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DFEH Releases Harassment Prevention Guide for California Housing Providers

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In June of 2021, the California Department of Fair Employment and Housing (“DFEH”) released a “[Harassment Prevention Guide for California Housing Providers](#)” (the “Guide”). The Guide is a new publication and follows the 2020 Fair Employment & Housing Council’s Fair Housing Regulations, demonstrating the DFEH’s intent to provide specific written guidance as to how DFEH will interpret a housing provider’s fair housing obligations. While the Guide is for informational purposes only and does not create any new or separate obligations other than those already in effect under relevant fair housing laws, it is our opinion the Guide is an important tool to assist clients in addressing harassment claims. We recommend reviewing the Guide to ensure that your company’s policies are in line with the Guide. In addition, the Guide outlines issues which DFEH finds important and will take into consideration when investigating complaints of harassment in housing.

The Guide summarizes the two categories of harassment in housing: *quid pro quo* and hostile environment. “*Quid pro quo*” is a Latin term meaning “this for that.” These types of claims typically involve unwelcome requests or demands for sexual favors or other conduct as a condition of obtaining or maintaining housing or housing services. The Guide gives an example of a landlord telling an applicant he won’t rent her an apartment unless she has sex with him.

“Hostile environment” typically involves unwelcome conduct that is so severe or pervasive that it interferes with a person’s ability to use and enjoy a dwelling, housing opportunity, or housing-related service. The Guide provides two examples: a resident shouting racial slurs at another resident, or a homeowner in a housing development governed by an HOA intentionally blocking a common area walkway so as to prevent another homeowner (who uses a wheelchair) to pass.

Either form of harassment can be verbal, physical, visual, involve coercion, intimidation, threats, and/or revealing private information without a person’s consent. When this behavior is based on a protected class (such as a resident harassing another resident based on their race, sex, disability, etc.), a housing provider’s participation in the harassment and/or failure to take reasonable steps to address it will be considered a form of discrimination.

It is important to remember that a housing provider is not the only individual that can engage in harassment. The Guide mentions that a housing providers’ employees or agents, or third parties (such as other residents, guests of residents, or contractors or vendors hired by the provider) can engage in harassment. Similarly, victims of harassment can include residents, guests and third-party contractor or vendors.

It is not enough that a housing provider ensure that they and their employees refrain from engaging in harassment and take action to address any such harassment. A housing provider must also take prompt action to correct and end harassment by third parties where the housing provider knew or should have known of the discriminatory conduct and had the power to correct it.

For most housing providers, the power to correct and end harassment will flow from an employment agreement, a lease (if another resident engaged in the behavior), CC&Rs (if the

housing is governed by an HOA), a contract (such as a contract for services from a third-party vendor), or other similar authority.

The remainder of the Guide focuses on DFEH's recommended practices for housing providers to prevent and address third-party harassment, such as the following:

- Reviewing leases and other documents to ensure they include an anti-harassment policy and create zero-tolerance policies for harassment/discrimination;
- Communicating to residents the importance of the anti-harassment/discrimination policy;
- Communicating information about anti-discrimination rights, such as posters, mailings, community newsletters, etc.;
- Providing residents contact information for the individuals responsible for receiving and investigating harassment complaints;
- Providing training to persons responsible for receiving and investigating harassment complaints.

The Guide stresses the importance of conducting a fair and impartial investigation and outlines the following steps for the same:

- As an initial step, whenever possible, interview the complaining party. Take careful, detailed notes during the interview, allow the complaining party to submit a written statement if they choose, and reassure the complaining party that their concern will be kept as confidential as possible (but without promising or guaranteeing complete confidentiality when investigating a complaint);
- Interview the accused party. You should inform the accused party of the allegations against them during the interview (but not before to ensure the integrity of the investigation) and allow the accused party to submit a written statement if they choose. It may not always be necessary to disclose the identity of the complaining party, nor does due process require you to show the accused party any written complaint against them;
- Interview relevant witnesses who may have information that could impact the findings of the investigation (which might not require interview of every witness but rather those whose information could impact the findings);
- Gather any documentation or evidence (such as camera footage) which may exist that reasonably confirms or disproves the complaining party's allegations and/or the accused party's response; and
- Conduct follow-up investigation as needed.

The Guide also provides the following tips to assess the credibility of complaining parties, accused parties, and witnesses:

- Whether the complaining party appeared upset shortly after the event;
- Whether the complaining party told someone of the event right after it happened;
- Whether it's plausible for the events to have occurred in the manner alleged;
- Whether anyone has a motive to lie;
- Whether direct and/or indirect witness or documentary evidence corroborates some or all of the allegations or responses;
- The extent a witness was able to reasonably perceive, recollect, and/or communicate about the matter;
- Whether witnesses have a history of honesty or dishonesty;
- Whether allegations of behavior are something that someone is known to do regularly (such as greeting all females with a hug); and
- Statements that are inconsistent with statements a person has made in a way that is not easily explained.

The Guide also recommends promptly completing your investigation, reaching a reasonable conclusion about what occurred, documenting your findings and conclusions, and taking any appropriate action based on those findings and conclusions. You should make findings and conclusions based on a “preponderance of the evidence” standard, meaning determining whether it was more likely than not that the conduct alleged occurred or did not occur. Finally, the results of the investigation and any planned follow up actions should be communicated to the relevant parties (being careful to maintain the privacy of the individuals involved to the extent reasonably possible).

The Guide further provides recommendations on steps a housing provider should take to correct and end harassment when the investigation reveals that a specific individual likely engaged in the harassing behavior. These actions will vary depending on the facts of a specific case, but can range from an oral warning, to a written notice to cease, to even potentially terminating the employment or tenancy of the harasser or terminating a contract with a third-party vendor if the housing provider has the ability to do so.

If a housing provider was able to confirm that harassment took place but was unable to identify the harasser in question, more general steps should be taken to address the issue, such as community-wide notices that indicate a finding of harassment by unidentified parties and a reminder that this type of conduct violates the lease, community policies, etc., and could be grounds for termination.

It is also important to remember that housing providers cannot retaliate, punish, or otherwise take action that harms any person who complains of harassment, even when an investigation does not support the complaint.

Finally, the Guide mentions behavior caused by a resident’s mental disability. The Guide reminds housing providers that there may be disability accommodation obligations if an accommodation would likely address the harassment.

In conclusion, the Guide is an important reminder that failure to promptly resolve claims of harassment can lead to liability, including discrimination liability if the harassment was based on a protected class.

If you need assistance with the creation of any anti-harassment policies, providing anti-harassment training, and assist with addressing specific claims of harassment or discrimination, contact the KTS fair housing practice group at: KTSFairHousing@kts-law.com.

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