

Fair Housing Protections, Covid Updates, and Eviction Protections

Fair Housing Services
Legal Aid Society of San Diego, Inc.
(844) 449-3500
WWW.LASSD.ORG

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LASSD

- We are the largest legal services provider in our county.
- The fair housing team investigates allegations of housing discrimination.
- We also provide education about fair housing rights and obligations to tenants and housing providers.
- We enforce your rights by
 - Investigating and/or
 - Representing you to resolve your complaint against housing provider and/or
 - Filing and representing you in administrative complaints with HUD/DFEH and/or
 - Filing lawsuit and representing you throughout the process

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Purpose of presentation is to provide general information about your rights and responsibilities and not to provide specific legal advice.

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What is fair housing?

- Housing choice
- People with similar income levels in the same housing market should have the same range of choices available to them despite their protected class status.

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What is not fair housing?

- Landlord/tenant disputes – unless they are based on protected class

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Federal Protected Classes

- Federal
 - Race
 - Color
 - National origin
 - Religion
 - Familial status
 - Sex
 - Disability

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California Protected Classes

- Race, color –
 - technically different but often alleged together
- Ancestry, national origin –
 - can include language
- Religion
 - includes all aspects of religious belief, observance, grooming
- Disability - mental, physical, developmental
- Sex, gender, pregnancy
- Sexual orientation
- Age

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California protected classes

- Gender identity, gender expression
- Marital status-
 - marriage, non-marriage, divorced, separated etc.
- Familial status –
 - Rules that single out children are not ok (except pool)
 - Inquiries about children/refusing to rent
 - Overly restrictive occupancy standards
- Citizenship, primary language, immigration status (Covered under Unruh)
 - Cannot inquire on status, disclose citizenship status with the purpose of harassment/intimidation
 - Can request information to verify financial qualifications
- Source of income
 - Lawful, verifiable, income
 - Illegal to refuse because it came from family daycare,
 - City of San Diego Local Ordinance
 - New State law
- Military/Veteran status
 - Active and reserve
- Arbitrary

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Discrimination

- When based on the protected categories it is illegal to:
 - Refuse to sell, rent, or lease rooms, apartments, condos or houses
 - Represent that a housing accommodation is not available for inspection, sale, or rental when it is in fact available
 - Deny a home loan or homeowner's insurance

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Discrimination continued

- Offer inferior terms, conditions, privileges, facilities or services in connection with the housing accommodation
- Refuse to permit, at a disabled tenant's expense, reasonable modifications when necessary to accommodate a disability *
- Refuse to make reasonable accommodations in housing rules, policies, practices, or services where necessary to afford a disabled person equal opportunity to use and enjoy a dwelling
- Retaliate against someone filing a complaint or asserting their rights under the fair housing law.

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COVID-19 Updates

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Reasonable Accommodations and COVID-19

- The California Department of Fair Employment and Housing released information stating that COVID-19 could qualify as a disability under fair housing laws.
- Example: A tenant may request that the housing provider waive a rule that prohibits or restricts guests to accommodate a tenant's need for someone to stay at the rental unit to care for the tenant because of a disability related to COVID-19.
- Example: Housing provider wants to perform non-emergency repair or perform inspection. The tenant is at an increased risk for COVID-19 and the tenant's doctor has recommended for tenant to limit exposure to others as much as possible. The tenant could ask for a reasonable accommodation to delay the non-emergency repair or inspection.

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COVID-19 and National Origin

- Discrimination against Asian Americans has increased
- Illegal to deny housing because someone is from one of the countries affected by Covid or because they are perceived as being from that country
- Illegal to have different rules for persons because they are from one of the countries most affected by Covid or perceived as being from that country

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COVID-19 – Age and Sex

- Age is protected class in CA – there may be housing discrimination based on age/COVID-19 because people over 65 are more likely to have COVID-19 complications
- Sex is a protected class and with tenants unable to pay rent there have been increased reports of sexual harassment

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COVID-19 and Familial Status

- Illegal for housing providers to discriminate against families with minors in the household.
- Increased scrutiny of children in apartment complexes.
 - Could include new rules about children.
 - Noise complaints.

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COVID-19 and Domestic Violence

- Increase reports of domestic violence during pandemic.
- Violence Against Women Act
 - For federally financed/subsidized housing
 - Lease bifurcation
 - Emergency transfer
- California Protections
 - Have locks changed
 - Early lease termination

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New San Diego County Eviction Ban

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San Diego County Eviction Ban

- The Eviction Ban would stop an eviction at all stages from issuing a notice to executing a lockout unless the eviction is necessary due to a “Imminent health and safety threat.”
- **Section 2(b):** “Imminent health or safety threat” is a hazard to the health or safety of other tenants or occupants of the same property, taking into account:
 - (1) the risk of potential spread of coronavirus caused by the eviction, in case of a Local Emergency due to COVID-19,
 - (2) any public health or safety risk caused by the eviction, and
 - (3) all other remedies available to the landlord and other occupants of the property, against the nature and degree of health and safety risk posed by the tenant’s activity
 - Other remedies: Restraining orders, overing to relocating tenants during repairs
 - **An imminent health or safety threat cannot be the Resident’s COVID-19 illness or exposure to COVID-19, whether actual or suspected.**
- **The “health and safety” standard is not new.** The California Judicial Council passed Emergency Rule 1 on April 6, 2020 (and in effect until September 1, 2020)
 - Emergency Rule 1 did not allow eviction cases to proceed in the state courts unless the “action is necessary to protect public health and safety.”

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San Diego County Eviction Ban continued

- Rent increase Moratorium
 - **Section 4(a):** From the date the ordinance is effective to July 1, 2021, no landlord may increase the Tenant's rent by any amount greater than the Consumer Price Index (CPI) for the previous year.
 - **Section 2(a):** "Change in CPI" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the San Diego area, as published by the United States Bureau of Labor Statistics.
 - [The current CPI is 4.1%.](#)
 - Residential Properties Excepted: Costa Hawkins
 - Single-Family Homes and Condos
 - Properties built, or had certificates of occupancy issued, after February 1995
- Effective date
 - **Section 10(a):** The ordinance will be in effect 30 days after passage (Effective **June 3, 2021**)
 - **Section 10(b):** The ordinance shall expire 60 days after the Governor lifts all COVID-19-related stay-at-home and work-at-home orders.
 - [Governor Newsome has represented he plans on reopening California on June 15, 2021.](#)
 - If all COVID-19 related stay-at-home and work-at-home orders are lifted on June 15, 2021, the Eviction Ban would expire on **August 14, 2021.**

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Eviction Protections under AB 3088/SB 91

- No-Cause evictions are not permitted until July 1, 2021, i.e., notices to terminate tenancy, for reasons other than non-payment, must have a just cause.

At-Fault	No-Fault
<ul style="list-style-type: none"> • Nonpayment before March 1, 2020 • After March 1, 2020, Nonpayment where tenant fails to (1) pay rent demanded or (2) turn in declaration of COVID-19 related financial district within 15 days of notice • Breach of material lease term • Nuisance • Waste • Failure to execute similar new lease • Criminal activity 	<ul style="list-style-type: none"> • Subletting in violation of lease • Denying entry to LL • Using unit for unlawful purpose • Failure to vacate after providing owner written notice of intent to terminate tenancy and failing to vacate • Employee/agent failure to vacate after termination as employee/agent of landlord
	<ul style="list-style-type: none"> • Owner move-in (spouse/domestic partner, children, grandchildren, parents, or grandchildren) <ul style="list-style-type: none"> • Must be in lease, if entered after July 1, 2020 • Withdrawal from the rental market (Ellis Act) • Substantial repair or demolition to maintain compliance with applicable laws governing habitability • Owner entered into contract for sale of single-family home/condo; buyer intends to occupy the property, and buyer not a real estate investment trust, corp or LLC with at least one corp member

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Eviction Under County Eviction Ban

- Types of eviction that could occur under the “imminent health and safety threat.”
- **“Imminent health or safety threat” is very fact specific inquiry**
- Must also factor in potential risk of spread of COVID-19 if tenant is displaced and other remedies available to the landlord.

At-Fault

- Between March 1, 2020 to June 30, 2021, Nonpayment where tenant fails to (1) pay rent demanded or (2) turn in declaration of COVID-19 related financial district within 15 days of notice
- Nuisance
- Waste
- Criminal activity
- Using unit for unlawful purpose

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New Notice Requirements

- Applies to all notice served during the Local Emergency (**February 14, 2020**) to 60 days after Governor lifts all COVID-19 orders
 - **Section 2(d):** “Local Emergency” includes any period of local emergency declared by the County of San Diego in response to the COVID-19 Pandemic
 - On **February 14, 2020**, the San Diego County Health officer declared a Local Health Emergency due to COVID-19.
- Specificity requirements
 - **Section 3(i)(2):** Include the reason for termination amounting to just cause or a different basis for eviction authorized under this ordinance and **must set forth specific facts** to permit a determination of the **date, place, witnesses, and circumstances concerning the reason for eviction.**
- **Section 3(i)(3):** Be written in all languages that the Landlord and/or the Landlord’s agents normally use for verbal communications with the Tenant
- **Section 3(j):** In order to prevail in an action to recover possession of a residential unit, a Landlord must prove **strict compliance with all applicable notice requirements** or any applicable portion of this ordinance.

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New Notice Requirements (Continued)

- **Section 3(l)(1):** In addition to complying with any other applicable notice requirements under local, state, or federal law, any notice of termination of tenancy served on a Tenant with respect to a residential unit during the Local Emergency and sixty (60) days afterward shall:
 - Include the following statement in bold underlined 12-point font: **"The Emergency Eviction Moratorium is currently in effect. Other than for failure to pay rent or an imminent health or safety threat, evictions are restricted during the Local Emergency declared by the County of San Diego]. Tenants who are being evicted for failure to pay rent may have additional protections under California law. You may contact Legal Aid Society of San Diego (1-877-534- 2524) or the Legal Referral and Information Service of the San Diego County Bar Association at 619-231-8585 or 800-464-1529. For additional information and referrals or visit <https://www.lasdd.org>."**
- Notice requirement does not apply to nonpayment of rent notices for SB 91 rental debt
 - **Section 3 (d)** Actions to recover an unpaid COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, is governed by SB 91, and nothing in this ordinance shall be construed to supersede or conflict with SB 91.

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Impact on current Unlawful Detainers and Termination Notices Previously Served

- Notices already served
 - **Section 3(c)(4):** Any notice of termination of tenancy served or expiring during the Local Emergency (**February 14, 2021**) or within sixty (60) days afterward shall be deemed invalid and insufficient to support an action in unlawful detainer during the Local Emergency or at any time afterward
 - Eviction ban invalidates any tenancy termination notice (**other than nonpayment per SB 91**) including those that expired before the eviction ban goes into effect.
 - Additionally, notices served prior to the passing of the ordinance on May 4, 2021 will likely not have the language required under the Eviction Ban.
- Unlawful Detainers
 - Unlawful detainers without judgments entered (excluding cases governed by SB 91)
 - The new notice requirements of the Eviction ban would invalidate the underlying notice and provide the Tenant/Defendant with an affirmative defense.

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Impact on current Unlawful Detainers

- Unlawful Detainers
 - Unlawful detainers with judgments entered via Stipulation, Defaults, or Judgments after trial
 - **Section 3 (c)(3):** Evict a Tenant or require a Tenant to vacate a residential unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be executed, including in the case of judgments entered prior to the date of this ordinance
 - **Stipulations**
 - Plaintiff/Landlords will not be able seek a lockout to enforce the moveout date if the moveout date is scheduled to occur while the ordinance is in effect.
 - Consequence of Tenant/Defendant breach:
 - The Tenant/Defendant may lose the benefit of other conditional terms such as neutral reference, waivers of rent, cash payments, and ect.
 - **Defaults/ Judgements after trial**
 - The landlord must refrain from requesting a lockout or allowing a lockout to go forward after on or after June 3, 2021 until 60 days after ordinance expires (likely **August 14, 2021**)

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Impact on Pre-unlawful Detainer settlement and Stipulations in Unlawful Detainer

- **Section 5: No Waiver of Rights**
 - Any agreement to waive any rights under this ordinance, including a stipulation, settlement agreement, or lease agreement, shall be void as contrary to public policy
- Impact on Landlord's and Tenant's ability to reach a settlement
 - **Nothing in the ordinance prevents the tenant from voluntarily moving out.**
 - Settlement via stipulation in an Active Unlawful Detainer
 - Landlords/Plaintiffs and Tenants/Defendants can enter into agreements with moveout dates before the expiration of the ordinance
 - However, the Landlord/Plaintiff cannot apply for a lockout date to occur before the expiration of the ordinance.
 - If the tenant breaches stipulation, the landlord **cannot** request a lockout based on the breach until after the expiration of the ordinance.
 - Pre-Unlawful Detainer moveout agreements
 - Landlords and Tenants enter into agreements with moveout dates before the expiration of the ordinance.
 - However, the landlord cannot file an Unlawful Detainer based on the breach of the moveout agreement until after the expiration of the ordinance.

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Includes information and resources on fair housing laws and COVID-19

