

# Fair Housing

Due to discrimination in housing, lending, and commercial business establishments, federal and state housing laws were enacted to prohibit these forms of discrimination.

Many of the blatant tricks that were used by real estate agents and lenders to deny purchases and/or loans to minorities in the past have been cast aside as a result of the many state and federal fair housing laws.

Unfortunately, as is many times the case, laws are only as good as the people who obey them. In recent times, many of the same discriminatory practices have been used, but on a much more subtle basis.

The following federal and state civil rights laws were legislated with the intent to prohibit many of the forms of discrimination that was tearing up our society.

## **Federal Fair Housing Laws** **Civil Rights Act of 1866**

The Civil Rights Act of 1866 was enacted just after the end of the Civil War (or what the South still calls the “War Between The States”). In any case, one of the key issues behind the above noted war was rights to all citizens in the United States.

The Civil Rights Act of 1866 gave ALL citizens in the United States the right to purchase, rent, sell, hold, and convey all (residential and commercial) real property and personal property without regard to race.

In addition all persons have the right to contract, sue, be sued, and enjoy the full benefits of the law.

*"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and extraction's of every king, and to no other."*

### **Federal Fair Housing Act (Civil Rights Act of 1968)**

The Federal Fair Housing Act prohibits discrimination in:

- sale, rental, or advertisement of residential dwellings;
- brokerage services;
- appraisal of real estate; and
- real estate loans and loan purchases.

Discrimination is based on a person's:

- race;
- religion;
- national origin;
- sex;

A broker may not discriminate on the sale or rental of a residential dwelling. Thus a broker may not:

- refuse to sell or rent for discriminatory reasons;
- evict a tenant for discriminatory reasons;
- use different qualification criteria for selling or purchasing a residential dwelling;

- impose different sale or rental charges for discriminatory reasons;
- use different terms, conditions, and privileges in the sale or rental of residential dwellings;
- perform differing maintenance activities for certain persons;
- limit use of common areas or facilities to certain persons; and
- refuse to provide service due to a person's refusal to provide sexual favors.

A broker may not steer a person into a residential neighborhood or community in an attempt to segregate housing patterns. This is called *steering* and is discriminatory and illegal.

A broker also may not use advertising that discriminates in the sale or rental of real property. This relates to all advertising used in the course of business.

A broker may not attempt to induce or actually induce a person to sell or rent their real property because of the entry of a certain class of people into the neighborhood. This is called *blockbusting* as is illegal.

### **Americans With Disabilities Act of 1990, Title III (ADA)**

The ADA was enacted to prohibit discrimination against people with disabilities. It covers most commercial buildings and requires building owners to remove all "architectural and communicative barriers" that will "impede reasonable access to any facility."

The building may be exempted from this law if it can be shown that upgrading the building to ADA standards would be a "disproportionate cost to the overall alteration."

### **California Fair Housing Laws Unruh Civil Rights Act of 1959**

The Unruh Act made it illegal for the proprietor of a business establishment to discriminate because of a person's race.

It stated:

*"All persons within the jurisdiction of this State (California) are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin, they are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."*

A business establishment may not discriminate based upon age of the patron or occupant. However, business establishments used to preserve housing for senior citizens are allowed under an amendment to the federal Fair Housing Act. A senior citizen is defined as a person 62 years of age or older. However, if all persons are not over 62 years of age, the development may qualify under the 55 year old exemption. This means that at least 80% of the units must be occupied by someone 55 years of age or older.

Damages for violation of this Act are not less than \$250 or three times the amount of the actual damages plus attorney fees.

### **California Fair Employment And Housing Act of 1963 (Rumford Act)**

The Rumford Act was the first piece of legislation to use the term "affirmative action." The law related to: *"Any activity for the purpose of eliminating discrimination in housing accommodations because of race, color, religion, sex, marital status, national origin, or ancestry."* This was a much more stringent law since it pertained to any person who refused to sell, lease, or rent housing accommodations because of race, color, religion, sex, marital status, national origin, or ancestry. Unfavorable and discriminatory terms could not be used to discourage the above group.

The Rumford Act prohibited discriminatory practices based on race, color, religion, sex, marital status, ancestry,

national origin, or disability in the sale or lease of housing accommodations. Discriminatory practices include:

- a broker refusing to represent an individual because of one of the above reasons;
- advertising that limits preferences based upon the above reasons;
- making an oral or written inquiry into the above reasons for a person looking to rent or purchase a residential dwelling; and/or
- limiting loans and financing based upon the above reasons.

The Department of Fair Employment and Housing and the Fair Employment and Housing Commission enforce the Rumford Act.

### **Housing Financial Discrimination Act of 1977 (Holden Act)**

The Holden Act was enacted in response to discrimination in lending practices in California. Lenders, realizing a higher foreclosure rate in urban areas where a majority of minority owners resided, decided to curtail loans in these areas.

They placed a RED LINE circle around these areas, thus coined the term "*Redlining*." The Holden Act placed restrictions on this practice by making it illegal to:

*"Consider the racial, ethnic, religious, or national origin composition of trends in neighborhoods surrounding a housing accommodation."*

If the buyer was qualified to purchase a 1-4 unit residential property, the lender had to make a reasonable loan available to that buyer. In retrospect, most people believe this to be a good and well timed law which reduced discrimination in lending, increased loans in urban areas, and slowed down the decay in many urban residential neighborhoods.

Lenders cannot discriminate when making a loan on the basis of:

- race;
- color;
- religion;
- ancestry;
- sex;
- marital status; and
- national origin.

Lenders cannot refuse a loan to a creditworthy borrower based upon the demographics of the neighborhood. They also cannot refuse a loan based upon a much lower appraisal of the property than in neighborhoods not composed predominantly of non-minority residents.

Lenders are required to post in a conspicuous public place a notice of a loan applicant's rights to file a lending discrimination claim with the Secretary of Business, Transportation, and Housing Agency. This includes state regulated banks and savings banks, and other institutions. It does not cover federally regulated banks.

Under the federal Home Mortgage Disclosure Act, lenders are required to disclose home loan origination information to the public. This ensures that redlining will not exist in the United States.

In addition, California state regulated lenders must compile data on the number and amount of loans originated for each fiscal year. These are grouped by census tract and is available to the public for five years.

## **Real Estate Commissioner's Regulations**

The real estate commissioner has enacted regulations prohibiting real estate brokers and their salespeople from any practice that discriminates against anyone based on:

- race;
- color;
- sex;

- ancestry;
- religion;
- disability;
- marital status; and
- national origin.

The commissioner also prohibits *blockbusting* and *panic selling*. Blockbusting has already been explained, however, panic selling occurs when a broker or salesperson goes into a neighborhood and induces homeowners and tenants to move out of the neighborhood because of an impending change in the ethnic makeup of the neighborhood.

The commissioner also hold real estate brokers accountable to their agents to inform them of all fair housing laws and commissioner's regulations regarding the matter.

**Regulations of the Real Estate Commissioner,  
Regulation 2780**

**Discriminatory Conduct as The Basis For Disciplinary Action**

Under Regulation 2780 discriminatory conduct is a basis for disciplinary action.

Prohibited discriminatory conduct by a real estate licensee based upon race, color, sex, religion, ancestry, physical handicap, marital status, or national origin includes:

- Refusing to negotiate for the sale, rental, or financing of the purchase of real property or otherwise making unavailable or denying real property to any person because of such person's:
  1. Race
  2. Color
  3. Sex
  4. Religion
  5. Ancestry
  6. Physical handicap

7. Marital status
8. National origin

- Refusing or failing to show, rent, or finance the purchase of real property to any person or refusing or failing to provide or volunteer information to any person about real property, or channeling or steering any person away from real property, because of that person's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin or because of the racial, religious, or ethnic composition of any occupants of the area in which the real property is located.

It shall not constitute discrimination under this subdivision for a real estate licensee to refuse or fail to show, rent, sell, or finance the purchase of real property to any person having a physical handicap because of the presence of hazardous conditions or architectural barriers to the physically handicapped which conform to applicable state and local building codes and regulations.

- Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin against any person in the
  1. Sale,
  2. Purchase,
  3. Negotiation,
  4. Solicitation of the sale or purchase
  5. The collection of payments
  6. The performance of services in connection with contracts of sale of real property.
  7. The performance of services in connection with loans secured directly or collaterally by liens on real property.
  8. Business opportunities.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of California as to acquiring, financing, holding, or transferring real property.

- Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin against any person in the terms, conditions, or privileges of sale, rental, or financing of the purchase of real property.

This does not prohibit the sale price, rent, or terms of a housing accommodation containing facilities for the physically handicapped to differ reasonably from a housing accommodation not containing such facilities.

- Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin against any person in providing services or facilities in connection with the sale, rental, or financing of the purchase of real property, including but not limited to:

1. Processing applications differently,
2. Referring prospects to other licensees because of the prospects' race, color, sex, religion, ancestry, physical handicap, marital status, or national origin,
3. Using with discriminatory intent or effect, codes or other means of identifying minority prospects,
4. Assigning real estate licensees on the basis of a prospective client's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of California as to acquiring, financing, holding, or transferring real property.

- Representing to any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status, or

national origin that real property is not available for inspection, sale, or rental when such real property is in fact available.

- Processing an application more slowly or otherwise acting to delay, hinder, or avoid the sale, rental, or financing of the purchase of real property on account of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of a potential owner or occupant.
- Making any effort to encourage discrimination against persons because of their race, color, sex, religion, ancestry, physical handicap, marital status, or national origin in showing, sale, lease, or financing the purchase of real property.
- Refusing or failing to cooperate with or refusing or failing to assist another real estate licensee in negotiating the sale, rental, or financing of the purchase of real property because of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of any prospective purchaser or tenant.
- Making any effort to obstruct, retard, or discourage the purchase, lease, or financing of the purchase of real property by persons whose race, color, sex, religion, ancestry, physical handicap, marital status, or national origin differs from that of the majority of persons presently residing in a structural improvement to real property or in an area in which real property is located.
- Performing any acts, making any notations, asking any questions or making or circulating any written or oral statement which when taken in context, expresses or implies a limitation, preference or discrimination based upon race, color, sex, religion, ancestry, physical handicap, marital status, or national origin; provided, however, that nothing herein shall limit the administering of forms of the making of a notation required by a federal, state, or local agency for data collection or civil rights enforcement purposes; or in the case of a physically handicapped person, making notation, asking questions or circulating any written or oral statement in order to serve the needs of such a person.

- Making any effort to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise of any right granted or protected by a federal or state law, including but not limited to:
  1. Assisting in any effort to coerce any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status, or national origin to move from or not to move from a particular area.
  2. Punishing or penalizing real estate licensees for their refusal to discriminate in the sale or rental of housing because of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of a prospective purchaser or lessee.
  3. Evicting or taking other retaliatory action against any person for having filed a fair housing complaint or for having undertaken other lawful efforts to promote fair housing.
- Soliciting of sales, rentals, or listing of real estate from any person, but not from another person within the same area because of differences in race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of such persons.
- Discriminating because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin in informing persons of the existence of waiting lists or other procedures with respect to the future availability of real property for purchase or lease.
- Making any effort to discourage or prevent the rental, sale, or financing of the purchase of real property because of the presence or absence of occupants of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin or on the basis or the future presence or absence of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin, whether actual, alleged, or implied.

- Making any effort to discourage or prevent any person from renting, purchasing, or financing the purchase of real property through any representations of actual or alleged community opposition based upon race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.
- Providing information or advice to any person concerning the desirability or particular real property or a particular residential area which is different from information or advice given to any other person with respect to the same property or area because of difference in the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of such persons.

This does not limit the giving of information or advice to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

- Refusing to accept a rental or sales listing or application for financing of the purchase of real property because of the owner's race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of any of the occupants in the area in which the real property is located.
- Entering into an agreement, or carrying out any instructions of another, explicit or understood, not to show, lease, sell, or finance the purchase of real property because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.
- Making, printing or publishing, or causing to be made, printed, or published, any notice, statement or advertisement concerning the sale, rental, or financing of the purchase of real property that indicates any preference, limitation, or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin, or any intention to make such preference, limitation, or discrimination.

This does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention

of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

- Using any words, phrases, sentences, descriptions, or visual aids in any notice, statement, or advertisement describing real property or the area in which real property is located which indicates any preference, limitation, or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

This does not prohibit advertising directed to physically handicapped persons for the purpose of calling to the attention of such persons the existence or absence of housing accommodation services or housing accommodations for the physically handicapped.

- Selectively using, placing, or designing any notice, statement or advertisement having to do with the sale, rental, or financing of the purchase of real property in such a manner as to cause or increase discrimination by restricting or enhancing the exposure or appeal to person of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

This does not limit in any way the use of an affirmative marketing program designed to attract persons of a particular race, color, sex, religion, ancestry, physical handicap, marital status, or national origin who would not otherwise be attracted to the real property or to the area.

- Quoting or charging a price, rent, or cleaning or security deposit for a particular real property to any person which is different from the price, rent, or security deposit quoted or charged to any other person because of difference in the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of such persons.

This does not prohibit the quoting or charging of a price, rent, or cleaning or security deposit for a housing accommodation containing facilities for the physically

handicapped to differ reasonably from housing accommodations not containing such facilities.

- Discriminating against persons because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin in performing any acts in connection with the making of any determination of financial ability or in the processing of any application for the financing or refinancing of real property.

Nothing herein shall limit the administering of forms of the making of a notation required by a federal, state, or local agency for data collection of civil rights enforcement purposes. In any evaluation or determination as to whether, and under what terms and conditions, a particular lender or lenders would be likely to grant a loan, licensees shall proceed as though the lender or lenders are in compliance with Section 35800 through 35833 of the California Health and Safety Code (The Housing Financial Discrimination Act of 1977.)

Prohibited discriminatory conduct by a real estate licensee under this subdivision does not include acts based on a person's marital status which are reasonably taken in recognition of the community property laws of this state as to acquiring, financing, holding, or transferring real property.

- Advising a person of the price or value of real property on the basis of factors related to the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of residents of an area or of residents or potential residents of the area in which the property is located.
- Discriminating in the treatment of, or services to, occupants of any real property in the course of providing management services for the real property because of the race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of said occupants.

This does not prohibit differing treatment or services to a physically handicapped person because of the physical handicap in the course of providing management services for a housing accommodation.

- Discriminating against the owners or occupants of real property because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin of their guests, visitors, or invitees.
- Making any effort to instruct or encourage, expressly or impliedly, by either words or acts, licensees or their employees or other agent to engage in any discriminatory act in violation of a federal or state fair housing law.
- Establishing or implementing rules that have the effect of limiting the opportunity for any person because of his or her race, color, sex, religion, ancestry, physical handicap, marital status, or national origin to secure real property through a multiple listing or other real estate service.
- Assisting or aiding in any way, any person in the sale, rental, or financing of the purchase of real property where there are reasonable grounds to believe that such person intends to discriminate because of race, color, sex, religion, ancestry, physical handicap, marital status, or national origin.

### **Section 2781 Panic Selling**

Prohibited discriminatory conduct includes, but is not limited to, soliciting sales or rental listings, making written or oral statements creating fear or alarm, transmitting written or oral warnings or threats, or acting in any other manner so as to induce or attempt to induce the sale or lease of real property through an representation, express or implies, regarding the present or prospective entry of one or more persons of another race, color, sex, religion, ancestry, physical handicap, marital status, or national origin into an area or neighborhood.

### **Section 2725(f) Duty to Supervise**

A broker licensee shall take reasonable steps to become aware of and to be familiar with and to familiarize his or her salespersons with the requirements of federal and state laws and regulations relating to the prohibition of discrimination in the sale, rental, or financing of the purchase of real property. Such

laws and regulations include but are not limited to the current provisions and any amendments thereto of:

1. Unruh Civil Rights Act.
2. Title VII and IX of the United States Civil Rights Act of 1968.
3. The Housing Financial Discrimination Act (Holden Act).
4. Blind and other physically disabled persons.

## **Fair Housing Overview**

### **Civil Rights Act of 1866**

The Civil Rights Act of 1866 gave all citizens in the United States the right to purchase real estate.

The Civil Rights Act of 1866 also gave everyone in the United States the right to enjoy the full benefits of the law. However, this act was largely ignored in the courts during the more than one hundred years from 1866 to 1968.

### **Civil Rights Act of 1968**

The Civil Rights Act of 1968 prohibited discrimination in the sale and rental of real estate

Exemptions from the act include a residential owner who does not own more than three single-family homes, does not live in the house, does not use a real estate agent in the sale of the home, and does not use discriminatory advertising.

The Civil Rights Act of 1968 prohibited discrimination in the:

- sale,
- rental,
- advertising,
- offer of brokerage services,
- loans, and
- appraisal services.

Discriminatory actions based on a person's:

- race
- color
- religion
- sex
- marital status
- national origin, and
- handicap.

A handicap can be physical or mental and limits a person's activities. A broker may not discriminate by

- using different provisions for minority applicants than other applicants,
- limit use of facilities, and
- delay maintenance because of discriminatory reasons.

A broker may not discriminate in advertising. This is both oral and written.

A broker may not induce people to move out of a neighborhood because minorities are coming into the area. This is called blockbusting and is illegal.

A person who have been a victim of discrimination may file a complaint with the Department of Housing and Urban Development. The statute of limitations is one year from the discriminatory act.

### **Americans With Disabilities Act**

A disability is a physical or mental condition that limits a person's normal life activities. Public and private buildings must be built or altered to comply with ADA.

A person discriminates against a person with a disability may be liable for civil damages in the amount of \$50,000.

### **Unruh Civil Rights Act**

The Unruh Civil Rights Act prohibits discrimination based upon race, color, sex, religion, ancestry, national origin, or a

disability in business establishments. This also applies to a person in the business of providing housing to the public.

### **California Fair Employment and Housing Act**

The California Fair Employment and Housing Act prohibits discrimination in housing accommodations in California. Discriminatory practices include:

- broker refuses to represent a minority person,
- broker asks about a prospective client's race, color, sex, religion, disability, national origin, or ancestry,
- Broker places an advertisement under discriminatory conditions,

### **Equal Credit Opportunity Act**

The Equal Credit Opportunity Act prohibits discrimination based upon race, color, sex, marital status, religion, and national origin. It is a federal law that attempts to stop:

- asking about a loan applicant's race, color, sex, marital status, religion, and national origin.
- requiring signatures from both spouses when one qualifies for the loan on his or her own.
- making loan qualification for minority applicants more difficult than other non-minority applicants.

The lender has thirty days to notify the loan applicant that their application has been denied, and must deliver to the applicant a statement specifying the reasons the loan was denied.

### **Housing Financial Discrimination Act**

The Housing Financial Discrimination Act, also known as the "Holden Act" was an attempt by California to prevent discrimination in lending.

The Holden Act stated that loan could not be denied to an applicant based upon:

- Race,
- Color,
- Religion,
- Marital Status,
- Sex,
- Ancestry, and
- National origin.

### **Home Mortgage Disclosure Act**

The Home Mortgage Disclosure Act requires lenders to disclose home loan information to the public. This includes anyone making home loans, including state and federally regulated banks. However, there are many exceptions to this requirement.

Lenders must disclose:

- type and purpose of the loan,
- whether it is owner-occupied or investor loan,
- income of the loan applicant,
- amount of the loan,
- sex and race of the loan applicant.

### **AIDS Disclosure**

If the occupant died as a result of AIDS and the buyer asks the broker a direct question, the broker must disclose that the occupant died from AIDS.

### **Advertising Guidelines**

It is discriminatory to use words or phrases that request particular buyer or tenant. Words such as “white”, “black”, “single”, etc. Are discriminatory.

However, advertising that requests people age 55 years and old is not discriminatory. This is many times used in adult communities.

Use of the Department of Housing and Urban Development's (HUD) Equal Housing Opportunity logo is a good way to advertise that the broker does not practice discriminatory practices in their business.

### **Department of Real Estate**

The California Department of Real Estate (DRE) prohibits discrimination by real estate brokers. Discriminatory practices include:

- Discouraging a client from purchasing or renting a property because of the client's race, national origin, sex, etc.
- Discriminating in management of properties.
- Limiting use of Multiple Listing Services, and
- Refusing to accept a listing, sale, or loan because of discriminatory reasons.

Blockbusting and panic selling are illegal. When a real estate attempts to induce a seller to sell their property because minorities are coming into the neighborhood and will devalue properties, this is called panic selling. The result is what is called blockbusting.

As you have seen from the many federal and state laws, as well as the Real Estate Commissioner's Regulations, Fair Housing is a major issue in California and national real estate. For this reason, the California Department of Real Estate requires salesperson licensees to complete this three hour continuing education course prior to their first license renewal. The knowledge gained from this course will help the licensee avoid discriminating in the sale, lease, development, etc. of real property

Next is a look at a recent court case that impacts fair housing in California.

FERNWOOD MOBILE HOME PARK et al., Cross-defendants and Appellants, v. EUGENE ALMEYDA et al., Cross-complainants and Respondents. COURT OF APPEAL OF

CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION  
THREE, December 20, 2002, Filed  
JUDGES: LEARY, J. I CONCUR: BEDSWORTH, ACTING P. J.  
FYBEL, J., Dissenting.

Appellants challenge a permanent injunction prohibiting them from engaging in housing discrimination based on familial status. We find no reversible error, thus we affirm the judgment, but not without disapproving the court's inappropriate and insensitive posttrial expressions of opinion regarding the nature of appellants' conduct in operating and managing a mobilehome park. Notwithstanding those remarks, we are convinced from our painstaking review of the entire record that there is no hint of judicial bias or prejudice affecting the outcome.

Fernwood Mobilehome Park (Fernwood) is a 165-space "blue collar" mobilehome development in Stanton, California. Established in 1970 as an adults-only community, it was operated as such until 1989, when federal law mandated it be opened to families with children. Fernwood entered the new housing rights era reluctantly, to say the least. It adopted a stifling set of rules and regulations targeting children and outlawing virtually every outdoor play activity in which they normally engage, and it warned applicants their children were not going to like living in the park because there was nothing for them to do. The tactic was effective. Notwithstanding a very tight market for affordable family housing in Orange County, 12 years after Fernwood relinquished its adults-only status, the park stood in stark population distribution contrast to the surrounding community: Only 18 percent of its households were occupied by families with children, as opposed to 68.4 percent of households in its census tract and 74 percent countywide.

The federal Fair Housing Amendments Act of 1988 (Pub.L. No. 100-430, § 13(a) (Sept. 13, 1988), 102 Stat. 1636), codified at 42 United States Code section 3601 et seq. in the Fair Housing Act, extended anti-discrimination coverage to familial status, defined, in pertinent part, as persons under the age of 18 who reside with their parent or legal custodian. (42 U.S.C. §§

3604(a)-(e) & 3602(k)(1).)

Seven years earlier, our Supreme Court held the Unruh Civil Rights Act (Civ. Code, § 51 et seq.) prohibits housing discrimination against families with children. (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 724, 180 Cal. Rptr. 496, 640 P.2d 115.) The court stated, "Whether the exclusionary policy rests on the alleged undesirable propensities of those of a particular race, nationality, occupation, political affiliation, or age, in this context the Unruh Act protects individuals from such arbitrary discrimination." (*Id.* at p. 726.) Despite the *Marina Point* decision, Fernwood maintained an express policy excluding children until the amended federal Fair Housing Act took effect.

Elizabeth Pierson, president and chief executive officer of the Fair Housing Council of Orange County, testified the discouraging comments and the overly restrictive rules, even if not enforced, would have a "dramatic impact," "a chilling effect" on a parent's desire to move into the property because "people don't want to live where they're not wanted or [will not] be welcome or think they're going to have problems."

In 1997, Angelina Almeyda needed a place to live when the home she and her family had rented for four or five years was sold. She wanted to buy, rather than rent, "to have some stability for my family, a place to call our own, and a home for my kids." She had saved enough money over the course of a few years to make a down payment on a mobilehome.

Fernwood was listed as a family park. Angelina found an affordable mobilehome for sale at space 95. It was sufficient to accommodate the family--Angelina, her husband, Gene Almeyda, three children, Ryan Almeyda, age 5, Steven Almeyda, age 11, Frank Martinez, age 15, and their family pet, Pepper, a Lhasa Apso. Angelina bought the unit for \$ 25,000.

The park's approval of the residency application took a few days, after which Angelina and her sons went "to meet the [Fernwood] management and go over park rules and regulations

and the lease [of space 95]." Fernwood's manager, Elaine Crammer, warned the family that kids weren't going to like it there." Angelina thought "it sounded like trouble[.]" but despite her reservations, she signed the rules and regulations and the lease, as did Gene at a later time.

The children also signed the rules and regulations. Five-year-old Ryan printed his name in block letters. Crammer said the children asked to sign and she wanted to make them feel they were part of the process.

The initial meeting between Crammer and the family turned out to be the high point of a relationship that thereafter followed an unswerving downhill path leading straight to the courthouse and the Almeydas' difficult decision to give up their home and seek a less hostile environment in which to raise the children. Facts will be discussed, *post*, as relevant to the legal issues on appeal. For present purposes, suffice it to say Fernwood sued the Almeydas for unlawful detainer and lost. It then filed the underlying action, alleging causes of action for breach of contract and abatement of nuisance, both claims based on the family's alleged violation of rules and regulations. These claims were dismissed, but Fernwood obtained a preliminary injunction against the Almeydas based on Gene's harassment and threats. The Almeydas cross-complained and prevailed in a jury trial on their theories of negligence and unlawful discrimination against families with children. Fernwood does not challenge the jury verdict or award of damages. However, the Almeydas also obtained a permanent injunction against Fernwood, prohibiting it from engaging in further unlawful conduct, and that injunction is at issue here.

Fernwood challenges the court's issuance of a permanent injunction prohibiting discrimination against families with children. To place the matter in context, we set forth the relevant background.

Fernwood's 14-page single-spaced rules and regulations in effect in 1989 recited, "Fernwood Mobile Home Park is a family

community with no minimum age requirements for Residents." However, there were special rules for children. Rule 12(E) provided, "Children (those persons under the age of 18 years) must be quiet and orderly and shall not be allowed to play in the street, on other Resident[s'] property, on vacant homesites, or to do anything which might be cause for complaint. Residents must acquaint all visiting children with the Park Rules and Regulations. Children must always be under the supervision of an adult. Children are not permitted in the clubhouse or in common areas unless accompanied by an adult Resident."

Rule 12(G) prohibited "baseball, football or ball throwing of any kind . . . within the Park, including on Resident's homesite, except on designated playground areas designed for such." n6 Under rule 12(I), a resident could babysit "on an infrequent basis, without compensation and for family and friends only[.]" but could not provide foster care or licensed child care unless complying with five conditions, including obtaining a \$ 1 million liability insurance policy and giving 60-days notice to management. Rule 14(C) barred children under the age of 16 from being in the clubhouse, except for the library room, without an accompanying resident.

"Resident" was defined as "a homeowner or other person who lawfully occupies a mobilehome."

There *were* no designated playground areas, thus there was no place to play ball at Fernwood.

With regard to the swimming pool, no "swim fins, diving masks, rubber floats, [or] the like" were permitted; the park did not allow "screaming, running, horseplay and loud noises" in the recreational areas; swimmers had to wear "only manufactured swim wear in good condition[.]" and "'homemade' swim wear" was prohibited. Rule 15(G) required that an adult resident accompany children under 16 in the pool area. Babies and children not yet "'potty trained'" were not allowed to use the pool under any circumstance. Shoes or sandals were required attire in the pool area "at all times."

The billiards room was off limits to children under 16 unless accompanied by an adult resident. Skateboarding and roller skating were absolutely prohibited within the park. Bicycles could be ridden "only . . . on the roadways and not on sidewalks, grass, vacant homesites or any other paved area." The rules and regulations alluded to additional rules and regulations posted at various locations within the park.

In addition to the written rules, Fernwood enforced a number of unwritten rules, with Crammer haranguing or writing up reports for children doing such things as riding a bike "near a house[,]'" giving someone a lift on the handlebars, not wearing helmets, riding bikes on streets other than their own, having no lights on their bikes at night, bouncing a ball, climbing over fences, going in the Jacuzzi, or hanging on the pool stair handrail. Children were not allowed to trick-or-treat at any house not specifically authorized by Crammer. The Almeidas were singled out for special attention: After Fernwood was unsuccessful in its unlawful detainer action, Crammer kept a watchful eye on the children, taking pictures of them to document alleged "incidents."

The jury found Fernwood discriminated against children. That finding is not challenged on appeal, nor does Fernwood dispute the evidence showing children were severely restricted in their usual and customary activities. As Angelina testified, "It's not a family park. They shouldn't call it a family park. If kids can live there why can't kids do kid things." A former resident used stronger language to describe how threatened he and his wife felt with Crammer constantly watching them and their children. He stated, "We were supposed to be living in comfort, at ease in a community, and all of a sudden we found ourselves in a hell. That's ridiculous. A person like [Crammer] as a manager instead she should be in the army." The same witness testified Crammer observed him walking with his children on one occasion, approached him, and said, "'Don't walk around too much because the old people can't think . . . and get scared that somebody's going to rob them.'" He said his children were not allowed to play in Fernwood, but had to go outside to the public streets, where they were at risk. They could not make any noise, even at family celebrations. The witness

said Fernwood was "like a jail." In effect, children were not allowed to be seen or heard.

The Almeydas also proved there was selective and uneven enforcement of the rules and regulations. Some residents received favored treatment, Crammer indulging their flagrant, repeated violations of the rules, belligerent and abusive conduct, cursing and foul language, public scenes, physical threats, and wild disturbances. Others, such as the Almeydas and similar families with children, were watched from the day they moved in, harassed, upbraided, cited, written up, embarrassed in front of guests, and, in the Almeydas' case, ultimately presented with a six-page letter from Fernwood's attorneys, set forth in legalese notifying them their residency was in jeopardy due to unspecified violations of "all the terms and conditions as set forth in the lease agreement." n7

Fernwood's enforcement policy required utilization of a three-step process, consisting of a verbal request, a written "friendly reminder," and finally a formal written seven-day notice to comply with rules and regulations or terminate. The policy was not followed in the Almeydas' case: Crammer admitted there were no friendly reminders, despite a hefty measure of seven-day notices, violations citations, and incident reports.

The seven-day notice which traumatized Angelina and led to a final confrontation between Gene and Crammer advised the Almeydas they had "multiple violations of the Park's Rules and Regulations[;]" they were "bound by the terms and conditions of the Rules and Regulations, Rental Agreement, and Residency Documents of the Park[;]" their tenancy could be terminated under statute, and they had "consistently failed and refused to abide by and conform to" provisions of the residency documents, inter alia, the provision requiring them to "abide and conform with all applicable laws and ordinances, all terms and conditions of this Agreement, the Rules and Regulations, all rules, regulations, terms and provisions contained in any document referred to in this Agreement, and said rules, regulations, terms and provision as may, [from] time to time, be amended, modified

or otherwise changed by Owner as permitted by the terms of this Agreement."

Against this backdrop, replete with other pertinent facts too numerous to recount, but well known to the parties, the court conducted posttrial hearings to determine the appropriateness of the Almeydas' request for a permanent injunction. After due consideration, it issued the subject injunction. It noted the jury found discrimination against families with children and the court had "reserved jurisdiction over the parties to cure illegal and/or discriminatory acts and practices and to prevent illegal and/or discriminatory acts and practices in the future for the benefit of the general public and the residents[.]" It stated the order was "intended to be prohibitory in that the Park shall not engage in [the business of renting sites for mobilehomes] unless it complies with all Applicable Law and every term of this order."

The injunction prohibits Fernwood from "engaging in any business practice that discriminates against, or has a discriminatory impact on, families with children." It orders the park to remove all signage inconsistent with the injunction, directs each cross-defendant to complete eight hours of training in fair housing law, and orders all park enforcement personnel, [\*12] present and future, to participate annually in fair housing training. It provides specific criteria for advertising vacancies and directs Fernwood to exhibit in a conspicuous location the federal fair housing advisement and to install permanent signage at the entrance to the facility stating, "FAMILIES WELCOME." The injunction contains a broad prohibition against "illegal, invalid or discriminatory terms in any Writing signed by a resident," as further specifically set forth in detail.

It orders Fernwood's counsel to serve a copy of the order and a federal fair housing rights booklet in appropriate language on each cross-defendant and present and future enforcement personnel, each present resident of Fernwood, each future applicant for residency, and "each manufactured home sales agent or broker within a three mile radius of the facility." The injunction requires Fernwood to "maintain written and verified documentary evidence of compliance . . . and . . . make such records available for inspection and copying upon the request of

any person free of charge during normal business hours at the office of the business property."

Finally, it directs Fernwood to file an annual declaration containing specified information about compliance and the existing family-with-children residency composition of the park.

Fernwood contends the Almeydas lacked standing to obtain a permanent injunction. The Almeydas alleged Fernwood's housing practices violated, inter alia, California's Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), the Unruh Act (Civ. Code, § 51), and California Business and Professions Code section 17200. Fernwood claims the Almeydas have no standing under FEHA because they failed to exhaust their administrative remedies before filing their civil suit for damages and have no standing under the Unruh Act because they moved out of the park. Finally, it asserts the Almeydas lack standing under [\*14] Business and Professions Code section 17200 because (1) they failed to properly allege the elements of a cause of action under that statute, and (2) they did not submit instructions to the jury or request findings on it. Because we agree with the trial court that standing exists under the Business and Professions Code, we need not decide the issue as it pertains to the state's fair housing laws.

With regard to the adequacy of the allegations to state a cause of action under Business and Professions Code section 17200, we find Fernwood's argument frivolous. Under the statute, an unlawful business practice "includes "anything that can properly be called a business practice and that at the same time is forbidden by law." [Citation.]" (*People v. McKale* (1979) 25 Cal.3d 626, 632, 159 Cal. Rptr. 811, 602 P.2d 731.) The pleading states "with reasonable particularity the facts supporting the statutory elements of the violation [citations]." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.) It alleges specific facts of an unlawful business practice--familial status discrimination--summarized, *ante*, and subsequently proved to the jury. (See *People v. McKale, supra*, 25 Cal.3d at p. 637 [complaint adequate on theory that operators of mobilehome park discriminated against applicants and tenants on basis of religion and ancestry in violation of Health & Safety

Code § 35720 & Business & Professions Code § 17200].)

Nor did the Almeydas' failure to propose jury instructions based on the Business and Professions Code constitute an abandonment or waiver of that theory of recovery when they subsequently sought the equitable remedy of injunctive relief from the court. Fernwood cites no apt authority for its waiver theory, and we have found none. The jury determined Fernwood had engaged in unlawful discrimination. As noted, *ante*, an unlawful business practice under Business and Professions Code section 17200 "includes "anything that can properly be called a business practice and that at the same time is forbidden by law." [Citation.]" (*People v. McKale, supra*, 25 Cal.3d at p. 632.) Running a mobilehome park in a discriminatory manner qualifies as a violation of the Business and Professions Code as a matter of law, requiring no special jury finding.

The judgment is affirmed. The Almeydas shall recover their costs and attorney fees on appeal.

O'LEARY, J.

I CONCUR:

BEDSWORTH, ACTING P. J.

**DISSENTBY: FYBEL**

**DISSENT: FYBEL, J., Dissenting:**

I respectfully dissent.

The Almeydas asserted that Fernwood, the mobilehome park operators, discriminated against their family by creating and enforcing rules governing where and how children may play and make noise in the park. The court repeatedly equated Fernwood with Nazis. The trial court said:

. "There's a lot of injustice there. These folks are running it kind of weird. It was a Nazi camp."

. "I got the impression [the jury] didn't like either side. They didn't like the park Nazi and they didn't like the husband."

. "So [the Almeydas] run to [an attorney] and he comes in and files basically a private attorney general-type thing on behalf of all people, similar situation, all mobile home parks run by park Nazis, sure. [The Almeydas are] out of [Fernwood] because allegedly [the responsible people are] park Nazis. If they weren't park Nazis [the Almeydas would] still be there. They'd be happy. You guys wouldn't be here."

. "Once this injunction is in place, the park will be run, trained, signs, stuff printed, and they're walking--should be walking on egg shells, and if they don't, someone's going to bring that to my attention . . . and we'll have a hearing and if I hear the stuff . . . that sounds like discrimination to me, . . . someone's going to be in deep trouble. . . . That's unconscionable conduct and all that Nazi park ranger-type of [\*36] thing."

. "You don't know how that offended me. I thought of all those nice folks in Germany saying 'What ovens'? 'What Jewish problem'? 'What camps'? 'We smell nothing[.] This is dust settling on us.' That offended the hell out of me that these nice people come in, they were nice people, came in, testified, 'We didn't know what's going on, we didn't,' and that's fine. I understand they're investors, but they've got to know what's going on. Now that I know what was going on there they've got to know so they make sure . . . the guy they turn the reigns over to has got to walk the line or they're in trouble again, they're in court again, money is on the line again."

The Nazis committed genocide, murdering millions of innocent children, women, and men in the Holocaust. The Nazis caused World War II in which American and Allied soldiers and others died. The trial court in this case equated Nazis to mobilehome park operators who had restrictive rules about noise and where children could play.

"Where the average person could well entertain doubt whether the trial judge was impartial, appellate courts are not required to speculate whether the bias was actual or merely apparent, or

[\*37] whether the result would have been the same if the evidence had been impartially considered and the matter dispassionately decided [citation], but should reverse the judgment and remand the matter to a different judge for a new trial on all issues." (*Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 247.) The trial court in this case both trivialized what the Nazis did and exaggerated beyond the pale what Fernwood did.

I acknowledge my colleagues' recognition that the trial judge's comments were "thoughtless and unfortunate," "inappropriate and insensitive," and "insensitive and uninformed." But, as the majority also recognizes, the test to be applied to determine disposition is whether the comments by the judge would cause a reasonable person to doubt the impartiality of the judge or would cause us to lack confidence in the fairness of the proceedings. The issue in this case is: Did the trial court meet the standard of fairness and the appearance of impartiality [\*39] when it repeatedly equated enforcement of rules of a mobilehome park with the conduct of the Nazis? For fairness and impartiality to have any meaning, the answer to this question should be a resounding no.  
FYBEL, J.

This concludes Fair Housing.