

# Kimball, Tirey & St. John LLP

## What is a “Protected Class”?

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Historically and statistically, there have been identifiable groups within our society that have received unfavorable treatment with regard to housing. They have been rejected or prevented from renting or buying real property, given different terms, paid higher rents or security deposits, or experienced a lower level of service during tenancy than other groups of people.

### Do “protected classes” get special rights?

No, the intention of federal and state fair housing laws is to require that ALL persons be given the same treatment, the same services, and offered an equal opportunity to live in a home of their choice—in other words, the same rights as everyone else. The only exceptions to this that persons with disabilities have been given several special rights (the right of reasonable accommodation and reasonable modification) in order to establish equal opportunity. (Note: If, for some reason, you must deviate from your normal procedures, be sure to document the situation; who, when, what, and why.)

### Are “protected classes” the same throughout the U.S.?

The protected classes have been identified at the federal, state, and in some cases, local levels of government. There are some variations that allow for differences in the make-up of individual communities.

*At the federal level*, there are seven classes: race, color, religion, sex, national origin, familial status, and handicap (referred to as disability in California).

*At the state level*, California has added marital status, sexual orientation, age, ancestry, source of income, medical condition, gender, gender identity and expression, genetic information, citizenship, immigration status, primary language and military and veteran status.

*At the local level*, some cities have added their own additional protected classes, such as the inclusion of “height and weight or body size” in both San Francisco and Santa Cruz, and “students” in Berkeley.

### Which group experiences the most incidences of discrimination?

The majority of discrimination cases filed throughout the United States are filed on the basis of disability. Second is race/color and third is familial status.

### A few things you should know about several of the “protected classes”

- *Color*: There can be many shades of skin color within a race and many people are combinations of multiple races; therefore, although color is a separate and distinct protected class, race and color are often combined in a complaint. Persons with darker skin tend to experience more frequent incidences of discrimination in housing, as well as in many other day-to-day situations.
- *Sex*: Sexual harassment is covered in this protected class, in which there is a growing awareness of discrimination. In California, this category also includes pregnancy, childbirth or medical conditions related to pregnancy or childbirth.

- *Familial status*: Any household that includes persons under the age of 18 is protected under familial status. Pregnancy is also included in this category. Only bona fide senior housing can exclude children.
- *Handicap/Disability*: This group covers medical conditions, mental or psychological and physical disabilities. The two special rights extended to the disabled include: 1) the right to make reasonable modifications to a dwelling to enable them to live there comfortably, and 2) the responsibility of management to make reasonable accommodations in order to allow the disabled person to fully enjoy their tenancy. An accommodation, in most cases, involves modifying a policy, procedure, service or rule, such as allowing assistive animals when no pets are allowed, or assigned special parking spaces.
- *Ancestry*: Going beyond national origin, rental decisions should not be based on someone's ancestry. This often includes name profiling, wherein the landlord avoids renting to someone whose last name appears to be "foreign" even if the person's family may have been in the U.S. for many generations.
- *Source of income*: Don't require or imply that applicants should be employed in order to qualify to rent. Their income or financial resources only need to be legal and verifiable. As of January 1, 2020, Section 8 and VASH vouchers (in addition to other federal, state, and local public assistance or rental subsidies) are considered a protected source of income under state law.
- *Gender/Gender Identity/Gender Expression*: California's Unruh Civil Rights Act defines gender as "sex and includes a person's gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." Discrimination involving gender identity and expression are on the rise. In the context of rental housing, an applicant or resident may prefer to be called by a name or a gender pronoun that is not consistent with the applicant's assigned sex at birth. Some applicants or residents identify as "gender neutral" or "non-binary" and may prefer you to use the pronouns "them/them/their" instead of the more common male or female pronouns. If you are unsure how to handle a situation involving gender identity or expression, get help from a fair housing knowledgeable attorney.

In California, which is often on the cutting edge of legal issues, two additional concepts have been added that pertain to protected classes: *perception and association*.

- *Perception*: If someone discriminates against a person, thinking that he or she is from a protected class, but the person isn't from that protected class, it is considered an act of discrimination.
- *Association*: Discriminating against someone because his or her friends or guests are from protected classes is also a violation.

Additionally, in California, *arbitrary discrimination* is considered to be a violation. This means that when management deliberately or arbitrarily discriminates against a person or group of persons based on personal characteristics, they are violating fair housing laws. This might include persons with tattoos, numerous body piercings, unusual hair styles, overweight persons, etc.

Technically, **we all** belong to several of these protected classes by virtue of just being male or female, married or unmarried, of a particular race, color, nationality, etc. If owners and leasing professionals/managers treat EVERYONE who comes in the door, calls on the phone, emails or contacts them via the internet with equal courtesy and provides the same opportunities to EVERYONE, the need for "protected classes" could ultimately be a thing of the past.

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