Using California’s Source of Income Discrimination Law to Protect Tenants and Applicants with Rental Subsidies

Patti Prunhuber, Justice in Aging Director, Housing Advocacy

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Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we’ve focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ+ individuals, and people with limited English proficiency.
Housekeeping

• All on mute. Use Questions function for substantive questions and for technical concerns.

• Problems with getting on to the webinar? Send an e-mail to trainings@justiceinaging.org.

• Find materials for this training (including the slides, transcript, written materials) and past trainings by searching the Resource Library, justiceinaging.org/resource-library.

• A recording will be posted to Justice in Aging’s Vimeo page. At the conclusion of the presentation, vimeo.com/justiceinaging.

• Enable closed captioning by selecting “CC” from the Zoom control panel.

• 1.25 hours of Continuing Legal Education (CLE) will be available

JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW
Justice in Aging’s Commitment to Advancing Equity

To achieve Justice in Aging, we must:

• **Advance equity** for low-income older adults in economic security, health care, housing, and elder justice initiatives.

• Address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low-income older adults in marginalized communities.

• Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, and economic class.
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Join Our Network!

Go to justiceinaging.org and hit “Sign up” or send an email to info@justiceinaging.org.
Today’s Webinar

1. Summary of the Law
2. Prohibited Practices and How to Address Violations
3. Role of the California Civil Rights Department (CRD)
4. Strategies and Advocacy Tips
5. Q&A
Today’s Panel

Presenters

• **Jamie Gaipa** - Attorney, Senior Advocacy Network, Stanislaus County
• **Denise McGranahan** - Deputy City Attorney, City Attorney's Office, City of Santa Monica
• **Azadeh Hosseinionian** - Senior Counsel, California Civil Rights Department

Moderator

• **Patti Prunhuber** - Director, Housing Advocacy, Justice in Aging
Why Are Voucher Anti-Discrimination Laws So Important?

- Section 8 waitlists are incredibly lengthy, but vouchers are time-limited
- These laws increase voucher utilization, lease-up rates and decrease homelessness
- HUD 2018 Study: Those places with SOI anti-discrimination laws more than doubled the lease-up rate
- Section 8 anti-discrimination laws affirmatively further fair housing
- Effective in assisting voucher holders to move to higher opportunity neighborhoods (more choice)
Summary of CA Source of Income Discrimination Law
Anti-Discrimination: Protected Characteristics (1 of 2)

• Race
• Color
• Ancestry
• National origin
• Citizenship*
• Immigration status*
• Primary language*
• Age*

• Religion
• Disability (mental or physical)
• Sex
• Gender identity or Expression
• Sexual orientation

*If a housing provider qualifies as a business, these characteristics would also be protected under the Unruh Civil Rights Act.
Anti-Discrimination: Protected Characteristics (2 of 2)

- Genetic information
- Marital status
- Familial status (families with children under 18 or pregnant people)
- Military or veteran status

- **Source of income** (including the use of government rental assistance such as a Section 8 Housing Choice voucher)*
CA Source of Income (SOI) Anti-Discrimination Law

• Govt. Code § 12955:
  • Prohibits housing providers from discriminating against an applicant for, or tenant of, rental housing, because they are using a federal, state, or local housing subsidy to assist with paying the rent

• Amendments effective 1/1/2020, explicitly state “SOI includes vouchers”
Types of Protected Income

• “Lawful, verifiable income” means: federal, state, local rental assistance used to pay all or part of rent

• Explicitly added “vouchers” to the protected sources of income

• Includes:
  - All federal, state, local assistance (SSI, CalWORKs, CAPI, GA)
  - Section 8 (Housing Choice) Vouchers
  - HUD VASH
  - Homeless Prevention & Rapid Rehousing Programs
  - Security deposit and Emergency Rental Assistance Programs (ERAP)
  - Non-profit and charitable assistance
  - Locally funded subsidy programs created by cities, counties, public agencies

See, 2 CCR Sec. 12140
Who is Subject to Law?

• Applies to all housing providers who rent residential properties in CA: rental agents, management companies, HOA’s, corporations, housing authorities...

• Except homeowners who live in their own home, condo or single family unit and rent out only one room within that unit.
Examples of Prohibited Practices (1 of 2)

- Advertising or stating a preference for tenants with certain sources of income (i.e. “No Section 8”);
- Refusing application from a prospective tenant;
- Charging a higher deposit or rent, or treating the prospective tenant or tenant differently in any other way because the prospective tenant or tenant uses a Section 8 voucher or other housing subsidy;
- Refusing to enter into or renew a lease because the tenant will use, or is using, a Section 8 housing voucher or other housing subsidy.
Examples of Prohibited Practices (2 of 2)

• Refusing to make needed repairs

• Harassing, evicting or otherwise discriminating against person because person uses or is planning to use rental assistance

• CRD regulations specify a host of actions landlords can’t use to deny access to rental housing:

  “[r]efusing to complete forms, sign documents, allow inspections, comply with public assistance, rental assistance, or housing subsidy regulation, . . . to make repairs to a housing accommodation to meet a governmental program’s habitability standards, or take other necessary steps to facilitate access to the housing accommodation.”

• Catch-all: otherwise make unavailable or deny a dwelling based on a person’s source of income.

  2 CCR §12005 (b)(1)(B); 2 CCR §12141(a).
Landlords Are Not Required to Accept all Section 8 Tenants

Landlords are not required if the rent they are asking is unaffordable to the family.

However, landlords cannot refuse to accept a Section 8 tenant if the reason is that they are on the Section 8 program.

Landlords can refuse for the same reasons they can refuse any other applicant.

Now that landlords know they cannot say they do not take Section 8, they look for pretextual reasons to say no.
How Landlords May Use Financial Eligibility Standards (1 of 2)

• If a Housing Provider requires that a tenant's income equal 3x the rent, the Housing Provider can only require that the tenant's income be equal to 3x the tenant's portion of rent, not the total rent.
How Landlords May Use Financial Eligibility Standards (2 of 2)

- Example: a two-bedroom unit is advertised at a rent of $2,500 per month
  - The building has a policy that all households must have an income of at least **three times the rent** in order to qualify for a unit.
  - A household with a Section 8 voucher applies for the apartment.
  - The tenant’s portion of the rent would be $500 and the housing authority will pay the additional $2,000.
  - The housing provider is permitted to ask about income and apply its uniform policy to require that the tenant have income of at least $1500 a month ($500 tenant portion x 3).
  - The provider may not require 3x the full rent, or set a higher income standard than it applies to other tenant applicants.

Cal. Govt. Code 12955(o); 2 CCR §12143
Rental, Criminal Record & Credit History (1 of 2)

- No Landlord reference
- Negative or no credit history –
  - Can’t use negative or lack of credit history as sole basis for denial; tenant can provide alternative evidence
  - SB 267 (eff. 1/1/24) prohibits use of Section 8 applicant’s credit history as part of application process without offering option of providing lawful, verifiable alternative evidence of reasonable ability to pay tenant portion (i.e. government benefit or subsidy, pay or bank records) and additional time to provide it
Use of criminal history information to deny housing (CCR, Title 2, §§ 12264-12271).

- Use of unreasonable lookback periods (ex: 25 years)
- Use of arrests alone as proof of criminal activity
- Use of overbroad categories of criminal activity (ex: no felonies) without consideration of nature/severity of crime
- Underuse of mitigating evidence
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<thead>
<tr>
<th>Reason</th>
<th>Example</th>
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<tr>
<td>Refusing to fill out and submit the paperwork</td>
<td>i.e. RTA forms, HAP contract, Direct Deposit form, W-2</td>
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<td>Delaying completion of the RTA or waiting to turn it into the PHA</td>
<td>or ghosting</td>
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<td>Requiring that the family make three times the total rent instead</td>
<td>of just three times the tenant share of rent</td>
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<td>Not holding the unit for Section 8 applicant, but holding it for</td>
<td>other applicants; then claiming the unit was rented</td>
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<td>Increasing the security deposit</td>
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<td>Stating that the unit size has to match the voucher size</td>
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Whack-a-Mole: More Landlord Excuses for Denial

- Stating that the rent cannot exceed the payment standard
- Requiring advanced approval from the PHA for the rent demanded
- Accusing the family of lying on the application or failing to disclose that she is using a voucher from the outset
- Stating that the family has no rental history or bad rental history
- Stating that the family’s credit score is too low or the applicant has no credit
- Raising the rent after the family with a voucher applies
Strategies to Get Landlords to Accept Vouchers

• Strategies with Landlords:
  • Educate housing providers about their obligations
  • Coordinate referrals between housing authorities, agencies, legal services; expedite voucher approval & inspection process
  • Coordinate with CRD on complaint process; enforcement
  • Emphasize the advantages of Section 8
    • Majority of rent directly deposited to landlord’s account
    • Criminal background check by PHA
    • If Landlord has problems with the tenant, PHA can intervene
Tenant Strategies for Getting Housing Providers to Accept Vouchers (1 of 2)

- **Tenant Strategies:**
  - Don’t call and ask, “do you accept Section 8?”
  - Ask to see the unit before mentioning the voucher
  - Create a Record and Preserve the evidence:
    - Communicate by text message and emails when possible
    - Write down name of the person spoke with, date, time, what was said
    - Screen shots of ads, especially if still advertised after told unavailable
    - If housing provider states no Section 8, ask for confirmation in writing
Tenant Strategies for Getting Housing Providers to Accept Vouchers (2 of 2)

• How to counter credit, criminal history denials

• Look to see if you are also protected under a local SOI anti-discrimination ordinance. Does it provide additional remedies?
  
  • 19 localities in California have adopted local ordinances prohibiting source of income discrimination
Litigation: Gardner v. Serrano
Family Apartments

• Case No. 23SYTCV01872 (LA case)
  • The Plaintiff, Robert Gardner, alleges that 22 housing providers turned him away when he tried to rent their available apartments, telling him it was their policy not to accept Section 8.
  • The Complaint alleges violations of the Fair Employment and Housing Act and Unruh Civil Rights Act, and seeks policy changes, fair housing training and monetary damages.
  • Settlements with some defendants who have agreed to adopt fair housing policies prohibiting SOI discrimination; require FH training, advertise that they accept Section 8 for 3 years; and report data to counsel for plaintiffs.
St. James v. WIB Holding, Barbara Bills & Related City Case

- Long-term disabled tenant denied right to use rent subsidy
- Order granted plaintiff relief under CA and Santa Monica SOI law; Unfair Business Practices
  - Santa Monica ordinance enables city to bring its own action to compel landlord compliance, and brings power of the government to the case. SMC Chap. 4.28.
- Landlord enjoined from refusing to accept vouchers from “any existing tenant or otherwise qualified applicant.
- Currently city’s case is on appeal
Role of CRD in Enforcement
Mission

The Civil Rights Department (CRD) is California’s civil rights agency. The mission of CRD is to protect the people of California from unlawful discrimination in employment, housing, and public accommodations, and from hate violence and human trafficking.

Effective July 1, 2022, we are now known as the Civil Rights Department, formerly known as the Department of Fair Employment and Housing. This name change better encompasses our full scope of responsibilities.
Civil Rights Department (CRD) Responsibilities

- Investigate discrimination complaints and cases of systemic discrimination.
- Facilitate mediation and resolution of disputes involving civil rights.
- Enforce the laws by prosecuting violations in civil court.
- Issue regulations that implement the FEHA and other statutes to provide greater clarity.
- Collect data on the pay and demographics of large employers’ workforces.
- Engage in public outreach and provide training and technical assistance to employers, business establishments, and housing providers regarding their responsibilities under the law.
CRD Housing Complaint Process

- Complete and Submit Intake Form online, by mail, or by phone.
  - [https://calcivilrights.ca.gov/](https://calcivilrights.ca.gov/)
  - 800-884-1684 (voice), 800-700-2320 (TTY),
  - or California’s Relay Service at 711
- CRD complaint must be filed within *one year* of last violation
- Intake interview by Department representative;
- If complaint is accepted, investigation
- Conciliation efforts
- Determination
- If “reasonable cause” determination is made, then mandatory mediation
- Civil Litigation if not settled
Available Legal Relief

In both private and CRD lawsuits, the injured party is entitled to:

**Damages**
- compensate them for out of pocket expenses or emotional distress;
- Attorneys’ Fees & Costs
- Punitive Damages; and
- Civil penalties.

**Affirmative Relief**
- Making previously denied housing available, or a comparable unit;
- Staff training and policy changes to prevent future discrimination; and
- Other actions to eliminate the effects of the discrimination
For first time, California civil rights officials file lawsuit alleging Section 8 discrimination
CRD Source of Income (SOI) Enforcement (2 of 3)

• **Testing:** From October 2020 to the present, CRD contracted with the Housing Rights Center in Los Angeles to perform fair housing testing regarding source of income discrimination.
• Discriminatory Ads Program:
  • CRD uses technology to search apartment listings for evidence of SOI discrimination. If discrimination is found, CRD sends a letter demanding the ad be taken down with information on source of income protections under California law.
  • Members of the public can report discriminatory ads here: https://appsandads.calcivilrights.ca.gov/s/
Resources

• Factsheets: [https://calcivilrights.ca.gov/Posters/](https://calcivilrights.ca.gov/Posters/)
• Report Discriminatory Ads here: [https://appsandads.calcivilrights.ca.gov/s/](https://appsandads.calcivilrights.ca.gov/s/)
Questions?

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Legal Authority & Written Resources

- Additional Written Resources and Legal Authority
- CRD Source of Income Discrimination Regulations
- CRD Source of Income Discrimination Fact Sheet
- CRD Complaint Form
- Advocates can e-mail their substantive question to us at info@justiceinaging.org
- Join our Aging in Place listserv for housing, health, aging and disability advocates, by emailing Patti at: pprunhuber@justiceinaging.org.