

**ATTACHMENT D**

**Fair Employment & Housing Council**

**Text of Fair Employment and Housing Act Housing Regulations (Draft)**

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

**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. No person shall be subjected to discrimination in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions on account of membership in a protected class. The objectives of the California Fair Employment and Housing Act (FEHA) and these regulations are to promote fair housing and to assist all persons in understanding their rights, duties, and obligations, so as to facilitate achievement of voluntary compliance with the law.

**§ 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) “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.

(b) “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, or any residential real estate-related transactions.

(c) “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 the 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.

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

(e) “Discriminatory intent” means that one’s membership in a protected class is a motivating factor in committing a discriminatory housing practice, even if other factors also motivated the practice.

(f) “Dwelling” means any building, structure, or portion thereof which is occupied as, or designed or intended for, occupancy as a residence by one or more families. 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 that are used as a residence, student housing, and assisted living housing.

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

(1) Examples of dwelling units include:

(A) a single family home;

(B) an apartment unit within an apartment building; and

(C) other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, or rooms in which people sleep. Examples include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

(h) “Housing accommodation” means any building, structure, or portion thereof that is occupied as, or intended for occupancy as, a residence by one or more families and any vacant land that is offered for sale or lease for the construction thereon of any building, structure, or portion thereof intended to be so occupied.

(i) “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.

(j) “Person” includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy cases, receivers, and fiduciaries, and all individuals and entities that fall within the definition of “owner” provided in this section.

(k) “Protected class” or “protected basis” means a characteristic or trait for which it is illegal to target for discrimination. The following are characteristics that are considered “protected classes” under the FEHA:

(1) “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, even by other someone within their own race, on account of their skin color.

- (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 identity; and gender expression.
- (5) "Gender" means sex, and includes a person's gender identity and gender expression.
- (6) "Gender Identity" means a person's identification as male, female, a gender different from the person's assigned sex at birth, or transgender.
- (7) "Gender Expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
- (8) "Sexual Orientation" means an individual's heterosexuality, homosexuality, or bisexuality.
- (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 account of national origin includes 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; and

(16) The perception that the person has any of the preceding characteristics, or that the person is associated with a person who has, or is perceived to have, any of those characteristics constitutes discrimination based upon that characteristic.

#### **§ 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) Limit the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or

(4) 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) Nothing in this subchapter, other than the prohibitions against discriminatory advertising, applies to:

(1) The sale or rental of any single family house by an owner, provided the following conditions are met:

(A) The owner does not own or have any interest in more than three single family houses at any one time.

(B) The house is sold or rented without the use of a real estate broker, agent, or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph (c)(1) of this section applies to only one such sale in any 24-month period.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(d) Nothing in this subchapter, other than the prohibitions against discriminatory advertising, applies to the rental or lease to a single roomer or boarder living within an owner-occupied single-family house, where no more than one roomer or boarder is to live within the household.

(e) 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 one sex where living areas are shared in a single dwelling unit.

(f) 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 some 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.

**§ 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.

### **§ 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 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.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently.

(5) Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings.

#### **§ 11098.9. Discriminatory Advertisements, Statements, and Notices.**

(a) It shall be unlawful to make, print, publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which 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.

(b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include, but are not limited to, any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling.

(c) Discriminatory notices, statements, and advertisements include, but are not limited to:

(1) Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular persons because of their membership in a protected class.

(2) Expressing to agents, brokers, employees, prospective sellers or renters, or any other persons a preference for, or limitation on, any purchaser or renter based on membership in a protected class.

(3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of any protected basis.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of any protected basis.

#### **§ 11098.10. Discriminatory Representations on the Availability of Dwellings.**

(a) It shall be unlawful because of a person's membership in a protected class to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

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

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented because of a person's membership in a protected class.

(2) Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings because of a person's membership in a protected class preclude the sale or rental of a dwelling to that person.

(A) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall comply with the requirements of Government Code section 12956.1 in declaring such restrictive covenant void.

(B) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant may record a document titled Restrictive Covenant Modification pursuant to Government Code section 12956.2.

(3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to a person because of that person's membership in a protected class.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental because of a person's membership in a protected class.

(5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, regardless of whether such person is actually seeking housing, because of a person's membership in a protected class.

#### **§ 11098.11. Blockbusting.**

(a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by making representations regarding the entry or prospective entry of a person or persons of any protected class into the project, neighborhood, or community.

(b) In establishing a discriminatory housing practice under this section, it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.

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

(1) Engaging, for profit, in conduct which conveys to a person that a project, neighborhood, or community is undergoing or is about to undergo a change in composition, based on a protected class, of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental. This includes uninvited solicitations for listings.

(2) Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular protected class can or will result in undesirable consequences for the project, neighborhood, or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

### **§ 11098.12. Discrimination in the Provision of Brokerage Services.**

(a) It shall be unlawful to deny any person access to, or membership or participation in, any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation, because of a person's membership in a protected class.

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

(1) Setting different fees for access to or membership in a multiple listing service because of a person's membership in a protected class.

(2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of a person's membership in a protected class.

(3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of a person's membership in a protected class.

(4) Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, because of a person's membership in a protected class.

### **§ 11098.13. Retaliation.**

(a) It shall be unlawful for a landlord or owner to retaliate against any person in the sale or rental of housing accommodations because that person has engaged in protected activity.

(b) Retaliation includes, but is not limited to: harassment, eviction, a change in the terms and conditions, or any other discrimination made unlawful by the FEHA.

(c) Protected activity includes, but is not limited to: opposition of practices made unlawful under the FEHA, informing law enforcement agencies of practices believed unlawful under the FEHA,

testifying or assisting in a proceeding regarding unlawful activity, assertion of rights protected by the FEHA, or aiding or encouraging a person to exercise their rights under the FEHA.

**§ 11098.14. Harassment.**

(a) It shall be unlawful for a landlord or owner to harass any person in connection with the sale or rental of a dwelling on account of a person's membership in a protected class. Harassment includes any hostile or unwelcome conduct which deprives or interferes with a housing benefit, including the right to live in a discrimination-free housing environment.

(1) Deprivation of a discrimination-free housing environment is established if the unwelcome conduct alters the terms, conditions, privileges, facilities, or services in connection with a complainant's housing accommodation so as to create a hostile, unsafe, or offensive housing environment or otherwise interferes with the quiet enjoyment of the complainant's housing environment.

(2) Harassment in housing includes but is not limited to:

(A) Verbal harassment, e.g. epithets, derogatory comments or slurs on a protected basis;

(B) Physical harassment, e.g. assault, impeding or blocking movement, or any physical interference with normal movement, when directed at an individual on a protected basis;

(C) Visual forms of harassment, e.g., derogatory posters, cartoons, drawings or other documents on a protected basis;

(D) Unwelcome sexual conduct, or other unwelcome conduct linked to the person's sex;

(E) Any coercion, intimidation, threats, or interference with an individual's exercise or enjoyment of a housing benefit, on a protected basis; or

(F) Imposing inferior terms, rules, conditions, privileges, facilities, or services in connection with a housing benefit or accommodation because of a protected basis.

(b) Harassment may be established by showing that the conduct was sufficiently severe or pervasive to alter the aggrieved person's conditions of residency or to create an environment which a reasonable person in the aggrieved person's position would find intimidating, hostile, offensive, or otherwise significantly less desirable in the provision of housing accommodations or benefits. The severity of the harassment is judged from the perspective of a reasonable person in the victim's position, considering all the circumstances. One act or omission may be sufficient to establish conduct that is sufficiently severe under this section.

**§ 11098.15. Sexual Harassment.**

(a) Harassment because of sex violates the prohibitions against discrimination found in the FEHA. Sexual harassment includes both:

(1) Quid pro quo harassment: When submission to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature is made a term or condition, whether explicitly or implicitly, to the provision of a housing accommodation, service, or benefit; and

(2) Hostile housing environment: When unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct has the effect of creating an environment which a reasonable person in the aggrieved person's position would consider the conduct intimidating, hostile, and/or offensive.

(b) Whether unwelcome sexual conduct constitutes actionable sexual harassment will depend upon the totality of the circumstances, including the nature of the conduct and the context in which the conduct occurred. Critical factors to examine include, but are not limited to, the context, nature, severity, scope, frequency, duration, and location of the conduct, as well as the identity, number, relative ages and relationships of the persons involved. A single incident of conduct if sufficiently severe may constitute actionable sexual harassment.

#### **§ 11098.16. Liability for Unlawful Harassment**

(a) A landlord, owner, or manager is liable for his or her own harassing acts.

(b) A landlord, owner, or manager may be vicariously liable for harassment by his or her agents or employees if the harassment is committed within the scope of the agent or employee's employment.

(1) Whether harassment occurs within the scope of employment is a question of fact. However, harassing conduct can be found to occur in the scope of employment even if it violates an employee's official duties, does not benefit the employer, is willful or malicious, or disregards the employer's express orders.

(2) An agent or employee can be considered to be acting within the course and scope of the employment relationship if his or her harassing conduct occurs incidental to an employee's job-related tasks. This includes, but is not limited to being, on the premises for work-related reasons such as conducting repairs.

(c) A property owner or manager is liable for third party acts of harassment where the property owner or manager, or his or her agents or employees, knew or should have known of the third party's conduct and did not take immediate and appropriate corrective or remedial action.

(d) A harasser may be personally liable for the harassment, regardless of whether the landlord, owner, or other covered entity knew or should have known of the conduct and/or failed to take appropriate corrective action.

### **Article 3. Discrimination in Residential Real Estate-Related Transactions**

#### **§ 11098.17. Discriminatory Practices in Residential Real Estate-Related Transactions.**

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of a person's membership in a protected class.

#### **§ 11098.18. Residential Real Estate-Related Transactions.**

The term residential real estate-related transactions means:

- (a) The making or purchasing of loans or providing other financial assistance--
  - (1) For purchasing, constructing, improving, repairing or maintaining a dwelling; or
  - (2) Secured by residential real estate; or
- (b) The selling, brokering, or appraising of residential real property; or
- (c) The use of territorial underwriting requirements, for the purpose of requiring a borrower in a specific geographic area to obtain earthquake insurance, required by an institutional third party on a loan secured by residential property.

#### **§ 11098.19. Discrimination in the Making of Loans and in the Provision of Other Financial Assistance.**

- (a) It shall be unlawful for any person that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons based on their membership in a protected class in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.
- (b) Practices prohibited under this section in connection with a residential real estate-related transaction include, but are not limited to:
  - (1) Failing or refusing to provide to any person information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of a person's membership in a protected class.
  - (2) Providing, failing to provide, or discouraging the receipt of loans or other financial assistance in a manner that discriminates in their denial rate or otherwise discriminates in their availability because of a person's membership in a protected class.

**§ 11098.20 Discrimination in the Purchasing of Loans.**

(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of a person's membership in a protected class.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Purchasing loans or other debts or securities which relate to, or which are secured by, dwellings in certain communities or neighborhoods but not in others because persons in such neighborhoods or communities are members of a protected class.

(2) Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of any protected basis.

(3) Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of any protected basis.

(c) This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of State or Federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to any protected basis with the exception of source of income.

**§ 11098.21. Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance.**

(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of a person's membership in a protected class.

(b) Unlawful conduct under this section includes, but is not limited to:

(1) Using different policies, practices or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of a person's membership in a protected class.

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, cost, duration, or other terms or conditions for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of a person's membership in a protected class.

(3) Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of a person's membership in a protected class.

**§ 11098.22. Unlawful Practices in the Selling, Brokering, or Appraising of Residential Real Property.**

(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of a person's membership in a protected class.

(b) For the purposes of this section, the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than protected classes.

(d) Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration a protected basis.

**Article 4. Disability**

**§ 11098.23. Definitions.**

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

(a) "Accessible," when used with respect to the public and/or common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with one or more physical disabilities. The phrase "readily accessible to and usable by" is synonymous with accessible.

(b) “Accessible route” means a continuous, unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated safely by a person with a physical disability or a person using a wheelchair. Interior accessible routes may include, but are not limited to, corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include, but are not limited to, parking access aisles, curb ramps, walks, ramps, and lifts.

(c) “Assistive animal” means a trained animal necessary as a reasonable accommodation for a person with a disability.

(1) Examples include, but are not limited to:

(A) “Guide dog,” as defined at Civil Code section 54.1, trained to guide a blind or visually impaired person.

(B) “Signal dog,” as defined at Civil Code section 54.1, or other animal trained to alert a deaf or hard of hearing person to sounds.

(C) “Service dog,” as defined at Civil Code section 54.1, or other animal individually trained to the requirements of a person with a disability.

(d) “Building” means a structure, facility, or portion thereof that contains or serves one or more dwelling units.

(e) “Building entrance on an accessible route” means an accessible entrance to a building that is connected by an accessible route to one or more of the following: public transportation stops, accessible parking and passenger loading zones, or public access routes such as streets or sidewalks.

(f) “Common use areas” means rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between buildings.

(g) “Controlled substance” means any substance made unlawful under the Uniform Controlled Substances Act, Division 10, Health and Safety Code. This includes substances identified in sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code. Marijuana shall not be included in this definition where the user of marijuana is using it lawfully under the Compassionate Use Act, Health and Safety Code section 11362.5 et seq.

(h) “Covered multifamily dwellings” means both of the following:

(1) Buildings that consist of at least four condominium dwelling units or at least three rental apartment dwelling units if the buildings have at least one elevator. For purposes of this definition, dwelling units within a single structure separated by firewalls do not constitute separate buildings.

(2) The ground floor dwelling units in buildings that consist of at least four condominium dwelling units or at least three rental apartment dwelling units if the buildings do not have an elevator. For purposes of this definition, dwelling units within a single structure separated by firewalls do not constitute separate buildings.

(i) “Disability” includes both physical and mental disabilities. For the purposes of these regulations, disability shall be interpreted broadly.

(1) “Physical disability” includes, but is not limited to, all of the following:

(A) Any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

1. Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; and
2. Limits a major life activity as described in subdivision (p) of this section.

(B) Any other health impairment not described in paragraph (A) that requires special education or related services.

(C) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (A) or (B), which is known to the housing provider, or other entity covered by this subchapter.

(D) Being regarded or treated by the housing provider, or other entity covered by this subchapter, as having or having had any physical condition that limits a major life activity.

(E) Being regarded or treated by the housing provider, or other entity covered by this subchapter, as having or having had a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (A) or (B).

(F) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(2) “Mental Disability” includes, but is not limited to, all of the following:

(A) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific

learning disabilities, that limits a major life activity as described in subdivision (p) of this section.

(B) Any other mental or psychological disorder or condition not described in paragraph (A) that requires special education or related services.

(C) Having a record or history of a mental or psychological disorder or condition described in paragraph (A) or (B), which is known to housing provider, or other entity covered by this subchapter.

(D) Being regarded or treated by a housing provider, or other entity covered by this subchapter, as having or having had any mental condition that makes achievement of a major life activity difficult.

(E) Being regarded as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (A) or (B).

(F) "Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(j) "Elevator" does not include an elevator that serves only the first ground floor or any nonresidential area.

(k) "Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

(l) "Exterior" means all areas of the premises outside of an individual dwelling unit.

(m) "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

(n) "Interactive process means the cooperative exchange of information in an attempt to discover whether there is an accommodation or modification that would effectively afford the applicant or resident an equal opportunity to use and enjoy a dwelling, including all public and common use spaces associated with it.

(o) "Interior" means the spaces, parts, components or elements of an individual dwelling unit.

(p) "Major life activity" means physical, mental, and social activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Major life activities are to be broadly construed.

(1) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss is considered to "limit a major life activity" if it makes the achievement of that

major life activity difficult.

- (2) A mental or psychological disorder or condition is considered to “limit a major life activity” if it makes the achievement of the major life activity difficult.
- (3) Whether or not a disability “limits a major life activity” shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(q) “Modification” means any change to the public or common use areas of a building or any change to a dwelling unit.

(r) “Premises” means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

(s) “Primary entry level entrance” means the principal entrance through which most people enter the dwelling unit, as designated by the California Building Standards Code or by the building official if the Building Standards Code designation is not available.

(t) “Public use areas” means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(u) “Site” means a parcel of land bounded by a property line or a designated portion of a public right of way.

(v) “Support animal” is an animal that provides emotional or other support to a person with a disability. A support animal is sometimes referred to as “companion animal.” In order to qualify as a support animal, no special training, certification, or licensing is required.

**§ 11098.24. General Prohibitions against Discrimination Because of Disability.**

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, housing accommodations to any buyer or renter because of a disability of:

- (1) That buyer or renter;
- (2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (3) Any person associated with that person.

(b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of housing accommodations, or in the provision of services or facilities in

connection with such dwelling, because of a disability of:

- (1) That buyer or renter;
- (2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (3) Any person associated with that person.

(c) It shall be unlawful to make an inquiry to determine whether any of the following people have a disability, or to make an inquiry into the nature or severity of the disability of those people:

- (1) An applicant;
- (2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (3) Any person associated with that person.

(4) It is not unlawful to make the following inquiries, provided such inquiries are made of all applicants, regardless of whether or not they are perceived to be disabled:

(A) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(B) Inquiry to determine whether an applicant is qualified for a housing accommodation available only to persons with disabilities or to persons with a particular type of disability;

(C) Inquiry to determine whether an applicant is qualified for priority availability to persons with disabilities or to persons with a particular type of disability;

(D) Inquiring whether an applicant for a dwelling is a current illegal user of a controlled substance;

(E) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(d) Nothing in this article requires that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**§ 11098.25. Reasonable Modifications of Existing Premises.**

(a) It shall be unlawful for any person to refuse to permit, at the expense of a disabled person, reasonable modifications of existing premises, occupied or to be occupied by a disabled person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for disabled persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

(b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

(c) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A tenant with a disability asks his or her landlord for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

Example (2): An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

#### **§ 11098.26. Reasonable Accommodations.**

(a) A landlord, owner, or other covered entity has an affirmative duty to make reasonable accommodations when such accommodations may be necessary to afford a disabled person equal

opportunity to use and enjoy a dwelling unit and public and common use areas. Such accommodations include, but are not limited to, exceptions to standard rules, policies, practices, or services.

(1) For example:

(A) A blind applicant for rental housing wants live in a dwelling unit with a seeing eye dog. The building has a no pets policy. It is a violation of this section for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing eye dog because, without the seeing eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

(B) Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of this section for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

(b) A housing provider may only deny a requested accommodation if:

(1) The applicant or resident on whose behalf the accommodation was requested is not a person with a disability;

(2) There is no disability-related need for the requested accommodation; or

(3) The accommodation is not reasonable – i.e., if it would impose an undue hardship.

(c) For the purposes of this article, any request for waiver of a “no smoking” rule in order to utilize medical marijuana in compliance with the Compassionate Use Act of 1996 (Cal. Health & Saf. Code § 11362.5 et seq.) shall be deemed reasonable and shall be granted, unless the nature of the housing facility prohibits it, such as a sober living or recovery home.

(d) A request for accommodation of an assistive or support animal shall be deemed presumptively reasonable and shall be granted, despite any “no-pets” policy in place.

(1) A person who is granted accommodation of an assistive or support animal shall not be required to pay any pet-fee or other additional fee, including additional security deposit, to have the animal in his or her residence. However, a person who is granted

accommodation of an assistive or support animal will be liable for any damages caused to his or her dwelling or the larger residence by the animal or as a result of the animal's presence.

(2) Any state and local requirements regarding animals apply equally to assistive and support animals including, but not limited to, requirements that an animal be licensed, vaccinated, and/or sterilized. A landlord or owner is permitted to request verification that an assistive or support animal is in compliance with any applicable requirements.

(3) A party seeking to deny accommodation of an assistive or support animal due to safety concerns must provide evidence that the specific animal in question presents an unreasonable risk of harm or danger, based on a history of violent or aggressive behavior. No species, breed, size, or other universal restrictions may be applied. However:

(A) State and local restrictions on species apply equally to assistive and support animals.

(B) State and local limits on the number of animals in a residence apply equally to support animals.

(4) Invitees to the property shall be granted presumptive accommodation for service and support animals, in accordance with the restrictions above.

(e) Someone requesting an accommodation, including, but not limited to, use of an assistive or support animal, may be required to provide verification of disability pursuant to section 11098.29 of these regulations.

(f) A grant of an accommodation pursuant to this section does not exempt a tenant's responsibilities under the lease.

### **§ 11098.27. Undue Hardship**

(a) A landlord or owner may deny a requested accommodation as not reasonable if the accommodation would impose an undue hardship on the landlord or owner. An undue hardship would impose significant difficulty or expense or would constitute a fundamental alteration in the program or service. The determination of whether an accommodation poses undue hardship must be made on a case-by-case basis involving various factors including, but not limited to:

(1) the nature and cost of the requested accommodation;

(2) the financial resources of the housing provider;

(3) the benefits that the accommodation or modification would provide to the applicant or resident with a disability; and

(4) the availability of alternative accommodations or modifications that would effectively meet the applicant's or resident's disability-related needs.

(b) A housing provider cannot claim undue hardship based on the housing provider's or another resident's fears or prejudices toward the individual's disability, nor can undue hardship be based on the fact that provision of a reasonable accommodation or modification might be considered unfair by other residents.

### **§ 11098.28. The Interactive Process**

(a) When a landlord or owner refuses the requested accommodation or modification because it is not reasonable, the landlord or owner must engage in an interactive process with the applicant or resident. If an effective alternate accommodation or modification that would not impose an undue hardship on the landlord or owner exists, then the landlord or owner must grant that accommodation or modification.

(b) Regardless whether the housing provider feels that an applicant or resident is entitled to a reasonable accommodation or reasonable modification, the housing provider immediately must begin the interactive process upon receipt of a request for accommodation or modification.

(c) Both parties to the interactive process must undertake reasonable efforts to participate in the interactive process with good faith. Direct communications between the housing provider and the resident or applicant is not required, but any indirect communication must alert the resident or applicant that the housing provider is considering various accommodations or modifications and that the resident or applicant has the right to participate in the conversation.

(d) The time necessary to complete the interactive process will depend on many factors, including but not necessarily limited to, the nature of the accommodations or modifications under consideration and whether it is necessary to obtain supporting information. Notwithstanding such variables, the time for processing and providing or denying reasonable accommodation or reasonable modification should not exceed thirty (30) calendar days from the date of the start of the interactive process. Any delay beyond the thirty calendar day timeline in completing the interactive process establishes a rebuttable presumption that the housing provider failed to provide a reasonable accommodation or reasonable modification.

(e) A landlord or owner is required to consider any and all reasonable accommodations of which it is aware or that are brought to its attention by the applicant or resident, except ones that create an undue hardship. A landlord or owner has the right to select and implement any accommodation that is effective for both parties, but should consider the preference of the applicant or resident to be accommodated. An individual with a disability is not obligated to accept an alternative accommodation if he or she believes it will not meet his or her needs and the preferred accommodation is reasonable.

(f) A failure to reach an agreement through the interactive process on a reasonable accommodation or reasonable modification is in effect a decision by the provider not to grant accommodation or modification.

**§ 11098.29. Proof of Disability**

(a) If the need for the requested accommodation or modification is not readily apparent, the provider may request information necessary to verify that an accommodation or modification is necessary because of the person’s disability.

(b) If a person’s disability is obvious, or otherwise known to the provider, and the need for the requested accommodation or modification is also readily apparent or known, then the housing provider may not request any additional information.

(c) All information concerning a person’s disability must be kept confidential and must not be shared with other persons unless disclosure is needed to either make or assess the decision to grant or deny the request for accommodation or modification, or disclosure is required by law.

(d) A qualified health care provider, who can provide information verifying disability or the necessity of an accommodation or modification, includes:

(1) a medical or osteopathic doctor, physician, or surgeon, licensed in California or in another state or country, who directly treats or supervises the treatment of the person requesting accommodation; or

(2) a marriage and family therapist or acupuncturist, licensed in California or in another state or country, or any other persons who meet the definition of “others capable of providing health care services” under CFRA and its implementing regulations, including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, physician assistants, who directly supervise the treatment of the person requesting accommodation.

(e) Sample Form:

[Form Forthcoming]

**§ 11098.30. Design and Construction Requirements.**

(a) Covered multifamily dwellings for which an application for a construction permit is submitted on or after July 1, 2005, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility. For the purposes of this article, discrimination on the basis of disability includes, but is not limited to, a failure to design and construct ten percent of the dwelling units in qualified buildings in a manner that incorporates an accessible route to the primary entry level entrance;

(1) For example:

(A) A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

(B) A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

(C) A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(b) All covered multifamily dwellings for which an application for a construction permit is submitted on or after July 1, 2005 with a building entrance on an accessible route shall be designed and constructed in such a manner that:

(1) The public and common use areas are readily accessible to and usable by disabled persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(A) An accessible route into and through the covered dwelling unit;

(B) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(C) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are

provided; and

(D) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) For example:

(A) A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (b) of this section.

(B) A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multifamily units. The ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (b) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(c) This article does not invalidate or limit any federal or state law that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this article. The building standard requirements imposed by this subchapter shall meet or exceed the requirements under the federal Fair Housing Amendments Act of 1988 and its implementing regulations.

## **Article 5. Housing for Older Persons**

### **§ 11098.31. Purpose.**

The purpose of this article is to effectuate the exemption in the Fair Employment and Housing Act that relates to housing for older persons. For this exemption, the burden of proof shall be on the owner to prove that the housing qualifies as housing for older persons.

### **§ 11098.32. Exemption.**

(a) The provisions regarding familial status in this subchapter do not apply to housing for older persons as defined by Government Code section 12955.9(b).

(b) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

### **§ 11098.33. State and Federal Elderly Housing Programs.**

The provisions regarding familial status in this subchapter shall not apply to housing provided under any Federal or State program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.

**§ 11098.34. 62 or Over Housing.**

(a) The provisions regarding familial status in this subchapter shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

- (1) There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
- (2) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over;
- (3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of paragraph (a) of this section:

Example (1): John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its “62 or over” exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the “55 or over” exemption in § 11098.35.

Example (2): The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the “62 or over” exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the “62 or over” exemption.

**§ 11098.35. Housing for Persons who are 55 Years of Age or Older.**

(a) The provisions regarding familial status in this subchapter shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

- (1) The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the HUD regulations in effect at the time of the alleged

violation; or

(2) The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

(A) Section 807(b)(2)(C) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

(B) 24 CFR 100.305, 100.306, and 100.307.

(b) For purposes of this article, “housing facility or community” means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

(1) A condominium association;

(2) A cooperative;

(3) A property governed by a homeowners' or resident association;

(4) A municipally zoned area;

(5) A leased property under common private ownership;

(6) A mobile home park; and

(7) A manufactured housing community.

(c) For purposes of this article, older person means a person 55 years of age or older.

**§ 11098.36. 80 percent Occupancy.**

(a) In order for a housing facility or community to qualify as housing for older persons under §11098.35, at least 80 percent of its occupied units must be occupied by at least one person 55 years of age or older.

(b) For purposes of this article, occupied unit means:

(1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

(2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this article, occupied by at least one person 55 years of age or older means that on the date the exemption for housing designed for persons who are 55 years of age or older is claimed:

(1) At least one occupant of the dwelling unit is 55 years of age or older; or

(2) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

(d) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility or community were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by § 11098.26 and who are under the age of 55.

(5) For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(A) Has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older; and

(B) Meets the requirements of §§ 11098.35, 11098.37, and 11098.38.

(f) For purposes of the transition provision described in § 11098.220(e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children

who reside in the facility or community in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older.

(g) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of § 11098.37.

**§ 11098.37. Intent to Operate as Housing Designed for Persons who are 55 Years of Age or Older.**

(a) In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents;

(2) Any advertising designed to attract prospective residents;

(3) Lease provisions;

(4) Written rules, regulations, covenants, deed or other restrictions;

(5) The maintenance and consistent application of relevant procedures;

(6) Actual practices of the housing facility or community; and

(7) Public posting in common use areas of statements describing the facility or community as housing for persons 55 years of age or older.

(b) Phrases such as “adult living”, “adult community”, or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, HUD shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of §§ 11098.36 and 11098.37(a).

**§ 11098.38. Verification of Occupancy.**

(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with § 11098.220 through reliable surveys and affidavits.

(b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in paragraphs (e)(1), (e)(3), and (e)(4) of § 11098.36.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license;

(2) Birth certificate;

(3) Passport;

(4) Immigration card;

(5) Military identification;

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

(1) Government records or documents, such as a local household census;

(2) Prior forms or applications; or

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

#### **§ 11098.39. Good Faith Defense against Civil Money Damages.**

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for housing for older persons exemption under this article.

(b) Components of the defense:

(1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for an exemption as housing for older persons exemption.

(2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.

(3) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this article.

(4) For purposes of this section, a person means a natural person.

(5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (c) of this section.

## **Article 6. Interference, Coercion, or Intimidation**

### **§ 11098.40. Prohibited Interference, Coercion, or Intimidation.**

(a) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this subchapter.

(b) Conduct made unlawful under this section includes, but is not limited to, the following:

(1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of that person's membership in a protected class.

(2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of their membership in a protected class, or the protected classes of any of their visitors and/or associates.

(3) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of that person's membership in a protected class, or the protected classes of any of that person's visitors and/or associates.

(4) Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this subchapter.

(5) Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Employment and Housing Act.

## **Article 7. Discriminatory Effect**

### **§ 11098.41. Discriminatory Effect Prohibited.**

(a) A practice has a discriminatory effect where an act or failure to act actually has the effect of unlawfully discriminating against a group of persons, or the practice creates, increases,

reinforces, or perpetuates segregated housing patterns because of any protected basis. Liability may be established under the Fair Employment and Housing Act based on a practice's discriminatory effect even if the practice was not motivated by a discriminatory intent.

(b) A practice with a discriminatory effect may still be lawful if supported by a legally sufficient justification. A legally sufficient justification exists where the challenged practice:

(1) Is performed by a business establishment as defined by Civil Code section 51 and is necessary to the operation of the business, and effectively carries out the significant business need it is alleged to serve, or if not performed by a business establishment, 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; and

(2) Those interests could not be served by another practice that has a less discriminatory effect.

(c) A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (b) of this section, may not be used as a defense against a claim of intentional discrimination.

## **Article 8. Familial Status**

### **§ 11098.42. General Prohibitions against Discrimination Because of Familial Status.**

(a) Prohibited discrimination on the basis of familial status includes, but is not limited to:

(1) Restricting children from common areas.

(A) This subchapter does not prohibit restrictions that are the minimum necessary to eliminate substantial risk to the health and safety of children.

1. Example: A rule stating that children under 10 years old must be accompanied by an adult while using a pool at a residence may be reasonable if the pool is easily accessible by children. A rule barring children, of any specified age group, from use of a pool at a residence would be overly prohibitive. Similarly, limiting the use of the pool by children over 10 years in any manner that adult tenants are not limited would be overly prohibitive.

(2) Charging higher security deposits to families with children.

(3) Requiring a person to sign a waiver of liability as a condition of occupancy by children.

(b) A person shall not be held liable for discriminating on the basis of familial status, if the person acted with the good faith belief that the conduct in question was justified by business necessity.

(1) “Business necessity” means a compelling, well-established public purpose which also establishes that there is no reasonable alternative means of serving the same purpose with less discriminatory impact.

### **§ 11098.43. Occupancy Standards.**

(a) This part 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 because of any protected basis;

(2) Limit the applicability of reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(A) In general, reasonable occupancy of a dwelling shall be established based on the standard set forth in by the Department of Housing and Community Development in Health and Safety Code section 17922.

(B) Nothing in this section prohibits an owner or landlord from enforcing a less restrictive occupancy standard.

(C) Local governments may elect to adopt in the alternative the standard of two persons for each bedroom plus one additional person. Once adopted, any imposed standard by a housing provider that limits the maximum number of residents on a basis more restrictive than two persons per bedroom plus one additional person shall be presumptively unreasonable, unless the provider can demonstrate a necessary business purpose for the limitation.

(i) Under this standard, for dwellings that do not contain separate bedrooms, such as bachelor, studio or efficiency apartments, a standard that limits the maximum number of residents to less than two persons shall be presumptively unreasonable.

(D) Local government shall notify the Department within one year of adopting an alternative standard. However, a local government can amend its adoption of the alternative occupancy standards at any time, provided the applied standard matches the standards set forth in either subdivision (A) or (C).

(E) Upon addition of a new child to a residence, through birth or adoption, where this addition places the residents in violation of the applicable occupancy standards, there shall be an exception made to the standard for one year (12 calendar months) from the First of the month during which the child joined the residence.

(i) During this twelve month period a housing provider may not terminate or otherwise alter the lease of the resident, unless they can show that the changes would otherwise have been made.

Example: A housing provider enforces a “two plus one” occupancy standard. A woman living with her husband and daughter in a one-bedroom apartment gives birth to a new baby, who moves into the residence on May 5. The housing provider must allow the family to continue or extend its lease until April 30 of the next year. However, the housing provider may make changes to the rent amount, and impose changes and conditions, provided they are consistent to changes made in the leases of other tenants not in violation of this Title.