

ATTACHMENT D

Fair Employment & Housing Council Fair Housing Regulations

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Div. 4.1. Department of Fair Employment & Housing

Chapter 5. Fair Employment & Housing Council

Subchapter 7. Discrimination in Housing

TEXT

[All additions to the CA Code of Regulations]

Article 1. General Matters

§§ 12000-12004. [Reserved]

§ 12005. Definitions.

As used in this subchapter, the following definitions shall apply:

(a) “Adverse action” means action that harms or has a negative effect on an aggrieved person. The adverse action need not be related directly to the dwelling or housing opportunity forming the basis for the lawsuit or administrative complaint; for example, filing false allegations about a tenant with a tenant’s employer may constitute adverse action. Adverse action includes:

(1) In dwellings that are rented, leased, or otherwise made available for occupancy whether or not for a fee, adverse actions include:

(A) Failing or refusing to rent or lease real property, failing or refusing to continue to rent or lease real property, failing or refusing to add a household member to an existing lease, reducing any tenant subsidy, increasing the rent, reducing services, changing the terms, conditions, or privileges, threatening to or actually filing false reports with tenant reporting agencies, unlawfully locking an individual out of, or otherwise restricting, access to all or part of the premises, harassment, termination, or threatened termination of tenancy, serving a notice to quit, filing an eviction action, evicting a tenant, refusing to provide a reasonable accommodation or reasonable modification, or engaging in any other discriminatory housing practice; and

(B) Taking any action prohibited by California Civil Code sections 1940.2 (a), 1940.3(b), 1940.35, or 1942.5(c) or (e), or Code of Civil Procedure 1161.4(a);

(2) Taking any action prohibited by Article 24 regarding the consideration of criminal history information;

(3) Refusing to sell a dwelling or residential real estate or otherwise failing or refusing to enter into a residential real estate related transaction;

(4) Refusing to provide financial assistance related to a dwelling or residential real estate;
or

(5) Taking other action that has an adverse effect on an aggrieved person.

(b) “Aggrieved person” includes any person who:

(1) Believes they have been injured by a discriminatory housing practice; or

(2) Believes that they will be injured by a discriminatory housing practice that is about to occur.

(c) “Arrest” means a record from any jurisdiction that does not result in a conviction and includes information indicating that an individual has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, military, or prosecutorial agency, and/or charged with or indicted for any felony, misdemeanor or other criminal offense.

(d) “Assistance animal” means an animal that is necessary as a reasonable accommodation for an individual with a disability. See also, section 12185. Assistance animals include service animals and support animals. An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of an individual’s disability.

(1) “Service animals” are animals that are trained to perform specific tasks to assist individuals with disabilities, including individuals with mental health disabilities. Service animals do not need to be professionally trained or certified, but may be trained by the individual with a disability or another individual. Specific examples include, but are not limited to:

(A) “Guide dog,” as defined at Civil Code section 54.1, or other animal trained to guide a blind individual or individual with low vision.

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

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

(D) “Miniature horses” meeting the requirements of 28 CFR 35.136(i) and 28 CFR 36.302(c)(9).

(E) “Service animals in training,” including guide, signal, and service dogs being trained by individuals with disabilities, persons assisting individuals with disabilities, or authorized trainers under Civil Code sections 54.1(c) and 54.2(b).

(2) “Support animals” are animals that provide emotional, cognitive, or other similar support to an individual with a disability. A support animal does not need to be trained or certified. Support animals are also known as comfort animals or emotional support animals.

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

(f) “Business establishment” shall have the same meaning as in Section 51 of the Civil Code. Business establishments include persons engaged in the operation of a business covered by Section 51 of the Civil Code, insofar as the business is related to dwellings, housing opportunities, financial assistance, land use, or residential real estate-related activities. The term business establishment shall be broadly interpreted. For example:

(1) The rental, sale, management or operation of residential real estate, including common interest developments and mobilehome parks, constitute business establishments;

(2) Government bodies engaged in enacting legislation to implement governmental functions may not constitute business establishments, but they may be a business establishment if they operate a business such as a shop in a government building; and

(3) Both nonprofit and for-profit organizations can constitute business establishments depending on the facts, but truly private social clubs not engaged in business activity are not business establishments.

(g) “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. Examples of common use areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, elevators, parking areas, garages, pools, clubhouses, dining areas, physical fitness areas or gyms, play areas, recreational areas, and passageways among and between buildings.

(h) “Complainant” means a person who files a complaint with the department alleging that the person has been aggrieved by a practice made unlawful by any law the department enforces.

(i) “Criminal conviction” means a record from any jurisdiction that includes information indicating that an individual has been convicted of a felony or misdemeanor, other than criminal determinations explicitly excluded by section 12269.

(j) “Criminal history information” means any federal, state or local public record, investigative consumer reports, and other compilations, reports, or other formats based on information in public records which include individual identifiers and describe an individual’s arrests and

subsequent dispositions. For purposes of this article, persons must not seek, consider or use information on criminal convictions except in compliance with section 12269.

(k) “Department” means the Department of Fair Employment and Housing.

(l) “Directly related conviction” means the criminal conviction has a direct and specific negative bearing on the identified interest or purpose supporting the practice. In determining whether a criminal conviction is directly related, a practice should consider the nature and severity of the crime and the amount of time that has passed since the criminal conduct occurred as provided in criminal history information, and additional relevant information as provided in criminal history information.

(m) “Discriminatory housing practice” means an act that is unlawful under federal or state fair housing law, including housing-related violations of the Fair Employment and Housing Act, the federal Fair Housing Act, the Unruh Civil Rights Act, the Ralph Civil Rights Act, the Disabled Persons Act, and the Americans with Disabilities Act.

(n) “Dwelling unit” means a single unit of a housing accommodation for a family or one or more individuals.

(o) “Financial assistance” includes the making or purchasing of loans, grants or the provision of other financial assistance relating to the purchase, organization, development, construction, improvement, repair, maintenance, rental, leasing, occupancy, or insurance of dwellings or which are secured by residential real estate, including:

(1) Mortgages, reverse mortgages, home equity loans, and other loans secured by residential real estate;

(2) Insurance and underwriting related to residential real estate, including construction insurance, property insurance, liability insurance, homeowner’s insurance, and renter’s insurance; and

(3) Loan modifications, foreclosures, and the implementation of the foreclosure process.

(p) “Housing accommodation” or “dwelling” includes:

(1) One or more dwelling units;

(2) Any building, structure, or portion thereof that is used or occupied as, or designed, arranged, or intended to be used or occupied as, a home, residence, or sleeping place by one individual who maintains a household or by two or more individuals who maintain a common household, and includes all public and common use areas associated with it, if any, including single family homes; apartments; community associations, condominiums, townhomes, planned developments, and other common interest developments as defined in the Davis-Stirling Common Interest Development Act (known colloquially as homeowner associations (HOAs)); housing cooperatives, including those defined under

Civil Code 4100(d); rooms used for sleeping purposes; single room occupancy hotel rooms and rooms in which people sleep within 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; bunkhouses; dormitories, sober living homes; transitional housing; supportive housing; licensed and unlicensed group living arrangements; residential motels or hotels; boardinghouses; emergency shelters; homeless shelters; shelters for individuals surviving domestic violence; cabins and other structures housing farmworkers; hospices; manufactured homes; mobilehomes and mobilehome sites or spaces; modular homes, factory built houses, multi-family manufactured homes, floating homes and floating home marinas, berths, and spaces; communities and live aboard marinas; and recreational vehicles used as a home or residence.

(3) Any vacant land that is offered for sale or lease for the construction of any housing accommodation, dwelling, or portion thereof as defined in subdivision (2); or

(4) All dwellings as defined in and covered by the federal Fair Housing Act (42 U.S.C. § 3602(b)).

(q) “Housing opportunity” includes the opportunity to obtain, use or enjoy a dwelling, a residential real estate-related transaction, financial assistance in relation to dwellings or residential real estate, development or land use in relation to dwellings or residential real estate, or other housing related privileges, services and facilities, including infrastructure or governmental services.

(r) “Includes” or “including” has the same meaning as “includes, but not limited to” or “including, but is not limited to.”

(s) “Legitimate” means that a justification is genuine and not false or pretextual.

(t) “Nondiscriminatory” means that the justification for a challenged practice does not itself discriminate based on a protected basis.

(u) “Owner” includes any person having any legal or equitable right of ownership, governance, possession or the right to rent or lease housing accommodations. This may include:

(1) A lessee, sublessee, assignee, managing agent, real estate broker or salesperson;

(2) A trustee, trustee in bankruptcy proceedings, receiver, or fiduciary;

(3) Any person that is defined as a “housing provider” in a statute, regulation or government program or that is commonly referred to as a “housing provider” in the housing industry;

(4) The state and any of its political subdivisions and any agency thereof;

(5) Agencies, districts and entities organized under state or federal law, and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations; and

(6) Governing bodies of common interest developments.

(v) “Person” or “persons” include:

(1) An individual or individuals;

(2) All individuals and entities that are included in the definition of “owner”;

(3) All individuals and entities that are described in 42 U.S.C. § 3602(d) and 24 C.F.R. 100.20, including one or more individuals, corporations, partnerships, limited liability companies, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy proceedings, receivers, and fiduciaries;

(4) All institutional third parties, including the Federal Home Loan Mortgage Corporation, Fannie Mae, and any other entities that comprise the secondary loan market;

(5) Community associations, condominiums, planned developments, and other common interest developments, including those defined in the Davis-Stirling Common Interest Development Act (Civil Code section 4000 et seq.);

(6) The state and any of its political subdivisions and any agency thereof; agencies, districts, and entities organized under state or federal law; and cities, counties, and cities and counties (whether charter or not), and all political subdivisions and agencies thereof; and

(7) Any entity that has the power to make housing unavailable or infeasible through its practices, including government entities and agencies, insurance companies, real estate brokers and agents, and entities that provide funding for housing

(8) “Person” shall be interpreted broadly.

(w) “Practice” includes the following, whether written or unwritten or singular or multiple: an action, failure to act, rule, law, ordinance, regulation, decision, standard, policy, procedure, and common interest development governing documents pursuant to Civil Code sections 4205, 4340-4370. Practice also includes “practices” as used in 24 C.F.R. Part 100.

(x) “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.

(y) “Private land use practices” include all non-governmental practices (a single action, multiple actions, and failure or failures to act) in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities including:

- (1) Rehabilitation, transfer, conversion, demolition and development;
- (2) Regulations and rules governing use of property and the conduct or characteristics of its occupants;
- (3) Provision, denial of, or failure to provide infrastructure, services or facilities and land use that affect the feasibility, use or enjoyment of housing opportunities and existing and proposed dwellings;
- (4) Covenants, deed restrictions, and other conditions or constraints on transfer or use of property, whether or not recorded with a county; and
- (5) Other actions that make housing unavailable.

(z) “Protected bases” or “protected classes” include race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status, arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes.

(aa) “Public land use practices” include all practices (a single action, multiple actions, and failure or failures to act) by governmental entities, as those entities are defined in sections 12005(u)(4), 12005(u)(5), and 12005(v)(6), in connection with development and land use that are related to or have an effect on existing or proposed dwellings or housing opportunities including:

- (1) Adoption, modification, implementation or rescission of single or multiple ordinances, resolutions, actions, policies, permits, or decisions, including authorizations, denials, and approvals of zoning, land use permits, variances, and allocations, or provision or denial of facilities or services;
- (2) Other actions authorized under the California Planning and Zoning Law (Title 7 (commencing with section 65000)), California Redevelopment Law (Health & Safety Code section 33320 et seq.), “Redevelopment Dissolution Law” (Division 24, Parts 1.8, 1.85 and 1.87), the Ellis Act (Government Code section 7060), the Mobilehome Parks Act (Health and Safety Code section 18200 et seq.), the Special Occupancy Parks Act (Health & Safety Code section 18860 et seq.), the California Relocation Assistance Act (Government Code section 7260 et seq.), the Surplus Lands Act (Government Code section 54220 et seq.), State Housing Law (Health and Safety Code section 17910 et seq., Government Code section 65580 et seq.) and other federal and state laws regulating the development, transfer, disposition, demolition, and regulation of residential real estate or

existing or proposed dwellings, and the provision of public facilities and services and other practices that affect infrastructure, municipal services and community amenities in connection with housing opportunities;

(3) All practices that could affect the feasibility, use, or enjoyment of housing opportunities;

(4) Allocation, provision, denial of or failure to provide municipal infrastructure or services, such as water, sewer, and emergency services, and other services, in connection with housing opportunities;

(5) Permitting of facilities or services that affect housing opportunities;

(6) Adoption, modification or implementation of housing-related programs, which include activities where a governmental entity, in whole or in part, owns, finances, develops, constructs, alters, operates, or demolishes a dwelling, or where such activities are done in connection with a program administered by, or on behalf of, a governmental entity, directly or through contractual, licensing, or other arrangements; and

(7) Other practices related to regulation of land use.

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

(cc) “Residential real estate” means all real property, whether improved or unimproved, that includes or is planned to include dwellings, or is zoned or otherwise designated or available for the construction or placement of dwellings.

(dd) “Residential real estate-related transaction” includes:

(1) Providing financial assistance;

(2) Buying, selling, brokering or appraising of residential real estate; or

(3) 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 real property.

(ee) “Respondent” means a person alleged to have committed a practice made unlawful by a law the department enforces and against whom a complaint has been filed with the department or civil action has been filed.

(ff) “Substantial interest” means a core interest of the organization that has a direct relationship to the function of that organization.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, 12955.8, 12956.1, and 12956.2, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§§ 12006-12009. [Reserved]

§ 12010. Liability for Discriminatory Housing Practices.

(a) Direct Liability.

(1) A person is directly liable for:

(A) The person's own conduct that results in a discriminatory housing practice.

(B) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct, including because supervisors, managers, or principals of the person had or should have had such knowledge.

(C) Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of any legal responsibility or authority the person may have with respect to the conduct of such third party. The power, responsibility, or authority can be derived from sources including contracts, leases, common interest development governing documents, or by federal, California, or local laws, regulations, or practices.

(2) For purposes of determining liability under this section, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person. An aggrieved person has a right to raise the discriminatory housing practice as an affirmative defense to an unlawful detainer action.

(3) An employee or agent may be directly liable for a discriminatory housing practice, regardless of whether the employee's or agent's employer or principal knew or should have known of the conduct or failed to take appropriate corrective action.

(b) Vicarious Liability. To the extent permissible by applicable California laws concerning agency, and so long as it is not inconsistent with interpretations of agency under the Fair Housing Act, a person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice.

(1) Whether liability for a discriminatory housing practice is consistent with agency law is a question of fact. However, a discriminatory housing practice can be found to occur even if it violates an agent's or employee's official duties, does not benefit the agent or employer, is willful or malicious, or disregards the agent's or employer's express orders.

(2) An agent or employee shall be considered to be acting within the course and scope of the agency or employment relationship even if his or her discriminatory housing practice occurs incidental to the agent's or employee's job-related tasks. This includes being on the premises of a dwelling for work-related reasons such as conducting repairs.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12983, Government Code.

Articles 2-6. [Reserved]

§§ 12011-12059. [Reserved]

Article 7. Discriminatory Effect

§ 12060. Practices with a Discriminatory Effect.

(a) Liability may be established under the Act based on a practice's discriminatory effect, as defined in paragraph (b) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in section 12062.

(b) A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of individuals, or creates, increases, reinforces, or perpetuates segregated housing patterns, based on membership in a protected class. A discriminatory effect may exist even if only a single person suffers harm from the practice.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

§ 12061. Burdens of Proof in Discriminatory Effect Cases.

(a) The complainant has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.

(b) If the complainant satisfies the burden of proof set forth in subdivision (a) of this section, the respondent has the burden of proving that the challenged practice meets all of the prongs of a legally sufficient justification, as set forth in section 12062.

(c) The opposing party may rebut whether the party with the burden of proof in either subdivision (a) or (b) has met its burden.

(d) Types of evidence that may be relevant in establishing or rebutting the existence of a discriminatory effect include:

- (1) National, state, and local statistics;
- (2) Applicant files or data;
- (3) Tenant/resident files or data;
- (4) Conviction statistics;
- (5) Demographic or census data;
- (6) Local agency data or records;
- (7) Police records and court records, including eviction data;
- (8) Survey data; and
- (9) Other relevant data.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code; 42 U.S.C. section 3615; 24 C.F.R. section 100.500 et seq.; *DFEH v. Merribrook Apts.* (Nov. 9, 1988) No. 88-19 FEHC Precedential Decs. 1988-99.

§ 12062. Legally Sufficient Justification.

(a) A business establishment with a practice that has a discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of the Act if the business establishment can establish that:

- (1) The practice is intended to serve a substantial, legitimate, nondiscriminatory interest that is necessary to the operation of the business;
- (2) The practice effectively carries out the identified business interest; and
- (3) There is no feasible alternative practice that would equally or better accomplish the identified business interest with a less discriminatory effect.

(b) In cases that do not involve a business establishment, the person whose practice has a discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of the Act if the person can establish that:

- (1) The practice is necessary to achieve a substantial, legitimate, nondiscriminatory purpose of the non-business establishment;

- (2) The practice effectively carries out the identified purpose;
- (3) The identified purpose is sufficiently compelling to override the discriminatory effect;
and
- (4) There is no feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect.

(c) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.

(d) The determination of whether an interest or purpose is substantial, legitimate, and nondiscriminatory requires a case-specific, fact-based inquiry. There are no interests that are *per se* substantial, legitimate, and nondiscriminatory.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code; *DFEH v. Merribrook Apts.* (Nov. 9, 1988) No. 88-19 FEHC Precedential Decs. 1988-99.

§ 12063. Relationship of Legally Sufficient Justification to Intentional Violations.

A demonstration that a practice is supported by a legally sufficient justification, as defined in section 12062, may not be used as a defense against a claim of intentional discrimination under section 12955.8(a) of the Act.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

Articles 8-10. [Reserved]

§§ 12064-12099. [Reserved]

Article 11. Financial Assistance Practices

§ 12100. Financial Assistance Practices with Discriminatory Effect.

(a) Practices prohibited under this section in connection with loans and financial assistance include the following, unless there is a legally sufficient justification for the practice:

(1) Making available, making unavailable, or discouraging the provision of financial assistance that results in a discriminatory effect based on membership in a protected class;

(2) Establishing the terms or conditions of financial assistance in a manner that results in a discriminatory effect based on membership in a protected class;

- (3) Failing or refusing to provide information regarding the availability of financial assistance, or failing or refusing to provide information regarding application requirements, procedures or standards for the review and approval of financial assistance, or providing information which is inaccurate or different from that provided others, that results in a discriminatory effect based on membership in a protected class;
- (4) Imposing different terms or conditions on the availability of financial assistance in a manner that results in a discriminatory effect based on membership in a protected class;
- (5) Determining the type of financial assistance to be provided or fixing the amount, interest rate, cost, duration, or other terms or conditions for financial assistance in a manner that result in a discriminatory effect based on membership in a protected class;
- (6) Servicing of financial assistance, or providing such servicing with different terms or conditions, in a manner that results in a discriminatory effect based on membership in a protected class;
- (7) Subjecting a person to harassment in a manner that has the effect of imposing different terms or conditions for the availability of financial assistance that results in a discriminatory effect based on membership in a protected class; and
- (8) Conditioning the availability of financial assistance, or the terms or conditions thereof, on a person's response to harassment in a manner that results in a discriminatory effect based on membership in a protected class.

(b) Practices in this section may also be a discriminatory practice if they violate section 12955.8(a) of the Act and any implementing regulations by intentionally discriminating on the basis of membership in a protected class.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

§§ 12101-12119. [Reserved]

Article 12. Harassment and Retaliation

§ 12120. Harassment.

(a) General. Quid pro quo and hostile environment harassment because of membership in a protected class constitute discriminatory housing practices.

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to any of the following: the sale, rental, or availability of a dwelling; the terms, conditions, or privileges of the sale or

rental, or the provision of services or facilities in connection therewith; or the availability, terms, conditions, or privileges of a housing opportunity. An unwelcome request or demand may constitute quid pro quo harassment even if an individual acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with any of the following: the availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental; the provision or enjoyment of services or facilities in connection therewith; the availability, terms, conditions, or privileges of a housing opportunity; or constitute any kind of adverse action. Hostile environment harassment does not require a change in the terms, conditions, or privileges of the dwelling, housing opportunity, or housing-related services or facilities.

(A) Whether hostile environment harassment existed or exists depends upon the totality of the circumstances.

(i) Factors to be considered in determining whether hostile environment harassment existed or exist include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

(ii) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment existed or exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment exists or existed, as well as the amount of damages to which an aggrieved person may be entitled.

(iii) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is viewed from the perspective of a reasonable person in the aggrieved person's position.

(b) Title VII Affirmative Defenses Not Available. The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 is not available in housing cases.

(c) Type of Conduct. Quid pro quo and hostile environment harassment in housing can be written, verbal, or other conduct and do not require physical contact. Quid pro quo and hostile environment harassment in housing include:

(1) Verbal harassment, including epithets, derogatory comments, or slurs;

(2) Physical harassment directed at an individual, including assault, impeding or blocking movement, or any physical interference with normal movement;

(3) Visual forms of harassment, including derogatory posters, cartoons, drawings, writings, or other documents. Nothing herein shall be construed to contravene the

protections provided by Civil Code sections 1940.4 and 4710;

(4) Unwelcome sexual conduct, or other unwelcome conduct, linked to an individual's sex, gender, gender identity, gender expression, or sexual orientation;

(5) Any coercion, intimidation, threats, or interference with a person's exercise or enjoyment of a housing opportunity;

(6) Taking any adverse action against a person in a manner that constitutes quid pro quo or hostile environment harassment, such as representing to an applicant that a dwelling or housing opportunity is unavailable because of the applicant's response to a request for a sexual favor or other harassment;

(7) Revealing private information to a third party about a person, without their consent, in a manner that constitutes quid pro quo or hostile environment harassment, unless such disclosure is required by federal or state law or permitted by an exception set forth in section 12176(b);

(8) Subjecting a person to a discriminatory housing practice may constitute quid pro quo or hostile environment harassment.

(d) Number of Incidents. A single incident of harassment because an individual is a member of a protected class may constitute a discriminatory housing practice, where the incident is sufficiently severe to constitute hostile environment harassment, or evidences quid pro quo harassment.

(e) Persons Protected. The prohibition on harassment extends to conduct that is based on an individual's membership in a protected class, being perceived as a member of a protected class, or on account of having aided or encouraged any person in the exercise of the rights protected by the Act.

(f) Nothing herein is designed to contravene a person's right to petition the government or exercise their rights under the First Amendment to the United States Constitution.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12948, 12955, and 12955.7, Government Code.

§§ 12121-12129. [Reserved]

§ 12130. Retaliation.

(a) It shall be unlawful for any person to take adverse action against an aggrieved person when a purpose for the adverse action is retaliation for engaging in protected activity.

(b) Persons Protected. For purposes of a retaliation claim, an aggrieved person includes any person who has alleged that they have been subject to adverse action due to engagement in a

protected activity. For purposes of a retaliation claim, the person does not need to have a claim under any other provision of the Act.

(c) “Protected activity” includes making a complaint, testifying, assisting or participating in any manner in a proceeding under the Fair Housing Act, Fair Employment and Housing Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Unruh Act, or any other federal, state or local law protecting fair housing rights or prohibiting discrimination in housing; opposition to housing practices believed to be discriminatory or made unlawful by a fair housing law; informing law enforcement or other government agencies of practices believed to be discriminatory or made unlawful by a fair housing law; assertion of rights protected by fair housing laws (including in response to perceived harassment); aiding or encouraging a person to exercise their fair housing rights; meeting or assembling with other persons in order to address potential or actual violations of fair housing rights (including, for example, by joining or organizing a tenant union); making a request for a reasonable accommodation or reasonable modification for an individual with a disability; or any other action related to access to statutory or constitutional remedial processes or remedies for violations of fair housing laws or laws prohibiting discrimination in housing.

(d) Burden-shifting rule. To establish a prima facie case of retaliation, a complainant must show that (1) the complainant was engaged in a protected activity; (2) the respondent subjected the complainant to an adverse action; and (3) a causal link exists between the protected activity and the adverse action. If the complainant can establish a prima facie case, the respondent must then offer a legitimate non-retaliatory reason for the adverse action, whereupon the burden shifts back to the complainant to demonstrate that the proffered reason is pretextual.

(e) “Purpose” means that retaliation formed some part of the basis for the respondent’s action even if it was not the sole motivating factor. The purpose must be more than a remote or trivial factor. Purpose may be established by evidence which indicates that the timing of the adverse action in relation to the respondent’s notification of the protected activity is such that retaliatory motivation can be inferred, may be established by the non-existence of another plausible purpose for the respondent’s adverse action, or by other direct or circumstantial evidence. For purposes of section 12955(f) of the Act, “dominant purpose” shall have the same meaning as purpose under this subsection.

(f) An aggrieved person under this Act may raise retaliation as an affirmative defense in an unlawful detainer action. Nothing in this subsection is intended to cause or permit the delay of an unlawful detainer action due to asserting retaliation as an affirmative defense. Raising retaliation as a good faith affirmative defense does not in and of itself constitute a delay of an unlawful detainer action.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12948, 12955, and 12955.7, Government Code.

Article 13. [Reserved]

§§ 12131-12154. [Reserved]

Article 14. Residential Real Estate-Related Practices

§ 12155. Residential Real Estate-Related Practices with Discriminatory Effect.

(a) Practices prohibited under this section in connection with a residential real estate-related transaction include the following, unless there is a legally sufficient justification for the practice:

- (1) Making available, or making unavailable, a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;
- (2) Establishing the terms or conditions of a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;
- (3) Failing or refusing to provide information regarding a residential real estate-related transaction or failing or refusing to provide information regarding application requirements, procedures, or standards for the review and approval of the residential real estate-related transaction, or providing information which is inaccurate or different from that provided others, that results in a discriminatory effect based on membership in a protected class;
- (4) Imposing different terms or conditions on the availability of a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;
- (5) Determining the price or other terms or conditions in connection with a residential real estate-related transaction in a manner that results in a discriminatory effect based on membership in a protected class;
- (6) Subjecting a person to harassment that affects a residential real estate-related transaction, in a manner that results in a discriminatory effect based on membership in a protected class; and
- (7) Conditioning the availability of a residential real estate-related transaction, or the terms or conditions thereof, on a person's response to harassment in a manner that results in a discriminatory effect based on membership in a protected class.

(b) Practices in this section may also be a discriminatory practice if they violate section 12955.8(a) of the Act and any implementing regulations by intentionally discriminating on the basis of membership in a protected class.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, and 12955.8, Government Code.

Article 15. Discrimination in Land Use Practices

§§ 12156-12160. [Reserved]

§ 12161. Discrimination in Land Use Practices and Housing Programs Prohibited.

(a) Unless there is a legally sufficient justification for the practice, it shall be unlawful for any person to engage in any public or private land use practice that intentionally discriminates pursuant to Government Code section 12955.8(a) and any implementing regulations based on membership in a protected class, or that has a discriminatory effect on members of a protected class pursuant to Article 7, including a practice that does any of the following in connection with housing opportunities or existing or proposed dwellings:

(1) Denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to housing opportunities;

(2) Makes housing opportunities unavailable or denies dwellings to individuals or intended occupants of dwellings;

(3) Imposes different requirements than generally imposed that deny, restrict, condition, adversely impact, or render infeasible housing opportunities or the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to housing opportunities or existing or proposed dwellings;

(4) Provides inadequate, inferior, limited, or no governmental infrastructure, facilities, or services, such as water, sewer, garbage collection, code enforcement, or other municipal infrastructure or services, in connection with the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use or in connection with housing opportunities or existing or proposed dwellings, or otherwise makes unavailable such infrastructure, facilities or services;

(5) Denies, restricts, conditions, adversely impacts, or renders infeasible the use of privileges, services, or facilities associated with housing opportunities or existing or proposed dwellings, or otherwise makes unavailable such privileges, services or facilities;

(6) Uses, approves of, or implements restrictive covenants, including provisions in governing documents of common interest developments, that restrict sale or use of property on the basis of a protected class, or the intended occupancy of any dwelling by individuals in a protected class, regardless of whether accompanied by a statement that the restrictive covenant is repealed or void;

(7) In the adoption, operation or implementation of housing-related programs, denies, restricts, adversely impacts, conditions, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or proposed dwellings;

(8) Refuses or fails to make reasonable accommodations in public or private land use practices or services related to the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with residential real estate or existing or proposed dwellings, including charging a fee for seeking or processing a reasonable accommodation, or using a variance or conditional use permit process rather than a reasonable accommodation process to respond to a request for a reasonable accommodation if the process takes into consideration different criteria or uses different processes than those required for consideration as a reasonable accommodation;

(9) Refuses or fails to make, or allows to be made, reasonable modifications in a dwelling when such modifications are required by law;

(10) Results in the location of toxic, polluting, and/or hazardous land uses in a manner that denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or proposed dwellings; or

(11) Denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or proposed dwellings or otherwise makes housing opportunities unavailable on the basis of an individual's or individuals' ability to speak, read or understand the English language. However, nothing in this section shall be interpreted to expand the obligation to provide translations of certain contracts and agreements as set forth in Civil Code section 1632 or section 1632.5.

(b) Where a public or private land use practice reflects acquiescence to the bias, prejudices or stereotypes of the public, members of the public, or organizational members, intentional discrimination may be shown even if officials or decision-makers themselves do not hold such bias, prejudice or stereotypes. This is a case-specific analysis.

(c) Application or implementation of a facially neutral practice violates the law if done in a manner that intentionally discriminates on the basis of membership in a protected class, or in a manner that has a discriminatory effect based on membership in a protected class in violation of section 12060 unless there is a legally sufficient justification for the manner in which the practice is applied or implemented.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, 12955.8, 12956.1, and 12956.2, Government Code.

§ 12162. Specific Practices Related to Land Use Practices.

To the extent that public or private land use practices identified in this section require conduct that violates other provisions of the Act and this subchapter, or otherwise restrict or deny residence, land ownership, tenancy, or any other land use benefit or housing opportunities, or

otherwise make housing opportunities unavailable or deny dwellings to individuals because of membership in a protected class or the intended occupancy of any dwelling by individuals in a protected class, or which have a discriminatory effect on the basis of membership in a protected class in the absence of a legally sufficient justification, they shall be unlawful. Those practices include actions to enact, modify, enforce, or implement:

(a) Practices requiring persons to take actions against individuals based upon broad definitions of nuisance activities (such as considering a certain number of phone calls to emergency services as a nuisance) or unlawful conduct, or mandating initiation of eviction procedures against tenants or occupants;

(b) Practices requiring persons to use specified criminal history records in their business establishment, prohibiting persons from renting or engaging in transactions covered by this Act on the basis of specified criminal convictions, or mandating initiation of eviction proceedings against tenants and occupants arrested, suspected or convicted of crimes;

(c) Practices requiring persons to take actions against individuals based upon their calls to emergency services or visits to the property by emergency services;

(d) Practices requiring persons to take actions against individuals based on information related to immigration status or legal residency or otherwise related to enforcement of laws related to immigration. Activities required by federal law or court order are exempt from this provision; and

(e) Practices that violate, or mandate that other persons violate, Article 24.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, 12955.6, 12955.8, 12956.1, and 12956.2, Government Code.

Articles 16-17. [Reserved]

§§ 12163-12175. [Reserved]

Article 18. Disability

§ 12176. Reasonable Accommodations.

(a) It is a discriminatory housing practice for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling unit and public and common use areas, or an equal opportunity to obtain, use, or enjoy a housing opportunity unless providing the requested accommodation would constitute an undue financial or administrative burden or a fundamental alteration of its program, or if allowing an accommodation would constitute a direct threat to the health and safety of others (i.e. a

significant risk of bodily harm) or would cause substantial physical damage to the property of others, as defined in Section 12179(a)(5) or 12185(d)(9).

(1) Subsection (b) of this section describes confidentiality requirements regarding reasonable accommodations;

(2) Subsection (c) of this section defines requirements relating to requests for reasonable accommodations;

(3) Section 12177 of this article describes the interactive process that is required when the duty to consider a reasonable accommodations request has been triggered;

(4) Section 12178 of this article defines requirements relating to the determination of whether a requested accommodation is necessary;

(5) Section 12179 of this article defines the bases upon which a requested accommodation can be lawfully denied;

(6) Section 12180 of this article states other requirements or limitations in the provision of reasonable accommodations and provides examples of reasonable accommodations.

(b) Confidentiality Regarding Reasonable Accommodations

(1) All information concerning an individual's disability, request for an accommodation, or medical verification or information must be kept confidential and must not be shared with other persons who are not directly involved in the interactive process or decision making about the requested accommodation unless disclosure is:

(A) Required to make or assess the decision to grant or deny the request for accommodation;

(B) Required to effectively administer or implement the requested accommodation;

(C) Authorized by the individual with the disability in writing; or

(D) Required by law.

(c) Requests for Reasonable Accommodations.

(1) The individual with a disability seeking a reasonable accommodation must make a request for such accommodation.

(2) The request for a reasonable accommodation may be made by the individual with a disability, a family member, or someone authorized by the individual with a disability to act on their behalf ("representative").

(3) A request for a reasonable accommodation need not be made in a particular manner or at a particular time. An individual makes a reasonable accommodation request at the time they request orally or in writing, or through a representative, an exception, change, or adjustment to a practice because of a disability, regardless of whether the phrase “reasonable accommodation” is used as part of the request. A request for a reasonable accommodation may be made at any time, including during litigation, at or after trial.

(4) The duty to provide reasonable accommodations is an ongoing one. Some individuals with disabilities require only one reasonable accommodation, while others may need more than one. Still others may need one reasonable accommodation for a period of time, and then at a later date, require another type of reasonable accommodation. Each request must be considered separately under the standards in this article.

(5) Adopting a formal procedure may aid individuals with disabilities in making requests for reasonable accommodations and may make it easier to assess those requests and keep records of the considerations given the requests. An individual requesting an accommodation may be asked to use a form or follow a particular procedure. However, a person may not refuse a request or refuse to engage in the interactive process because the individual with a disability or their representative did not use the preferred forms or procedures. The forms and procedures used may not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford an individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity, such as the information prohibited in section 12178.

(6) A person responsible for responding to accommodation requests must treat a request by an individual with a disability for assistance in completing forms or in following procedures, or a request for alternative methods of communication during the reasonable accommodation process, as a request for reasonable accommodations that must be responded to in the same manner as any other request. In many circumstances, such requests, or the person considering the request, may also be covered by the American with Disabilities Act and the provisions in the ADA and its accompanying regulations requiring the provision of auxiliary aids and services and alternative methods of communication.

(7) Reasonable Accommodation Requests in Unlawful Detainer Actions.

(A) An individual with a disability may raise failure to provide a reasonable accommodation as an affirmative defense to an unlawful detainer action.

(B) A request for a reasonable accommodation in unlawful detainer actions can be made at any time during the eviction process, including at or after trial, and in certain circumstances after eviction. A reasonable accommodation request that is made during a pending unlawful detainer action is subject to the same regulations that govern reasonable accommodation requests at any other time. For example:

(i) Rowan is an individual with a disability who receives Social Security Disability on the sixth day of each month. He is served a three-day notice to pay rent or quit on the second day of the month, but is unable to pay until after the notice expires. As a result, the owner files an unlawful detainer action. At trial, Rowan requests an accommodation to pay his rent on the sixth instead of the first, including allowing a late payment for the month at issue in the trial. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed.

(ii) Chelsea is an individual with a physical disability. The owner filed a successful unlawful detainer action unrelated to her disability. Chelsea partially moved out the day after the trial, but was unable, without help, to move some larger items (e.g. her couch, bed and dresser) to her new apartment. Because of the disability, she could not lift or carry anything heavy. She requested some additional time as a reasonable accommodation to arrange for help to move her furniture. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179 (for example if the owner has the capacity to leave the items in the unit for a period of time or if the unit is not re-rented), and engaging in the interactive process under section 12177 as needed.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12177. The Interactive Process.

(a) If a request for a reasonable accommodation is not promptly granted, the person considering the request for accommodation must engage in a timely (pursuant to subsection (d)), good faith, interactive process with the individual with a disability, or the individual's representative, in order to identify, evaluate, or implement an effective, reasonable accommodation for an individual with a disability.

(b) If the person considering the request for accommodation believes the information received is insufficient to establish either that a disability exists or the nature of the disability-related need for the accommodation, or if the nexus between the disability and the requested accommodation is not clear to the person considering the request for accommodation, the person considering the request for accommodation must seek clarification or additional information pursuant to section 12178 from the individual with a disability or the individual's representative. The person considering the request must not deny it for lack of information without first requesting the clarification or additional information and providing a reasonable opportunity for the individual requesting the accommodation to provide it.

(c) If the person considering the request believes that the initially requested accommodation cannot be granted for a reason permitted under section 12179, the person considering the request must try to identify if there is another accommodation that is equally effective and must discuss with the individual with the disability or the individual's representative whether other alternative

accommodations would be equally effective in meeting the needs of the individual with a disability. If an alternative accommodation would effectively meet the requester's disability-related needs of the individual and could not be lawfully denied for a reason permitted under Section 12179(a)(3)-(6), the person considering the request must grant it. The individual requesting the accommodation is not obligated to accept an alternative accommodation if the alternative accommodation will not meet the needs of the individual with the disability and the initially requested accommodation could not be lawfully denied for a reason permitted under section 12179. In many cases, the individual with the disability has the most accurate knowledge about the functional limitations posed by their disability, and therefore should be given significant weight.

(d) Requests for reasonable accommodations must be promptly considered. The time necessary to respond to a request depends on many factors, including:

- (1) The nature of the accommodation under consideration;
- (2) Whether it is necessary to obtain supporting information because the disability or the need for the accommodation is not obvious or known to the person considering the request;
- (3) Whether the accommodation is needed on an urgent basis; and
- (4) Whether it is necessary to engage in the interactive process to resolve the request.

(e) An undue delay by the person considering the request, for example, when there is a failure to act promptly on the need to acquire additional information pursuant to section 12178, may constitute a denial of a reasonable accommodation. Whether a request has been promptly considered is a case-by-case factual determination.

(f) A failure to reach an agreement on an accommodation request after a reasonable attempt to do so is in effect a decision not to grant the requested accommodation. If the individual requesting the accommodation or their representative has, after a reasonable opportunity, unreasonably failed to provide legally relevant information that was requested consistent with the regulations, the person considering the request may find this failure to be grounds for determining that the accommodation could not be granted. However, if after the denial of the initial request, the individual with a disability or their representative makes a later request for the same or similar accommodation, the latter request must be considered pursuant to these regulations independently of the initial request.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12178. Establishing that a Requested Accommodation is Necessary.

(a) If an individual with a disability or their representative makes a request for an accommodation that provides reliable information about the disability and how the requested accommodation is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity, then the person considering the request may not request any additional information about the individual's disability or the disability-related need for the accommodation.

(b) If the disability of the individual requesting an accommodation is apparent or known by the person considering the request, and it is also readily apparent or known how the requested accommodation is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity, then the person considering the request may not request any additional information about the requestor's disability or the disability-related need for the accommodation.

(c) If the disability of the individual requesting an accommodation is apparent or known by the person considering the request, but the need for the requested accommodation is not readily apparent or known, then in order to evaluate the disability-related need for the accommodation, the person considering the request may request only information that:

(1) Describes the needed accommodation; and

(2) Shows the relationship between the individual's disability and how the requested accommodation is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity.

(d) If the disability of the individual requesting an accommodation is not readily apparent to the person considering the request, the person may request only information that:

(1) Is necessary to establish that the individual has a disability;

(2) Describes the needed accommodation; and

(3) Shows the relationship between the individual's disability and how the requested accommodation is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity.

(e) A person considering a request for an accommodation may not seek information about:

(1) The individual with a disability's particular diagnosis or medical condition, the severity of the disability, medical records, medical history, other disability or medical issues unrelated to the request, or other disability or health related information beyond the information identified in subdivision (d) above.

(2) Information unrelated to the inquiry in subdivision (d) above.

(f) Depending on the individual's circumstances, information establishing that the individual has a disability can usually be provided directly by the individual with a disability through a variety of means, such as a credible statement or documentation of receipt of disability benefits. A credible statement is one that a reasonable person would believe is true based on the available information. Information confirming that the individual has a disability, or confirming that there is a disability-related need for the accommodation, may also be provided by any reliable third party who is in a position to know about the individual's disability or the disability-related need for the requested accommodation, including:

- (1) A medical professional;
- (2) A health care provider, including the office of a medical practice or a nursing registry;
- (3) A peer support group. Peer support groups are mutual support groups developed as alternatives to traditional medical or psychological treatments. They provide services such as education, peer mentoring, peer coaching, and peer recovery resource connections for groups of people with disabilities or people suffering from a wide range of trauma or illness;
- (4) A non-medical service agency or person, including In-Home Supportive Services or Supported Living Services providers; or
- (5) Any other reliable third party who is in a position to know about the individual's disability or disability-related need for the accommodation. This could include a relative caring for a child with a disability, a relative caring for an elderly family member with dementia, or others in a caregiving relationship with a person with a disability.

(g) The determination of whether a third party is reliable must be determined on a case-by-case basis. A determination of reliability may take into account:

- (1) Information establishing how the third party is familiar with the individual's disability or the disability-related need for the accommodation;
- (2) Information that specifies the functional limitations that underlie the request for an accommodation, but this information need not include specific medical information or terminology; or
- (3) Information providing a means to contact the third party to verify that the person identified did in fact provide the documentation and to answer any questions permitted by law.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code.

§ 12179. Denial of Reasonable Accommodation.

(a) A requested accommodation may be denied if:

(1) The individual on whose behalf the accommodation was requested is not an individual with a disability;

(2) There is no disability-related need for the requested accommodation (in other words, there is no nexus between the disability and the requested accommodation);

(3) The requested accommodation would constitute a fundamental alteration of the services or operations of the person who is asked to provide the accommodation;

(4) The requested accommodation would impose an undue financial or administrative burden on the person who is asked to provide the accommodation; or

(5) The requested accommodation would constitute a direct threat to the health or safety of others (i.e. a significant risk of bodily harm) or would cause substantial physical damage to the property of others, and such risks cannot be sufficiently mitigated or eliminated by another reasonable accommodation, pursuant to the following:

(A) A determination that an accommodation poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence, not on mere speculation or stereotype about the requested accommodation or a particular disability or individuals with disabilities in general;

(B) The assessment of whether the specific accommodation in question poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must consider, based on objective evidence that is sufficiently recent as to be credible, and not from unsubstantiated inferences:

(i) The nature, duration, and severity of the risk of a direct threat to the health and safety of others or of substantial physical damage to the property of others;

(ii) The probability that a direct threat to the health or safety of others or substantial physical damage to the property of others will actually occur; and

(iii) Whether there are any additional or alternative reasonable accommodations that will eliminate the direct threat to the health or safety of others or substantial physical damage to the property of others; or

(6) A support animal requested as a reasonable accommodation would constitute a direct threat to the health or safety of others or would cause substantial physical damage to the property of others under Section 12185(d)(9).

(b) The determination of whether an accommodation poses an undue financial or administrative burden must be made on a case-by-case basis and should consider various factors including:

- (1) The cost of the requested accommodation;
- (2) The financial resources of the person who has been asked to grant the accommodation;
- (3) The benefits that a proposed alternative accommodation would provide to the individual with a disability;
- (4) The availability of alternative accommodations that would effectively meet the disability-related needs of the individual with a disability;
- (5) Where the entity being asked to make the accommodation is part of a larger entity, the structure and overall resources of the larger organization, as well as the financial and administrative relationship of the entity to the larger organization. In general, a larger entity with greater resources would be expected to make accommodations requiring greater effort or expense than would be required of a smaller entity with fewer resources; and
- (6) Whether the need for the accommodation arises from the owner's failure to maintain or repair the property as required by law or contract, or to otherwise comply with related legal obligations.

(c) A fundamental alteration is a modification that changes the essential nature of the services or operations of the person being asked to provide the accommodation. For example, if a landlord does not normally provide shopping for residents, a request to shop for an individual with a disability could constitute a fundamental alteration.

(d) A person cannot deny a request for a reasonable accommodation based on the person's or another individual's fears or prejudices about the individual's disability, nor can a denial be based on the fact that provision of a reasonable accommodation might be considered unfair by other individuals or might possibly become an undue burden if extended to multiple other individuals who might request accommodations.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code, *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§ 12180. Other Requirements or Limitations in the Provision of Reasonable Accommodations; and Examples.

(a) Other requirements or limitations in the provision of reasonable accommodations include:

- (1) It is unlawful to charge a fee or require an additional deposit or financial contribution as a condition of receiving, processing, or granting a reasonable accommodation.

(2) The fact that an accommodation may impose some cost on the person providing the accommodation is not grounds for denial of a request, so long as the cost does not constitute an undue financial or administrative burden, under section 12179.

(3) It is unlawful for a person to request or require that an individual with a disability or representative waive the right to request a future accommodation.

(b) Examples of Reasonable Accommodation:

(1) 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 has a mobility disability 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. 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 owner must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost of reserving a space is likely minimal in light of the overall budget of a 300 unit apartment complex, the accommodation does not constitute an undue burden as defined in section 12179(b). Since providing parking spaces is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12179(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(2) Miguel is an individual with cognitive impairments that limit his ability to manage his financial affairs. Miguel uses a third party representative payee. He requests that he be able to pay rent through the payee rather than pay directly from his checking account, and that any nonpayment notices be sent to his representative payee as well as himself. This accommodation is necessary because without it Miguel might not be able to pay rent in a regular and timely manner which is necessary for him to fulfill his obligation as a tenant. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost is likely minimal in light of the overall budget of most apartment complexes, the accommodation does not constitute an undue burden as defined in section 12179(b). Since processing rent payments is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12179(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(3) Abigail, an individual with a disability, receives only SSI (Supplemental Security Income), a government benefit based on her inability to work because of her disability.

She requests that she be permitted to add a co-signer on her rental lease in order to meet the minimum income qualifications. If the combined income of Abigail and the co-signer constitutes sufficient income to meet the reasonable minimum income qualifications in light of Abigail's and the co-signer's other financial obligations, and if Abigail would not otherwise be able to rent this apartment, this accommodation may be necessary. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost is likely minimal in light of the overall budget of most apartment complexes, the accommodation does not constitute an undue burden as defined in section 12179(b). Since making changes to application and screening criteria is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12177(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(4) Tuan has quadriplegia and uses a power wheelchair, which can make it difficult for him to travel. He must make arrangements with a paratransit agency and it cannot always accommodate his requests without significant advance notice. He requests a reasonable accommodation for additional time to come into the mortgage lender's office to sign a loan modification application, even though the mortgage company's normal practice is to give little advance notice of the meeting. This accommodation may be necessary because without it Tuan may be unable to sign the loan modification application and so receive the loan. The mortgage company must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost is likely minimal in light of the overall budget, the accommodation does not constitute an undue burden as defined in section 12179(b). Since processing loan modification applications is part of the essential operations of the mortgage company, the accommodation is not a fundamental alteration, as defined in section 12177(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted.

(5) Michiko requests an exception to her property's no-pets policy as a reasonable accommodation so that her friend Yoshi, who has a non-apparent disability, is able to visit with his emotional support animal. Yoshi, as an individual with a disability, is entitled to reasonable accommodations. Michiko may request such an accommodation on behalf of Yoshi. As the disability is non-apparent, the owner may request information establishing the disability and the disability-related need for the animal. Discrimination is prohibited against individuals associated with an individual with a disability. Denying Michiko the right to have visitors of her choice, like other tenants, because her visitor has a disability would constitute discrimination against Michiko because of her association with an individual with a disability. Because without this accommodation Michiko will not be able to receive Yoshi as a visitor at her apartment which is a standard benefit of being a leaseholder this accommodation may be necessary to provide Michiko an equal opportunity to use and enjoy a dwelling, and is therefore a necessary accommodation. The owner must consider the request under these regulations, including considering

whether it constitutes an undue financial or administrative burden as defined in section 12179 and engaging in the interactive process under section 12177 as needed. Because the cost to process the request is likely minimal in light of the overall budget, the cost of providing an accommodation does not constitute an undue burden as defined in section 12179(b). Further, since determining the appropriateness of assistance animals is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12179(c). Therefore, in the absence of additional relevant facts or unless the animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others, or unless Yoshi fails to provide the necessary information, the accommodation should be granted. (Note if Yoshi has a service animal, rather than a support animal, the animal would be permitted pursuant to subsection 12185(b) without the need to request an accommodation.)

(6) Marita wants to install a ramp to enable her son, who uses a wheelchair, to enter and leave her house without assistance. Given the small lot, the ramp will extend slightly beyond the permitted set-back requirements on Marita's lot but will still be within Marita's property line and will not cross a public right of way. Marita requests a reasonable accommodation from the city to modify the city's policy or ordinance regarding set-back requirements on her property. Because without the ramp Marita's son would not be able to use the house like any other dweller (coming and going without assistance), this accommodation is necessary to afford him an equal opportunity to use and enjoy a dwelling. The city must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179, and engaging in the interactive process under section 12177 as needed. Because the cost of processing and permitting her request is likely minimal in light of the city's overall budget, the accommodation does not constitute an undue burden as defined in section 12179(b). Since reviewing building alterations is part of the essential operations of the city, the accommodation is not a fundamental alteration, as defined in section 12179(c). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted. The city must not charge Marita a fee for processing her request, whether or not it is granted, under section 12180(a)(1). (Note that reasonable accommodations may also be available to Marita if the ramp did extend beyond her property line into a public right of way, but a further interactive process might be warranted on those specific facts).

(7) Teresa lives in a second floor apartment in a medium-sized apartment building with a single elevator that was working when she moved in. Last month her leg was amputated and she now uses a wheelchair. The elevator in the building is broken. Teresa cannot leave her home without assistance on the stairs. She requests that the owner expedite repairs to the elevator and offer her the first available ground floor unit. Her request is necessary because there is a nexus between Teresa's disability and her request; without the requested accommodations she will not be able to access her unit using the common area. The owner must consider the request under these regulations, including considering whether it constitutes an undue financial or administrative burden as defined in section 12179 and engaging in the interactive process under section 12177 as needed. Because

the repair would be required by law as part of the owner's obligation to maintain the apartment, and if the costs of the requested accommodations are not burdensome in light of the overall budget of the building, the accommodations would not constitute an undue burden as defined in section 12179(b). Since making repairs is part of the essential operations of the apartment complex, the accommodation is not a fundamental alteration, as defined in section 12179(c). See, section 12179(b)(6). Therefore, in the absence of additional relevant facts, the requested accommodation should be granted. Depending on the time it takes to repair the elevator, or particular difficulties for Teresa, additional accommodation requests may be made that would need to be considered.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; *Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n* (2004) 121 Cal.App.4th 1578.

§§ 12181-12184. [Reserved]

§ 12185. Assistance Animals.

(a) Assistance animals include guide dogs, signal dogs, service dogs, service animals, and support animals as defined in section 12005(d).

(b) Persons, including tenants, occupants, invitees, owners, and others, are permitted to have service animals in all dwellings (including common use and public use areas), residential real estate, and other buildings involved in residential real estate transactions, subject to the restrictions set forth in subsection (d) below. The only permissible questions that can be asked of an individual to determine if the animal is a service animal are: 1) "Are you an individual with a disability?" and 2) "What is the disability-related task the animal has been trained to perform?" It is not permitted to ask the individual with a disability to demonstrate the task.

(c) Individuals with disabilities who have a support animal may request a reasonable accommodation related to the individual's need for the support animal in dwellings (including common use and public use areas) and residential real estate, and other buildings involved in residential real estate transactions.

(1) The standards, procedures, and defenses in sections 12176 through 12180 for evaluating a request for a reasonable accommodation apply to a request to have a support animal as a reasonable accommodation.

(2) A support animal certification from an online service that does not include an individualized assessment from a medical professional is presumptively considered not to be information from a reliable third party under section 12178(f). An individualized assessment means an assessment based on information that demonstrates that the individual has a disability, describes the needed accommodation (including the species of animal), and describes the relationship between the individual's disability and how the requested accommodation is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity. A person provided with

such a certification must provide an opportunity to the individual requesting the accommodation to provide additional information that meets the requirements of section 12178 before denying a request for reasonable accommodation.

(d) Provisions applicable to all assistance animals include:

(1) An individual with an assistance animal may also be covered by other legal obligations relating to assistance animals, such as the American with Disabilities Act, section 504 of the Rehabilitation Act, Civil Code section 51 et seq., and Government Code 11135, which include additional requirements or prohibitions relating to assistance animals, and may further restrict the nature and type of inquiry that may be made concerning assistance animals;

(2) An individual with an assistance animal shall not be required to pay any pet fee, additional rent, or other additional fee, including additional security deposit or liability insurance, in connection with the assistance animal;

(3) An individual with an assistance animal may be required to cover the costs of repairs for damage the animal causes to the premises, excluding ordinary wear and tear;

(4) An individual may have more than one assistance animal. Each animal must be individually determined to meet the requirements in this article. When an individual already has a support animal as a reasonable accommodation and requests an additional support animal as a reasonable accommodation, the person considering the subsequent request may consider whether the cumulative impact of multiple animals in the same dwelling unit constitutes an undue burden or fundamental alteration;

(5) No breed, size, and weight limitations may be applied to an assistance animal (other than specific restrictions relating to miniature horses as service animals under the Americans with Disabilities Act);

(6) Reasonable conditions may be imposed on the use of an assistance animal to ensure it is under the control of the individual with a disability or an individual who may be assisting the individual with a disability, such as restrictions on waste disposal and animal behavior that may constitute a nuisance, so long as the conditions do not interfere with the normal performance of the animal's duties. For example, a leash requirement may interfere with the ability of a guide dog, signal dog, or service dog to assist an individual, in which case the animal may be under voice control or otherwise responsive. Similarly, a "no noise" requirement may interfere with a dog's job of barking to alert a blind individual to a danger or someone at the door, but incessant barking all night long or when the individual is not at home may violate reasonable restrictions relating to nuisance. Any such conditions may not be more restrictive than those imposed upon other animals on the property;

(7) Animal vests, identification cards, or certificates are not in and of themselves documentation of either disability or the need for a reasonable accommodation, other than as set forth in subsection (c)(2) above;

(8) If an individual with a disability is denied permission to have an assistance animal, the individual is still entitled to all the rights and privileges that otherwise would have been accorded the individual, so long as the individual no longer has the animal; and

(9) An assistance animal need not be allowed if the animal constitutes a direct threat to the health or safety of others (i.e. a significant risk of bodily harm) or would cause substantial physical damage to the property of others under the following provisions:

(A) In addition to the reasons set out in section 12179 for denial of a request for a reasonable accommodation for a support animal, an assistance animal may be denied if:

(i) The specific assistance animal in question poses a direct threat to the health or safety of others that cannot be sufficiently mitigated or eliminated by another reasonable accommodation; or

(ii) The specific assistance animal in question would cause substantial physical damage to the property of others that cannot be sufficiently mitigated or eliminated by another reasonable accommodation;

(B) A determination that an assistance animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence that is sufficiently recent as to be credible, about the specific animal's actual conduct, not on mere speculation or fear about the types of harm or damage an animal may cause or on evidence about harm or damage that other animals have caused.

(C) The assessment of whether the assistance animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must consider:

(i) The nature, duration, and severity of the risk of a direct threat to the health or safety of others or of substantial physical damage to the property of others;

(ii) The probability that a direct threat to the health or safety of others or substantial physical damage to the property of others will actually occur; and

(iii) Whether there are any reasonable accommodations that will eliminate the direct threat to the health or safety of others or substantial physical damage to the property of others. The reasonable accommodation provisions in Section 12176 through Section 12180 must be used to determine whether there is another or additional reasonable accommodation that would sufficiently mitigate or eliminate the problems creating the direct threat.

(D) Relevant evidence in determining whether an assistance animal imposes a direct threat includes whether there is evidence that the animal in question is currently engaging in dangerous conduct or has a recent history of overt dangerous acts, as described under Food & Agric. Code section 31601 et seq. A dog that has been finally determined by a court of law to be “potentially dangerous dog” or “vicious dog” pursuant to Food & Agric. Code section 31601 et seq. shall presumptively be considered to pose a direct threat to the health or safety of others.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3, Government Code; Section 54.1 and 54.2, Civil Code, *Auburn Woods I Homeowners Ass’n v. Fair Employment and Housing Com’n* (2004) 121 Cal.App.4th 1578.

Articles 19-23. [Reserved]

§§ 12186-12264. [Reserved]

Article 24. Consideration of Criminal History Information in Housing

§ 12265. Prohibited Uses of Criminal History Information.

(a) Any practice of a person that includes seeking information about, consideration of, or use of criminal history information is unlawful if:

- (1) It has a discriminatory effect under Article 7, unless a legally sufficient justification applies under section 12266;
- (2) It constitutes intentional discrimination under section 12267;
- (3) It constitutes a discriminatory statement under section 12268; or
- (4) It relates to practices specifically prohibited under section 12269.

(b) Subject to the requirements in this article, persons who choose to seek, consider or use criminal history information for decisions or actions covered by the Act may either:

- (1) Establish a practice that uses a “bright line” policy (that is, categorical exclusions that do not consider individualized circumstances);
- (2) Establish a practice that conducts an individualized assessment of an individual’s circumstances; or
- (3) Establish a practice that combines a “bright line” policy with an option (either discretionary or required) for an individualized assessment of an individual’s circumstances.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.

§ 12266. Establishing a Legally Sufficient Justification Relating to Criminal History Information.

(a) Persons with a practice of seeking, considering or using criminal history information that has a discriminatory effect on individuals in protected classes must establish that the practice complies with this article and meets all of the prongs of a legally sufficient justification, as set forth in this section and in subsections 12062 (c) and (d).

(b) Business establishment: A business establishment as defined in section 12005 whose practice has a discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of the Act if the business establishment can establish that:

(1) The practice is intended to serve a substantial, legitimate, nondiscriminatory interest, such as the safety of its residents, employees, or property, that is necessary to the operation of the business;

(2) The practice effectively carries out the identified business interest. This element requires that the practice seek, consider, and use only criminal history information regarding directly related convictions. Demonstrating that the practice effectively carries out the identified business interest requires showing that taking adverse action on the basis of the criminal conviction is necessary to prevent a demonstrable risk to accomplishing the identified interest. A demonstrable risk is a risk that is more than speculative and is based on objective evidence. For example, a recent criminal conviction for residential arson could be directly related to the risk that a person may injure other residents or property, and therefore taking adverse action on such a conviction could be necessary to prevent a demonstrable risk of such an injury. In contrast, a ten-year-old conviction for a non-alcohol related traffic offense would not likely be directly related to fulfilling financial obligations, and therefore taking adverse action on such a conviction would not be necessary to prevent a demonstrable risk to that business interest; and

(3) There is no feasible alternative practice that would equally or better accomplish the identified business interest with a less discriminatory effect.

(c) Non-Business establishment: In cases that do not involve a business establishment, the person whose practice has a discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of the Act if the person can establish that:

(1) The practice is necessary to achieve a substantial, legitimate, nondiscriminatory purpose of the non-business establishment;

(2) The practice effectively carries out the identified purpose. This element requires that the practice seek, consider, and use only criminal history information regarding directly

related convictions. Demonstrating that the practice effectively carries out the identified purpose requires showing that taking adverse action on the basis of the criminal conviction is necessary to prevent a demonstrable risk to accomplishing the identified interest. A demonstrable risk is a risk that is more than speculative and is based on objective evidence. For example, a recent criminal conviction for residential arson could be directly related to the risk that a person may injure other residents or property, and therefore taking adverse action on such a conviction could be necessary to prevent a demonstrable risk of such an injury. In contrast, a ten-year-old conviction for a non-alcohol related traffic offense would not likely be directly related to fulfilling financial obligations, and therefore taking adverse action on such a conviction would not be necessary to prevent a demonstrable risk to that business interest;

(3) The identified purpose is sufficiently compelling to override the discriminatory effect; and

(4) There is no feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect.

(d) The determination of whether there is a feasible alternative practice that would equally or better accomplish the identified purpose with a less discriminatory effect is a fact-specific and case-specific inquiry and will depend on the particulars of the criminal history information practice under challenge. In making that determination, the following factors must be taken into consideration:

(1) Whether the practice provides the individual: (A) an opportunity to present individualized, mitigating information either in writing or in person; and (B) written notice of the opportunity to present mitigating information;

(2) Whether the practice requires consideration of the factual accuracy of the criminal history information;

(3) Whether the practice requires consideration of mitigating information in determining whether to take an adverse action;

(4) Whether the practice delays seeking, considering, or using a third party report of criminal history information until after an individual's financial and other qualifications are verified;

(5) Whether the practice includes providing a copy or description of a person's policy on the use of criminal history information to an individual upon request; or

(6) Any other factor that the court considers relevant to the determination.

(e) Mitigating information means credible information about the individual that suggests that the individual is not likely to pose a demonstrable risk to the achievement of the identified interest.

Credible information is information that a reasonable person would believe is true based on the source and content of the information. Mitigating information includes:

- (1) Whether the individual was a juvenile at the time of the conduct upon which the conviction is based;
- (2) The amount of time that has passed since the date of conviction;
- (3) Evidence that the individual has maintained a good tenant history before and/or after the conviction;
- (4) Evidence of rehabilitation efforts, including a person's satisfactory compliance with all terms and conditions of parole and/or probation; successful completion of parole, probation, mandatory supervision, or Post Release Community Supervision; a Certificate of Rehabilitation under Penal Code section 4852.01; or other conduct demonstrating rehabilitation, such as maintenance of steady employment;
- (5) Whether the conduct arose from the individual's status as a survivor of domestic violence, sexual assault, dating violence, stalking, or comparable offenses against the individual;
- (6) Whether the conduct arose from the individual's disability, or any risks related to such conduct, which could be sufficiently mitigated or eliminated by a reasonable accommodation; or
- (7) Other relevant facts or circumstances surrounding the criminal conduct and/or conduct after the conviction.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.

§ 12267. Intentional Discrimination and the Use of Criminal History Information.

(a) Practices that seek, consider, or use criminal history information may be a discriminatory practice if they violate Government Code section 12955.8(a) and any implementing regulations by intentionally discriminating on the basis of membership in a protected class. This includes cases where selective use of the information is demonstrated to be a pretext for unequal treatment of individuals who are members of a protected class.

- (1) For example, the fact that a respondent has acted upon criminal history information differently for a member of a protected class than the respondent has acted upon comparable information for another individual may demonstrate pretext.
- (2) Pretext also may be shown where evidence establishes that the respondent did not actually know of the individual's criminal history information at the time of the alleged discrimination.

(b) If the different action is the result of an intervening change in policy pursuant to complying with newly adopted regulations, and the later enacted policy is applied uniformly, the different action shall not, in and of itself, be considered unlawful.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.

§ 12268. Discriminatory Statements Regarding Criminal History Information.

(a) A person's notice, advertisement, application, or other written or oral statement regarding criminal history information that violates Government Code section 12955(c) or its implementing regulations or which conflicts with the provisions in this article and Article 7 shall be a violation of the Act.

(b) Advertising a lawful screening policy or providing individuals a copy of a lawful screening policy pursuant to section 12266(d)(5) is not unlawful. Offering an individual an opportunity to present individualized, mitigating information pursuant to section 12266(d) and (e) is not unlawful.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926, 12927, 12955, and 12955.6, Government Code.

§ 12269. Specific Practices Related to Criminal History Information.

(a) It is unlawful for a person to:

(1) Seek, consider, use, or take an adverse action based on criminal history information about any arrest that has not resulted in a criminal conviction;

(2) Seek, consider, use, or take an adverse action based on information about any referral to or participation in a pre-trial or post-trial diversion program or a deferred entry of judgment program; provided that if this information was provided by an individual for purposes of offering mitigating information, a person may consider and use such information;

(3) Seek, consider, use, or take an adverse action based on information about any criminal conviction that have been sealed, dismissed, vacated, expunged, sealed, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code sections 1203.1 or 1203.4); provided that if this information was provided by an individual for purposes of offering mitigating information, a person may consider and use such information;

(4) Unless pursuant to an applicable court order, seek, consider, use or take an adverse action based on any adjudication in the juvenile justice system, or information regarding a matter considered in or processed through the juvenile justice system; provided that if

this information was provided by an individual for purposes of offering mitigating information, a person may consider and use such information; or

(5) Implement a “blanket ban” or categorical exclusion practice that takes adverse action against all individuals with a criminal record regardless of whether the criminal conviction is directly related to a demonstrable risk to the identified substantial, legitimate, nondiscriminatory interest or purpose. Examples of such prohibited practices include bans against all individuals with a criminal record, bans against all individuals with prior convictions, bans against all individuals with prior misdemeanors, and bans against all individuals with prior felonies.

(b) While laws regulating investigative consumer reports, such as California Civil Code section 1785.13(a)(6), allow the reporting of certain criminal history information up to seven years from the date of disposition, release or parole, a court may consider shorter look-back periods in its determination of whether there is a feasible alternative practice under subsection 12266. A look-back period limits the inquiry to criminal activity that occurred during a certain amount of time prior to the present. Look-back periods are intended to ensure that the criminal history information considered is relevant to the decision being made.

(c) Persons who obtain investigative consumer reports or criminal history information from third parties are also subject to the requirements of applicable federal and state law regarding such reports, including the Fair Credit Reporting Act (15 U.S.C. section 1681 et seq.); the California Consumer Credit Reporting Agencies Act (Civil Code section 1785.2 et seq.); and Civil Code section 1785.10 et seq. relating to consumer credit reporting agencies.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.

§ 12270. Compliance with Federal or State Laws, Regulations, or Licensing Requirements Permitting or Requiring Consideration of Criminal History.

In some instances, persons may also be subject to federal or state laws or regulations that require or prohibit consideration of certain criminal history information.

(a) Compliance by a person with specific federal or state laws that apply to the particular transaction at issue and require consideration of criminal history information constitutes an affirmative defense to a discriminatory effect claim under the Act, e.g. Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. section 13663(a)) and Ineligibility of Individuals Convicted for Manufacturing or Producing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 CFR section 982.553).

(b) Failure of a person to comply with specific federal or state laws that prohibit consideration of specific criminal history information, or that require consideration of mitigating factors or evidence of rehabilitation, in regard to consideration of such history, and that apply to the transaction, may constitute a violation of the Act.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.

§ 12271. Local Laws or Ordinances.

In some instances, a person may also be subject to local laws or ordinances that provide additional limitations on seeking, considering, or using criminal history information. Nothing in this article exempts persons from compliance with those local laws or ordinances; provided that such local laws or ordinances do not violate the Act or implementing regulations and those limitations are more protective of individuals in protected classes.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12927, 12955, and 12955.8, Government Code.