

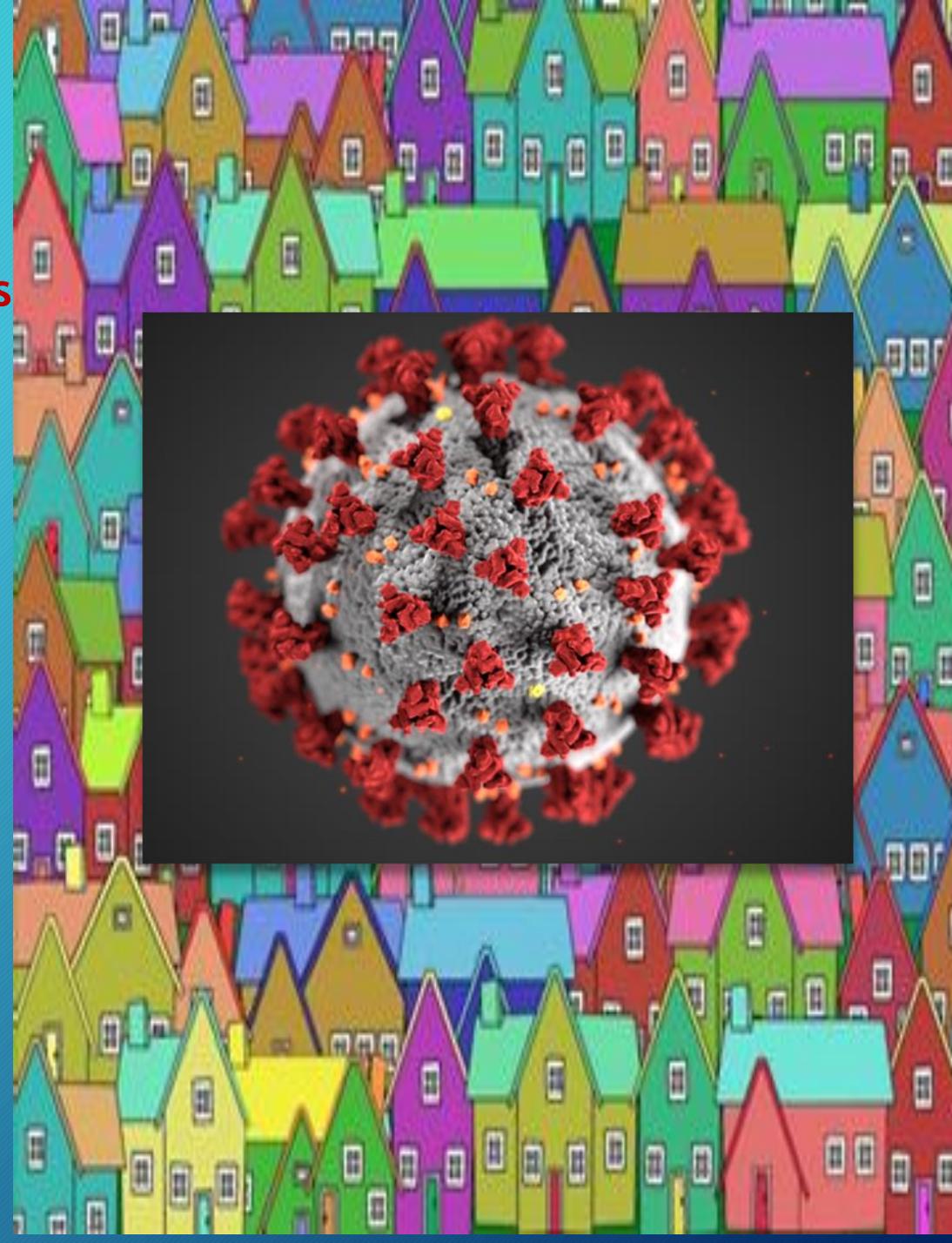
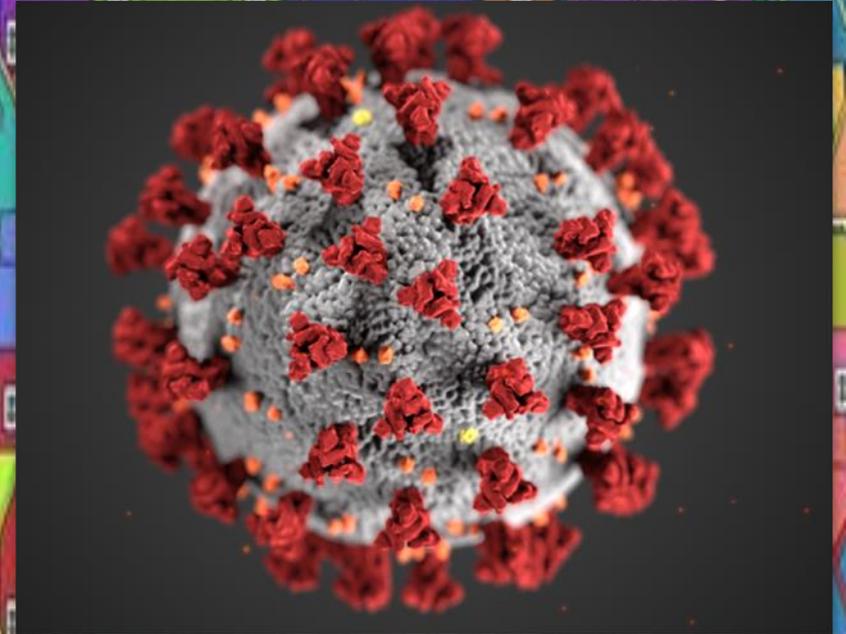
FAIR HOUSING FOR OUR FUTURE

National Fair Housing Month Celebration

COVID19-Presenting Old and New Fair Housing Challenges

April 2, 2021 at 11:00-12:15 p.m.

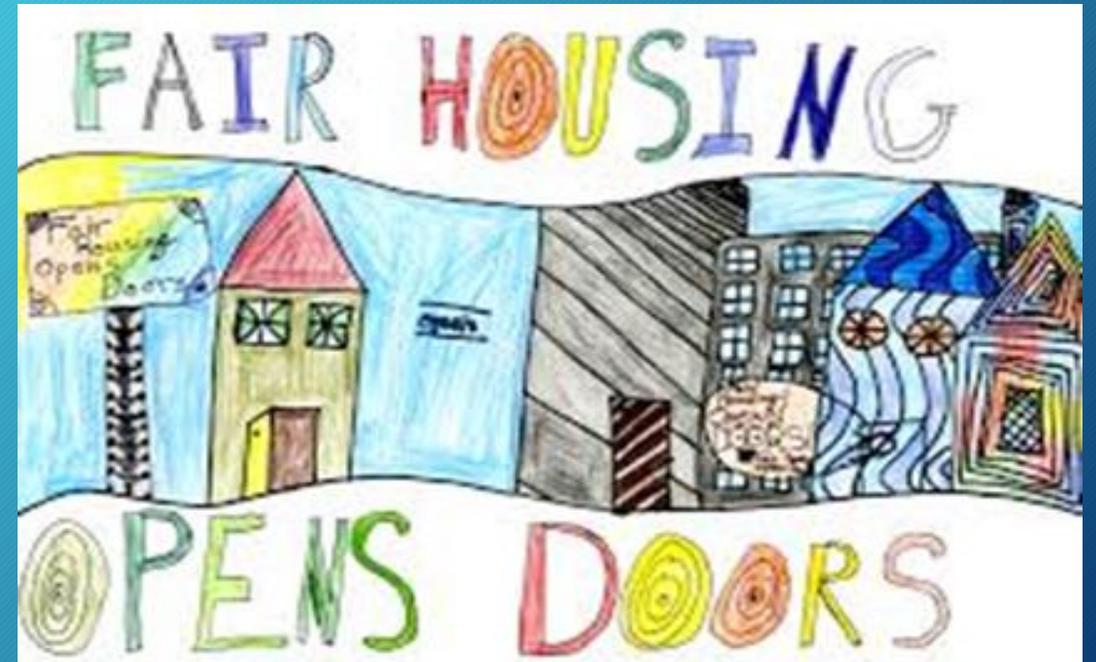
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AGENDA

COVID-19- Presenting Old and New Fair Housing Challenges

- Introductions
- Fair Housing and evictions
- COVID-19 Eviction Protections
 - COVID-19 Rental Assistance
 - Other tenant protections during COVID-19
- New Patterns of Discrimination in the Pandemic
 - disability
 - source of income
 - familial status
 - race & national Origin



Fair Housing and Evictions

- Black women are more likely than any other group to be evicted.
- People with disabilities have historically higher rates of unemployment than the general population.
- LGBTQ people are at high risk of eviction and homelessness.
- **COVID pandemic exacerbates these underlying disparities:**
 - Black and Latinx people more likely to have experienced job loss
 - COVID-19 deaths disproportionately impacting communities of color, including Black, Indigenous, and Latinx individuals.
 - People who are undocumented do not qualify for unemployment insurance or stimulus checks, increasing risk for housing instability.
 - **Source:** Leifheit, Kathryn, et al, “*Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*” (2020) available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576

Evictions and Health

- In states with eviction moratoria in effect, there were fewer Covid cases and fewer COVID deaths.
- “Structural racism and poverty, fundamental causes of eviction risk also manifest as comorbidities and poor access to care in Black and Latinx communities and low-income households, creating vulnerabilities to Covid-19.
 - **Source:** Leifheit, Kathryn, et al, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (2020) available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576
- People who have moved due to unaffordable housing represent a population at increased risk for unmet medical needs.
 - **Source:** Chen, Katherine L., et al, *Unmet Medical Needs Among Adults Who Move due to Unaffordable Housing: California Health Interview Survey, 2011-2017* (2021) available at <https://link.springer.com/article/10.1007/s11606-020-06347-3>



Covid-19 Eviction Protections

- Federal (CDC)
- State (SB 91 aka AB 3088)
- Local
- Landlords *always* required to obtain court order through “unlawful detainer” process to evict.

California Eviction Protections: SB 91 (**COVID-19** Tenant Relief Act)



- “Just cause” protections extended to *all* tenants statewide
- Qualifying tenants permanently protected from eviction for nonpayment of rent if they follow certain steps
 - Tenants must timely submit declaration, pay partial rent
 - Protection applies to rent due March 1, 2020-June 30, 2021 (may be extended)
- Landlords required to provide special notice when demanding rent.
- For nonpayment cases, eviction notice must:
 - Provide 15 court days' notice.
 - Include a blank copy of a declaration of **COVID-19** related financial distress.
 - Include language advising tenant of their rights

California Non-Payment Eviction Protections



If tenant returns signed **financial distress declaration** within 15 days of receipt every month, they get protections from eviction:

- Rent from March 1, 2020 - August 31, 2020 cannot be the basis for eviction.
- For rent from September 2020 - June 30, 2021, tenant is protected if they pay 25% of the total rent due by June 30, 2021.
 - When paying 25%, tenants should write on the payment and include a letter specifying what time period the payment is for.
 - Remaining 75% of rent cannot be used as the basis for eviction.
 - If tenant does not pay at least 25% of rent due from September 2020 - June 30, 2021, the earliest the landlord could sue for eviction is July 1, 2021.
- No proof of COVID hardship required except for “high income tenants”

Declaration of COVID-19-Related Financial Distress

- Tenant must declare, under penalty of perjury, that they have experienced COVID related financial distress.
- Must be returned within 15 days of service of the Notice to Pay Rent or Quit.
 - In person, if an address for in person delivery is stated on the 15-day notice;
 - By email, if the landlord indicates an email address in the 15-day notice;
 - Through United States mail to the address indicated by the landlord in the notice; or
 - Through the same methods that the tenant can use to deliver the payment pursuant to the notice.
- Tenant should write on Declaration the time period to which it pertains.

DECLARATION OF COVID-19-RELATED FINANCIAL DISTRESS

Code of Civil Procedure Section 1179.02(d)

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic.
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to health impacts of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

Signed under penalty of perjury under the laws of the State of California.

Signature

Dated

For information about legal resources that may be available to you, visit <https://lawhelpca.org/>.

For information, resources, and support visit www.LandlordTenant.dre.ca.gov.

What If Tenant Misses the 15-Day Deadline?



- **If tenant misses the 15-day deadline and unlawful detainer court case is filed**
 - Tenant may file the COVID-19 financial distress declaration within time to file answer, usually 5 days
 - Court holds hearing
 - Court determines if there was mistake, inadvertence or excusable neglect resulting in tenant's failure to timely submit declaration to landlord;
- **Remember reasonable accommodations for tenants with disabilities!**
 - Reasonable accommodation request may be made even post-judgment
 - Reasonable accommodations can also apply to court access

What Happens To The Rent?



- **Landlord may sue tenant for unpaid rent starting August 1, 2021**
 - Landlords must offset any financial assistance received.
 - Late fees, decreased services prohibited for tenants who have submitted declaration
- **Credit protections**
 - Landlords may not sell the rental debt to third parties until July 2021
 - All nonpayment evictions filed March 4, 2020-June 30, 2021 are masked. (CCP 1161.2)
 - Small claims actions for COVID-19 debt also masked. (CCP 1161.2.5)
 - COVID rental debt cannot be used as a negative factor by tenant screening

SB 91 - Protections Against Pretextual Evictions



- ALL tenants get “just cause” protections until June 30, 2021. (CCP §1179.03.5)
 - Permitted “just cause” bases for evictions under Civil Code § 1946.2
 - Added permission where landlord is selling to buyer who intends to occupy
 - Narrowed bases for “substantial rehab” eviction
- If a landlord files an eviction against a tenant based on something other than nonpayment of rent:
 - Landlord *cannot* collect rental damages that accrued between March 2020 - January 2021. CCP §1179.03.5(a)(3)(B)
 - If tenant shows landlord was retaliating for nonpayment of rent when filing an unlawful detainer on another basis, subject to retaliation penalty under Civil Code §1942.5.
- Increased penalties for illegal lockouts and utility shutoffs under Civil Code § 789.3 through June 30, 2021.

Local Government Eviction Protections



- State law preempts many local protections related to nonpayment
- Some cities and counties have other eviction protections including:
 - Prohibition on certain types of evictions such as: no-fault evictions; Ellis; unauthorized occupants or pets; nuisance or refusal to allow entry
 - Prohibitions on rent increases, late fees

CDC Eviction Moratorium Extended to June 30, 2021



- On **March 29, 2021**, CDC extended **Moratorium** until **June 30, 2021**
 - 85 Fed.Reg. at 55292, 86 Fed.Reg. 8020, effective 1/31/21-6/30/21
 - See: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/Eviction-Moratoria-Order-FAQs-02012021-508.pdf>
- **Tenant must sign declaration that states:**
 1. Tenant has used best efforts to obtain gov't assistance for rent or housing;
 2. Tenant's household income is less than \$99,000, did not have to pay income tax in 2019, or received a stimulus check;
 3. Tenant is unable to pay rent due to substantial loss of income, hours, lay-offs, or extraordinary out-of-pocket medical expenses;
 4. Tenant is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit; and
 5. Tenant would likely become homeless, need to enter shelter, or need to double-up if evicted.
- **Residents who previously submitted a declaration should not be asked to resubmit and should have continued protections until June 30, 2021.**

CDC Order - Bottom Line

SLOW THE SPREAD OF COVID-19

[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)



Wear a cloth face covering
in public spaces



Stay at least 6 feet
from other people



Frequently wash
your hands

- Can be used for nonpayment evictions and no-fault evictions (but some courts have not permitted)
 - Tenant must sign declaration
 - No deadline for submitting this declaration.
- Can be used at any stage in eviction process (but some courts only apply Order to final removal of tenant)
- Financial hardship may be unrelated to COVID
- CDC is *temporary* so less protective than SB 91 but helps for:
 - Income loss for non COVID-19 related reason
 - Rent owed before March 2020
 - Tenant who missed deadlines for declarations
- Constitutional challenges

COVID-19 Rental assistance Per SB 91



- Distribution of federal funds governed by SB 91, with options for locals to run their own program.*
- Funds may be used for back rent, 3 months future rent, utilities
- Eligibility for assistance based on tenant circumstances
 - <80% AMI, decreased income due to COVID-19
 - Demonstrated risk of experiencing homelessness or housing instability.
 - Priority for incomes <50% AMI, then hardest hit communities
- Undocumented people eligible to apply for and receive rental assistance
- Landlords *who agree to participate* receive 80% of the amount owed for eligible tenants, and required to waive remaining 20%
 - SB 91 states that rental assistance is source of income under state fair housing law
- If landlord refuses, eligible tenants can apply and get only 25% of debt
 - Google “Housing is Key” or go to <https://housing.ca.gov/>

Prohibition on large rent increases



- Penal Code Section 396(e) prohibits residential landlords from increasing rental prices for rental housing (including space in a mobile home park or campground) more than 10% during a state of emergency.
- Multiple emergency declarations have been in effect since last year, including declarations related to the **COVID-19** pandemic and wildfires, and remain in effect.
- For updates: Governor's Office of Emergency Services: <https://www.caloes.ca.gov/cal-oes-divisions/legal-affairs/price-gouging>

New Fair Housing Patterns and Issues in the Pandemic



- 1. Discrimination based on disability**
 - Do any or all of COVID19 victims meet the definition of eligibility?
- 2. Source of income discrimination**
 - Do any or all of landlords' refusals to accept rental assistance constitute unlawful discrimination?
- 3. Familial status discrimination**
 - Are families sheltering at home in multifamily housing fully protected?
- 4. Discrimination based on race and national origin**
 - Will the ugly "China Virus" rhetoric result in more housing discrimination based on race and national origin?

Disability: Threshold Issue: Covid-19 Victims' Protection Under FHA and FEHA



Is Covid-19 a “qualified disability” protected under federal/state fair housing laws?

- An Individual with **COVID-19's** impairments must “substantially” limit (per FHA) or just “limit” (per FEHA) “major life activities such as:
 - i.e. working; mobility; ability to care for self; walking; grocery shopping; cooking, driving; and may have neurological/psychological effects causing behavioral issues.
- **COVID-19** may have long-term effects, so may = substantial impairments under FHA
- “Physical or mental impairment” extends to communicable diseases, including AIDS/HIV, tuberculosis, hepatitis, and others.
 - This broad coverage of AIDS/HIV, as a communicable disease with various impacts on major life activities, supports a claim that **COVID-19** may also constitute a disability.
- No case has held that the FHA does not apply to temporary disabilities.
- A person with a history of having **COVID-19** may also be covered a person with a record of having a disability, or may be regarded as having a disability

Disability: Threshold Issue: Covid-19 Victims' Protection Under FHA and FEHA



A person may be protected against housing discrimination if the person:

- currently has **COVID-19**
- has a history of having the virus, or
- is perceived to have the virus
 - Having a disease is not always a disability *per se*, although it can be regarded as one for a particular individual.
 - One of the primary purposes of disability discrimination laws is to protect individuals with disabilities from discrimination based on prejudice, stereotypes, or unfounded fears
- Is associated with a person with the virus or who is perceived to have it or at risk for it.
 - Family members living with or caring for someone with **COVID-19**
 - Seeking to evict or refuse to rent a unit to a healthcare worker because of fears that the applicant works with immunocompromised patients during the pandemic and is likely to be a health threat.

New Fair Housing Patterns and Issues in the Pandemic: Examples of Disability Discrimination

- Unlawful denial of or eviction from housing for having COVID-19, a record of having it, for being regarded as having it, or for being associated with a person with it.
 - refusing to rent to someone moving from a nursing home due to assumption the person contracted the virus.
 - courts have held that rejecting a home health aide because he takes care of a person with HIV-AIDS is discrimination.
- **Inquiries about whether a person has COVID-19**
 - Landlords are prohibited from asking whether an individual has Covid-19, how severe it is, evidence about exposure or test results. 24 C.F.R. § 100.202(c).
- **Imposition of limitations in access to housing or housing-related services because of COVID-19**



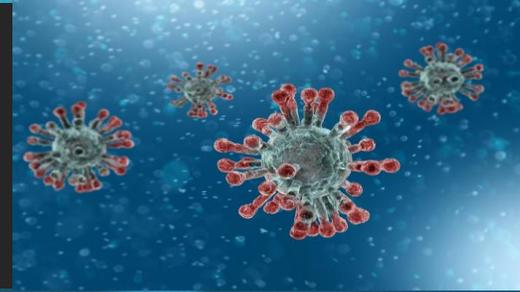
Disability Discrimination: Denial of Reasonable Accommodations

- Refusal to grant a “reasonable accommodation” if one is necessary to permit the disabled person to “use and enjoy” the housing of her choice.
 - Requesting to relocate to a private room within a congregate living facility
 - Requesting an extra bedroom for a live-in aide.
 - A tenant may request rescission of an eviction notice as a reasonable accommodation when the eviction or termination is based on disability-related behavior
 - Extension of time to move after agreeing to move by a specific date
 - Extension of a trial in an unlawful detainer
 - Extension of time to move
 - Limiting or prohibiting entry into the unit

**REASONABLE
ACCOMMODATIONS**



New Fair Housing Patterns and Issues in the Pandemic: Direct Threat



- Could **Covid-19** pose a Direct-Threat such that the person would not be covered by fair housing laws?
 - Housing need not be made available to people “whose tenancy would constitute a direct threat to the health or safety of other individuals.”
 - **COVID-19** is a highly contagious and deadly disease
- This exemption must be based on an individualized evaluation of the individual and informed by the reasonable medical judgments of the CDC or state or local health authorities.
 - An accommodation must be offered if the threat can be reduced or eliminated by a reasonable accommodation.
 - offering self-quarantine procedures
- Cannot be based on stereotypes or assumptions
- Interactive process

New Fair Housing Patterns and Issues in the Pandemic: Disability Discrimination

What is probably not housing discrimination?

- Housing providers may encourage tenants and homeowners to adopt infection-control practices such as washing hands or using a hand sanitizer, wearing cloth face coverings in common areas, and physical distancing.
- Landlords may ask a tenant or applicant to self-report about exposure or an underlying medical condition, but not about treatment.
- Cannot require that a person be vaccinated?
- Due to the extreme lack of testing available and because some people are asymptomatic, inquiries about whether someone has been diagnosed with COVID-19 is not definitive proof that the person does or does not have the virus.

Housing providers should apply consistent policies and practices that comply with

- Recommendations by the Centers for Disease Control to prevent spread of the virus
- These policies and practices are designed to assume that everyone may have the virus



New Fair Housing Patterns and Issues in the Pandemic: Eviction Case Example



THREE-DAY NOTICE TO QUIT

[C.C.P. Section 1161 (4); SMRCCA Section 1806 (a)(2) and (b)]

You have breached your rental agreement, as set forth below, by committing and/or permitting a nuisance in the premises, and by creating an unreasonable interference with the comfort safety and enjoyment of other tenant at the Property containing the Premises as well as with the management and ownership at the property:

Specifically, you have done the following:

On September 7, 2020, the manager's caller-ID showed your name on it, but when he answered the phone and individual stated that they were calling from the Santa Monica Police Department and his car alarm was on. **Impersonating a Police officer is a crime.**

On September 4, 2020, you were witnessed by several tenants and the manager screaming in the Courtyard, "I have **Covid-19**. Come close and I will cough on you." You were also witnessed screaming obscenities and insults towards another resident of the premises while in the common areas. It appears that you are trying to ensue fear and an unsafe environment for the other residents and staff. The manager contacted the Police Department to report such activities.

On or about August 15, 2020, you were witnessed harassing other residents by knocking on their doors and informing them that you had **Covid-19** and they were required to help you by going to get you groceries etc.

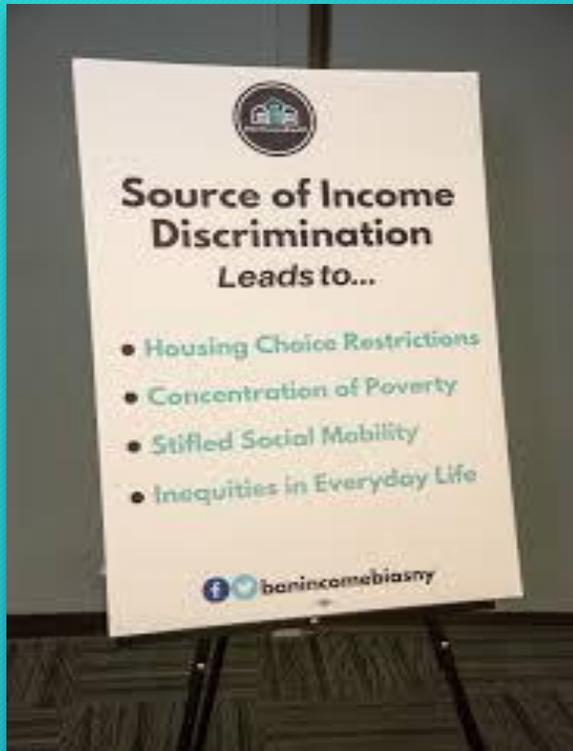
New Fair Housing Patterns and Issues in the Pandemic: Other issues regarding public health measures.

VIRUSES
DON'T
DISCRIMINATE



- Local laws also mandate temporary relocation such as when a unit is uninhabitable
 - Can landlords require tenants to vacate for renovations during pandemic?
- *City of Santa Monica v. Golshirazian, and SoCal Investment Company, LLC* (filed January 2021)
 - Allegations: Defendant served misleading notices and filed eviction, attempting to drive tenants out of rent-controlled units to renovate during the pandemic
 - Claims: Violations of City's Tenant Harassment Ordinance and its Covid-19-related Eviction Moratorium
 - One tenant was battling COVID-19 prior to losing a business, housemate, and father.

New Fair Housing Patterns and Issues in the Pandemic: Source of Income Discrimination



- **Source of Income Discrimination:** Not only unlawful in California and other states but definition of protected class has expanded to include those receiving rental assistance such as Section 8
- **Key Pandemic Issue:** Landlord's refusal to accept Covid-19 rental assistance or to complete forms
 - California Fair Employment & Housing Act: Source of Income is a protected class.
 - California Civil Code §1947.3.
 - requires residential landlords to accept rent payments through a third party, if the payor provides a signed acknowledgment stating that they are not currently a tenant of the premises and that acceptance of the rent payment does not create a new tenancy with the third party
 - Local Source of Income laws such as Santa Monica's.

New Fair Housing Patterns and Issues in the Pandemic: Source of Income



- Silver linings in some cities.
 - With dropping rents and vacancies, more units pencil out for Section 8 vouchers
 - Landlords have greater need
 - for steady income

New Fair Housing Patterns and Issues in the Pandemic: Familial Status Discrimination



- Housing discrimination against families with children is unlawful under federal and California fair housing laws.
- Pandemic issues:
 - Landlords refusing to accept large families
 - With students home from school, potential for more noise complaints and confrontations with other tenants, especially those teleworking.
 - Restrictions on children playing in common areas.

New Fair Housing Patterns and Issues in the Pandemic: Race & National Origin



- Effects on housing of underlying disparities discussed above.
- Hate crimes against Chinese and Asian Americans in the wake of misleading rhetoric about the “China Virus.”
 - “Spit On, Yelled At, Attacked: Chinese-Americans Fear For Their Safety” (March 23, 2020 NY Times)
 - A 26 year-old Chinese-American woman was walking to her gym in San Francisco, when a man shouted and swore at her, then yelled at the bus to run her over. At the cross-walk, he spit on her face and her sweater.
 - DFEH webinar on Anti-Asian discrimination: <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2021/01/Understanding-and-Preventing-Anti-Asian-Bias.pdf>
- Treatment under federal and California fair housing laws.
- Harassment based on race or national origin.
- Housing providers may be required to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct even if the harasser is another tenant.
- Housing providers decide for which tenants to accept rental assistance (Example: California’s 80/20 program).



COVID 19-Presenting Old and New Fair Housing Challenges



QUESTIONS



THANK YOU!

OUR CONTACT INFORMATION

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