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California Housing Discrimination (“Fair Housing”) Law

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Introduction

California housing discrimination law originated in 1959, with passage of the Unruh Civil Rights Act, which required all “business establishments” to provide “full and equal accommodations” regardless of race, color, religion, ancestry, or national origin. In 1963, California passed the Rumford Fair Housing Act. The Fair Housing Act was expanded in 1988 and later, in 1993, amended to conform to federal housing discrimination law. The Act, as currently denominated, is known as the Fair Employment and Housing Act (FEHA).

Procedural Issues

The statute of limitations for filing a FEHA housing discrimination action is two years, and one year for a claim under the Unruh Civil Rights Act.

Any person or entity who can show an “injury in fact” has standing to sue. This includes rental applicants, tenants, the spouse of an applicant or tenant, or children or other adults who reside with the applicant or tenant, regardless of age or relationship.

Standing in housing discrimination cases also extends to “community-based” organizations whose “mission” is advancing “fair housing”, or who unilaterally assume a responsibility to investigate “fair housing” complaints.

Most FEHA provisions apply both to “owners” and “any person”. Thus, potential housing discrimination defendants include, for example, lessees, sublessees, assignees, managers, and real estate brokers and salespersons. “Person” includes

individuals, corporations, legal representatives, trusts, unincorporated organizations, and the like.

Housing Discrimination Law

Protected classes for the purpose of housing discrimination law include the usual classes: race, color, religion, sex, sexual orientation, marital status, national origin, and disability, but also include other classes, such as familial status (children), source of income, age, and occupation.

Prohibited acts include a refusal to sell, rent, or negotiate for housing; the provision of inferior terms, conditions or privileges relating to housing; discrimination in lending; and refusal to provide reasonable disability accommodation. Unlawful acts also include: falsely representing that housing is unavailable; inquiring about a person’s race or sexual orientation; or making any statement that indicates a preference, limitation, or discrimination for or against a protected class.

Proof of housing discrimination can be in the form of actual intent or adverse impact. In cases of intentional discrimination, a violation “may be established by direct or circumstantial evidence.” To successfully defend against a disparate impact case, the disputed practice must be shown to be “necessary to achieve an important purpose sufficiently compelling to override [its] discriminatory effect and effectively [carry] out the purpose it is alleged to serve.”

Damages

Housing discrimination plaintiffs may be awarded: (1) actual damages, (2) emotional distress damages, (3) injunctive relief, (4) punitive damages, and (5) attorney fees.

Actual damages include out-of-pocket expenses and lost housing opportunities. Out-of-pocket expenses may include moving, storage, or travel costs when alternative housing is sought; attorney fees paid to contest an eviction; wages lost to attend a court hearing, deposition, or trial; and other expenses incurred to file or prosecute a housing discrimination claim.

Organizational plaintiffs must prove that, rather than spending resources on its other work, it spent resources to redress the defendant's discriminatory conduct, or that it will have to spend resources to counteract the harm caused by the defendant to the organization's mission.

The FEHA also provides for awards of emotional distress damages which are caused by housing discrimination.

Under the Unruh Civil Rights Act, a plaintiff may be awarded "up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney fees that may be determined by the court in addition thereto."

Injunctive relief, in the form of temporary or permanent restraining orders may also issue. Such orders may include "cease and desist" orders, orders requiring the development of non-discriminatory policies or procedures, or attendance at courses designed to prevent housing discrimination.

Punitive damages may also be awarded in appropriate cases. The FEHA does not provide for any "cap" on punitive damage awards, thus the only limit on such awards is that which is imposed by the requirements of constitutional due process.

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of bankruptcy, business law, constitutional and civil rights law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has served as a Judge Pro Tempore for the Santa Clara Superior Court, and is also a licensed Real Estate Broker.

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