

Table of Contents

PART I. FAIR HOUSING

CHAPTER 1. HOUSING PROHIBITED ACTS

- § 1:1 FEHA
- § 1:2 Housing accommodation and opportunity defined
- § 1:3 Owner and person(s) defined
- § 1:4 Discrimination defined
- § 1:5 FEHA protected bases
- § 1:6 Incorporates Unruh arbitrary discrimination
- § 1:7 Methods of Proof
- § 1:8 Discrimination, examples
- § 1:9 Denying housing or making it unavailable
- § 1:10 Provision of inferior terms, conditions, or privileges of housing
- § 1:11 Denial of reasonable accommodation
- § 1:12 Denial of reasonable modification
- § 1:13 Physically-accessible design
- § 1:14 Harassment
- § 1:15 Illegal communications about housing
- § 1:16 Discrimination in lending and real estate transactions
- § 1:17 Discrimination in MLS access
- § 1:18 Discriminatory financial or income standard
- § 1:19 Aiding and abetting unlawful practices
- § 1:20 Retaliation and interference
- § 1:21 Criminal history information
- § 1:22 Unruh's applicability to rentals and sales of housing
- § 1:23 Interaction with other California fair housing laws
- § 1:24 Housing discrimination violating the Unruh Civil Rights Act based on age
- § 1:25 Compare: housing designed to meet physical and social needs of seniors
- § 1:26 Effect of change in circumstance of the senior
- § 1:27 Guests as temporary residents
- § 1:28 Qualifying senior housing—design requirements
- § 1:29 County of Riverside—specific senior housing provisions
- § 1:30 Effect of federal Fair Housing Act and regulations

CA FAIR HOUSING AND PUBLIC ACCOMMODATIONS

- § 1:31 Federal preemption
- § 1:32 Mobilehome parks—age-based residency restrictions
- § 1:33 HUD regulations
- § 1:34 Intergenerational Housing Development
- § 1:35 Discriminatory acts under other federal or state laws

CHAPTER 2. DISCRIMINATION IN LAND USE, PLANNING, AND DEVELOPMENT APPROVAL

- § 2:1 Application of fair housing to land use and zoning
- § 2:2 Restrictive land use and zoning can perpetuate segregation
- § 2:3 FEHA expressly covers public and private land use and zoning laws and practices
- § 2:4 California's new Affirmatively Furthering Fair Housing Law applies to public land use practices
- § 2:5 Impact of fair housing laws on land use planning and development approval
- § 2:6 State and federal fair housing laws prohibit discriminatory land use decisions
- § 2:7 State law prohibits discrimination against affordable housing
- § 2:8 Proof of land use discrimination through showing discriminatory effect
- § 2:9 Discrimination based on disability; reasonable accommodation required
- § 2:10 Laws requiring approval of housing developments, increases in density or regulatory concessions, incentives or waivers
- § 2:11 Obligations to plan and zone for housing and remove impediments to development

CHAPTER 3. PROTECTED CLASSES

- § 3:1 Generally
- § 3:2 Substantial equivalency
- § 3:3 Additional protected classes under the FEHA
- § 3:4 All arbitrary discrimination under the Unruh Act also protected
- § 3:5 Freedom from housing discrimination is a civil right
- § 3:6 Race and color
- § 3:7 Religion
- § 3:8 Sex
- § 3:9 Sexual Orientation
- § 3:10 Marital Status
- § 3:11 National origin and ancestry

TABLE OF CONTENTS

- § 3:12 Familial status
- § 3:13 Source of income
- § 3:14 Disability and medical condition
- § 3:15 Genetic information or characteristics
- § 3:16 Perception and association
- § 3:17 Exemptions under the FEHA
- § 3:18 Citizenship and immigration status
- § 3:19 Survivors of domestic violence
- § 3:20 Land use and zoning discrimination
- § 3:21 Military service members
- § 3:22 Family day care operators

CHAPTER 4. PROPER DEFENDANTS OR, WHO MAY BE LIABLE?

- § 4:1 Interrelation of federal and state law
- § 4:2 FEHA's statutory provisions
- § 4:3 "Housing accommodation"
- § 4:4 FEHA liability for "owners"
- § 4:5 FEHA's broad definition of "owner"
- § 4:6 FEHA liability for "persons"
- § 4:7 Broad definition of "person"
- § 4:8 FEHA liability without limitation as to actor
- § 4:9 The act itself triggers liability
- § 4:10 Case law interpreting who may be liable
- § 4:11 The Federal Fair Housing Act is a source for interpreting who may be liable under FEHA
- § 4:12 Who may be liable under the FHA's statutory provisions
- § 4:13 HUD regulations interpreting the FHA
- § 4:14 HUD administrative law judge decisions
- § 4:15 Housing regulations
- § 4:16 FEHC decisions
- § 4:17 Tort principles apply to determine direct and vicarious liability
- § 4:18 Direct liability for principal's own action or inaction
- § 4:19 Vicarious liability for the acts of agents
- § 4:20 Vicarious liability for acts of independent contractors
- § 4:21 Vicarious liability of corporate officers and directors
- § 4:22 Vicarious liability for acts of other tenants
- § 4:23 Joint and several liability
- § 4:24 Finding out who is responsible
- § 4:25 Properly naming defendants
- § 4:26 Other potential defendants in FEHA cases
- § 4:27 Statutory exemptions from FEHA liability

CA FAIR HOUSING AND PUBLIC ACCOMMODATIONS

- § 4:28 Immunities from FEHA liability
- § 4:29 Potential privileges in FEHA cases

CHAPTER 5. PROOF

- § 5:1 Claimant has ultimate burdens
- § 5:2 Intent to discriminate
- § 5:3 Direct vs. circumstantial evidence
- § 5:4 Direct evidence of intentional discrimination
- § 5:5 Circumstantial, or “indirect” evidence
- § 5:6 Testing evidence
- § 5:7 Disparate impact
- § 5:8 Examples of neutral policies which potentially have a disparate impact on protected classifications
- § 5:9 Proof of disparate impact based on policy of delegating discretion.
- § 5:10 Burden-shifting analysis
- § 5:11 Discriminatory effect under California Law
- § 5:12 HUD regulation 100.500 discriminatory effect prohibited (24 C.F.R. § 100.500)
- § 5:13 Harassment
- § 5:14 Hostile environment harassment
- § 5:15 Quid pro quo harassment

CHAPTER 6. DEFENSES

- § 6:1 Introduction
- § 6:2 Nature of an Affirmative Defense
- § 6:3 Compare: Exemptions
- § 6:4 Cross-refer—substantive defenses to particular claims
- § 6:5 Defense to disparate impact does not also provide a defense to a disparate treatment claim
- § 6:6 No failure to exhaust administrative remedies
- § 6:7 Arbitration
- § 6:8 Statute of limitations
- § 6:9 Direct threat—for discrimination on the basis of disability
- § 6:10 First Amendment
- § 6:11 Res judicata and collateral estoppel
- § 6:12 Unclean hands/after-acquired evidence of plaintiff misconduct
- § 6:13 Releases

CHAPTER 7. PROCEDURAL CONSIDERATIONS

- § 7:1 Introduction
- § 7:2 Parties

TABLE OF CONTENTS

- § 7:3 Standing
- § 7:4 Statute of limitations
- § 7:5 Statute of limitations for Civil Rights Department complaints
- § 7:6 The Civil Rights Department investigative process
- § 7:7 Civil Prosecution by the Civil Rights Department
- § 7:8 Arbitrability
- § 7:9 Pre-filing Notice Requirements
- § 7:10 Venue
- § 7:11 Settlement

CHAPTER 8. REMEDIES

- § 8:1 Federal law
- § 8:2 California employment law
- § 8:3 Purpose
- § 8:4 Special damages
- § 8:5 Compare—Administrative proceedings
- § 8:6 Out of pocket losses
- § 8:7 Lost housing opportunity
- § 8:8 Factors considered in awarding lost housing opportunity damages
- § 8:9 Organizational plaintiffs may also recover special damages
- § 8:10 Diversion of resources damages
- § 8:11 Method of proof
- § 8:12 Examples of evidence to support diversion of resources damages
- § 8:13 Frustration of mission damages
- § 8:14 Examples of evidence to support frustration of mission damages
- § 8:15 General damages
- § 8:16 Statutory basis
- § 8:17 Standard of review
- § 8:18 Amount of award
- § 8:19 Defendants may be liable for testers' emotional distress
- § 8:20 Damages cut-off period
- § 8:21 Mitigation of damages
- § 8:22 Injunctive relief
- § 8:23 Types of injunctive relief
- § 8:24 Civil penalties
- § 8:25 Punitive damages
- § 8:26 Guidelines
- § 8:27 Standard of proof
- § 8:28 Nexus
- § 8:29 Amount

CA FAIR HOUSING AND PUBLIC ACCOMMODATIONS

- § 8:30 "Guideposts" in determining punitive damage amount
- § 8:31 Reprehensibility of conduct
- § 8:32 Comparison with other penalties
- § 8:33 Ratio between punitive and compensatory damages
- § 8:34 Wealth of defendant
- § 8:35 Punitive damages and public entities
- § 8:36 Punitive damages and civil suits brought by the Attorney General
- § 8:37 Compensatory and punitive damage awards are subject to interest
- § 8:38 Purpose
- § 8:39 Compounded interest

**CHAPTER 9. ATTORNEY'S FEES,
COSTS, AND EXPENSES IN FAIR
HOUSING AND PUBLIC
ACCOMMODATION CASES**

- § 9:1 Introduction
- § 9:2 Entitlement to fees
- § 9:3 Statutes providing that fees "may" be awarded to prevailing parties
- § 9:4 Statutes providing that a prevailing plaintiff "shall" be awarded fees
- § 9:5 Statutes providing that the prevailing *party* "shall" be awarded fees
- § 9:6 Statutory costs awards under FEHA
- § 9:7 Non-statutory costs, including expert witness fees
- § 9:8 Other fee statutes that should be considered in fair housing and public accommodation litigation
- § 9:9 Complete success not required
- § 9:10 Must achieve success on important issue
- § 9:11 Success can take variety of forms
- § 9:12 Denial of fees under Code Civ. Proc. § 1033
- § 9:13 *Hensley/EPIC* two-part test
- § 9:14 Were the unsuccessful claims completely separable from successful claims?
- § 9:15 Does overall lack of success merit a reduction?
- § 9:16 No proportionality required in damages cases
- § 9:17 Lodestar method required
- § 9:18 Reasonable number of hours
- § 9:19 Reasonable hourly rates
- § 9:20 Multipliers
- § 9:21 Noticed motion required

TABLE OF CONTENTS

PART II. PUBLIC ACCOMMODATIONS

CHAPTER 10. UNRUH CIVIL RIGHTS ACT: PROHIBITED ACTS, PROTECTED CLASSES, AND PROPER DEFENDANTS

SECTION A. UNRUH PROHIBITED ACTS

- § 10:1 Introduction
- § 10:2 Protected Enumerated Classes
- § 10:3 Sex
- § 10:4 Race
- § 10:5 Religion
- § 10:6 Disability
- § 10:7 Medical Condition
- § 10:8 Marital Status
- § 10:9 Sexual Orientation
- § 10:10 Citizenship, Primary Language and Immigration Status
- § 10:11 Perception
- § 10:12 Association
- § 10:13 Retaliation

SECTION B. UNRUH PROTECTED CLASSES

- § 10:14 Non-enumerated bases
- § 10:15 Examples of “arbitrary discrimination”
- § 10:16 Examples of Unruh Act claims deemed to be non-arbitrary

SECTION C. PROPER DEFENDANTS UNDER UNRUH AND TITLE II OF THE CIVIL RIGHTS ACT OF 1964

- § 10:17 Purpose
- § 10:18 Expansion of prior law
- § 10:19 Broad interpretation of “business establishment”
- § 10:20 Covers commercial and non-profit entities open to and serving the general public
- § 10:21 Examples of covered business establishments
- § 10:22 First Amendment considerations
- § 10:23 Federal public accommodations law
- § 10:24 Scope: Title II applies to a public accommodation
- § 10:25 Public accommodation defined (42 U.S.C. 2000a(b))
- § 10:26 Does the public accommodation affect interstate commerce?

CHAPTER 11. DISABILITY DISCRIMINATION IN PUBLIC ACCOMMODATIONS

- § 11:1 Brief history
- § 11:2 Definition of disability
- § 11:3 Federal disability statutes
- § 11:4 State disability statutes—The Disabled Persons Act and the Unruh Civil Rights Act:
- § 11:5 Public Accommodation Laws Covering State or state-funded entities
- § 11:6 Specific state disability discrimination laws
- § 11:7 Special issues

CHAPTER 12. AMERICANS WITH DISABILITIES ACT AND ITS INCORPORATION INTO CALIFORNIA LAW

- § 12:1 ADA incorporation into California civil rights law
- § 12:2 ADA
- § 12:3 Summary of Title III of the ADA
- § 12:4 Public accommodation defined
- § 12:5 “Commercial facilities” also covered for accessibility of new construction and alterations
- § 12:6 ADA definition of disability
- § 12:7 Prima facie elements of a claim under Title III of the ADA
- § 12:8 Prohibited acts
- § 12:9 Why plaintiffs should not rely on federal ADA claim only
- § 12:10 California civil rights laws that have incorporated ADA violations
- § 12:11 Requirements for physical accessibility of the built environment under the ADA and California laws
- § 12:12 Website accessibility
- § 12:13 California requirements for existing facilities
- § 12:14 California building code standards versus ADA
- § 12:15 Federal question and supplemental jurisdiction
- § 12:16 California’s CASp (Certified Access Specialist) program
- § 12:17 Prelitigation letter, complaint, CASp stay and early evaluation
- § 12:18 Effect of CASp inspection on plaintiff’s relief
- § 12:19 Service accessibility

TABLE OF CONTENTS

- § 12:20 ADA exceptions to modification and auxiliary aids and services obligations
- § 12:21 California incorporation of service accessibility requirements
- § 12:22 Retaliation

CHAPTER 13. OTHER PUBLIC ACCOMMODATION STATUTES

- § 13:1 Other statutes covering public accommodations
- § 13:2 Discrimination in granting of franchises prohibited
- § 13:3 Third party policies or contracts requiring discrimination
- § 13:4 Gender-based pricing
- § 13:5 Credit denial to women
- § 13:6 Sexual harassment; business, service, and professional relationships
- § 13:7 Civil Suits for human trafficking
- § 13:8 Posting notices against slavery and human trafficking

CHAPTER 14. CIVIL STATUTES PROTECTING AGAINST HATE VIOLENCE

- § 14:1 Gender-motivated violence
- § 14:2 Ralph Act
- § 14:3 Ralph Act jury instructions
- § 14:4 First Amendment Concerns
- § 14:5 Bane Civil Rights Act

CHAPTER 15. PROOF ISSUES UNDER CALIFORNIA'S UNRUH CIVIL RIGHTS ACT AND RELATED STATUTES

- § 15:1 Unruh Act
- § 15:2 Intentional discrimination required
- § 15:3 A violation of the ADA also violates Unruh
- § 15:4 Contrast; disparate treatment showing allowed for ADA claim
- § 15:5 Single discriminatory act sufficient
- § 15:6 Statistical evidence can establish intent
- § 15:7 Circumstantial evidence can establish intent
- § 15:8 Mixed motive cases
- § 15:9 The question of whether the defendant is a business establishment is a matter of law
- § 15:10 Whether a claimant is covered by the Unruh Act
- § 15:11 Establishing other, non-enumerated categories

CA FAIR HOUSING AND PUBLIC ACCOMMODATIONS

- § 15:12 Examples, discrimination considered justified or reasonable
- § 15:13 Discrimination in Business Dealings (Civ. Code § 51.5)

CHAPTER 16. DEFENSES IN PUBLIC ACCOMMODATION CASES

- § 16:1 Introduction
- § 16:2 Nature of an Affirmative Defense
- § 16:3 Affirmative Defenses Available in Public Accommodation Accessibility Cases
- § 16:4 Discrimination Is Justified/Necessary
- § 16:5 Requested Modification Is Unreasonable (ADA)
- § 16:6 Barrier Removal Is Not Readily Achievable
- § 16:7 Auxiliary Aids and Services
- § 16:8 Direct Threat
- § 16:9 Industry Standards, or “Dimensional Tolerances” Defense
- § 16:10 Lack of Pre-litigation Demand
- § 16:11 Unclean Hands?
- § 16:12 Not recognized as affirmative defenses
- § 16:13 Lack of Intent to Discriminate Is Not a Defense to ADA Claims, nor to Unruh Claims Asserted by Virtue of ADA Incorporation
- § 16:14 Assertion of Third Party Liability Is Not a Valid Affirmative Defense
- § 16:15 Causation
- § 16:16 Assertion that ADA Violations Are “de minimus”
- § 16:17 Constitutional Challenges

CHAPTER 17. PROCEDURAL CONSIDERATIONS

- § 17:1 Introduction
- § 17:2 Civil Rights Department (CAD) Filing & Investigation
- § 17:3 Unruh Complaints
- § 17:4 Jurisdiction
- § 17:5 Venue
- § 17:6 Standing
- § 17:7 Unruh standing: “aggrieved party”
- § 17:8 Class Actions
- § 17:9 Unruh organizational standing.
- § 17:10 Unruh as an unlawful business practice?
- § 17:11 ADA Standing
- § 17:12 No futile gesture required
- § 17:13 ADA Association standing
- § 17:14 Deterrence plus intent to return

TABLE OF CONTENTS

- § 17:15 Deterrence means likely to return but not if futile
- § 17:16 Standing under the ADA establishes standing under Unruh and the DPA
- § 17:17 Similar requirements for Unruh and DPA construction-related accessibility claims
- § 17:18 Different standing requirements for compliance enforcement vs. recovery of damages
- § 17:19 Whether pre-filing notice is required under Title III of the ADA
- § 17:20 Preemption by federal law
- § 17:21 Construction with other laws
- § 17:22 Statute of limitations: Unruh and DPA
- § 17:23 Pre-filing Notice Requirements Against Governmental Entity or Employee
- § 17:24 Continuing violations, equitable tolling, and fraudulent concealment

CHAPTER 18. REMEDIES IN PUBLIC ACCOMMODATION CASES

- § 18:1 Introduction
- § 18:2 Actual damages
- § 18:3 Minimum damages per visit or deterred visit, not per violation (Civ. Code § 55.54(e))
- § 18:4 Daily damages not available
- § 18:5 Damages can still accumulate quickly
- § 18:6 Courts have held Unruh Act's treble damages to be punitive in nature
- § 18:7 Punitive damages are not recoverable against a public entity
- § 18:8 Punitive damages generally not available with statutory treble damages
- § 18:9 Election of damages required under Unruh or Disabled Persons Act
- § 18:10 Injunctive relief (Civ. Code § 52(c))
- § 18:11 Attorney's fees
- § 18:12 Civil Right Department (CRD) complaint
- § 18:13 Attorney General enforcement
- § 18:14 The Disabled Persons Act (DPA): actual damages (Civ. Code § 54.3(a))
- § 18:15 Includes emotional distress damages
- § 18:16 Trebling and statutory damages
- § 18:17 Proof of actual damages not required to recover statutory minimum damages
- § 18:18 Minimum damages per visit or deterred visit, not per violation (Civ. Code § 55.56(e))
- § 18:19 Election of damages required under Unruh or Disabled Persons Act

CA FAIR HOUSING AND PUBLIC ACCOMMODATIONS

§ 18:20 Attorneys' fees

CHAPTER 19. 42 U.S.C.A. § 1983

- § 19:1 Overview of 42 U.S.C. § 1983
- § 19:2 Background of statute
- § 19:3 Purpose
- § 19:4 Concurrent jurisdiction
- § 19:5 State agencies—Eleventh amendment immunity
- § 19:6 Factors determining whether entity is an arm of the state
- § 19:7 Section 1983 elements/application
- § 19:8 “Person” within the meaning of section 1983
- § 19:9 *Monell* claim
- § 19:10 Avenues to establishing *Monell* liability
- § 19:11 Respondeat superior theory
- § 19:12 Qualified immunity
- § 19:13 Acting under color of law
- § 19:14 Private parties/entities
- § 19:15 Deprived of a constitutional or federal right
- § 19:16 Preclusion
- § 19:17 Age Discrimination in Employment Act (ADEA)
- § 19:18 Americans with Disabilities Act/Rehabilitation Act
- § 19:19 Civil Rights Act of 1964
- § 19:20 Individuals with Disabilities Education Act
- § 19:21 Supervisor liability

APPENDICES

- Appendix A. The Fair Employment and Housing Act
(Gov. Code § 12900 et seq.)
- Appendix B. The Unruh Act & Selected Related States
(Civ. Code § 51 et seq.)
- Appendix C. Department of Fair Employment and Housing, Regulations RE Discrimination in Housing
- Appendix D. Department of Fair Employment and Housing Procedural Regulations (2 C.C.R. § 10000 et seq.)
- Appendix E. HUD Housing Regulations (24 C.F.R. § 100 et seq.)
- Appendix F. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act 7-8 (May 17, 2004) “Questions and Answers on Sexual Harassment under the Fair Housing Act,” Nov. 17, 2008

TABLE OF CONTENTS

Appendix G. Memorandum from Roberta Achtenberg,
Assistant Secretary for HUD's Office of
Fair Housing and Equal Opportunity re
"Guidance Regarding Advertisements
Under § 804(c) of the Fair Housing Act"
(Jan. 9, 1995)

Appendix H. HUD memo February 9, 2011 Assessing
Claims of Housing Discrimination
against Victims of Domestic Violence
under the Fair Housing Act (FHA) and
the Violence against Women Act (VAWA)

Table of Laws and Rules

Table of Cases

Index