

Kimball, Tirey & St. John LLP

Fair Housing Questions & Answers

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1. Question: How many protected classes are there in California?

Answer: In addition to the seven federal protected classes (race, color, religion, national origin, sex, familial status and disability) California has thirteen protected classes, some of which are unique to California. They are: marital status, age, ancestry, sexual orientation, source of income, medical condition, gender, gender identity, gender expression, genetic information, citizenship, immigration status and primary language spoken. California also prohibits discrimination based on the perception that someone is from a protected class or is associated with someone from a protected class. Finally, it prohibits discrimination on any arbitrary basis.

2. Question: What is a request for a reasonable accommodation?

Answer: A reasonable accommodation is a change or exception to the property's rules, policies, practices or services that is necessary to afford a person with a disability full and equal use and enjoyment of the rental property.

3. Question: What are some examples of a reasonable accommodation?

Answer: Common examples are allowing a resident to have an assistive animal, reserving a special parking space for a resident, allowing a resident who needs to move due to a disability to terminate a lease without further obligation for rent, or modifying a rent due date to coincide with the receipt of disability payments.

4. Question: What is a request for a reasonable modification?

Answer: A reasonable modification is a physical change to the apartment or the common areas that is necessary to afford a resident with a disability full and equal use and enjoyment of the rental property.

5. Question: Who pays for a reasonable modification?

Answer: Modifications are usually at the resident's expense unless the property receives federal financial assistance in which case the landlord must make and pay for the modifications. The other exception is that if a newer property (built for first occupancy 3/13/91 or later) wasn't built in compliance with accessibility laws in place at the time of construction, the landlord must pay to make it accessible.

6. Question: What is an assistive animal?

Answer: According to HUD, an assistive animal "is an animal that works, provides assistance or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistive animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision,

alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures or providing emotional support to persons with disabilities who have a disability-related need for such support.”

7. Question: Can I require a tenant pay a deposit for their assistive animal?

Answer: No. It is unlawful to condition the granting of a reasonable accommodation, such as allowing a resident to have an assistive animal, on that person paying a fee or deposit. However, the resident can still be held liable for any damage to the unit above ordinary wear and tear that is caused by the animal and those damages can be taken out of the regular security deposit that the resident paid for the unit.

8. Question: A tenant wants to move in with a companion dog. Our property only allows cats as pets. Can I tell the tenant to get a companion cat instead?

Answer: No. You cannot apply pet restrictions to assistive animals. An assistive animal is not a pet. You must allow the tenant to get the type of assistive animal that best meets his/her disability-related needs.

9. Question: I just received a Notice of Filing of Discrimination Complaint from the California Department of Fair Employment and Housing. What do I do?

Answer: You only have 20 days to respond to a fair housing complaint from either HUD or the DFEH. If you do not respond to the complaint in that time frame the agency will proceed with the case without your input which could result in a finding of discrimination against you. You should contact our office right away and also notify your insurance company of the complaint.

10. Question: Someone told me that a guest of a resident can file a fair housing complaint, is that true?

Answer: Yes. Guests have standing to bring a fair housing complaint or lawsuit if the guest receives discriminatory treatment while visiting a resident at your property. A common example would be refusing to allow a guest to bring his assistive animal with him when he visits your resident at the property.

11. Question: An applicant came into my office and is clearly pregnant. Do I count the baby to determine whether her household meets our occupancy standards?

Answer: No. You should not count the baby until it is born. You should also have a reasonable policy about what happens when the addition of a minor to the household during the tenancy puts the household over occupancy. A suggested policy would be that the household gets to stay through the end of their lease or a certain number of months, whichever is longer. We recommend that the number be a minimum of six months, but you may want to consider a longer period of time in order to help ensure that an enforcing agency would find the time period to be reasonable.

12. Question: What is the difference between ADA and fair housing laws? Does the ADA apply to my property?

Answer: The ADA (Americans With Disabilities Act) applies only to places of public accommodation. Fair housing laws apply to private residential rental housing (and housing sales). Only the areas of your property that are open for the public to come and do business with you are covered by the ADA, such as your rental office and

future resident parking. The other areas of your property, such as the rental units, common areas and amenities are covered by fair housing laws. There are some substantial differences between the ADA and fair housing laws, so if you are unsure about which laws apply and what your responsibilities are, you should contact our office.

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