

# Kimball, Tirey & St. John LLP

## 2014 Fair Housing Laws, Regulations, Rules & Guidelines

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*Fair Housing complaints and ADA lawsuits are on the rise in California. Defending a complaint or lawsuit can be time consuming and expensive – even if you win. It is important to keep abreast of new laws and developments in this complex area of law. The following is a summary of new laws, regulations and guidelines that affect residential rental property.*

**California Laws** (Note: SB is a Senate Bill and AB is an Assembly Bill.) Please click on the [bill number](#) to go directly to the chaptered bill.)

**(AB 60) Driver's Licenses for Undocumented Immigrants** This bill will, effective January 1, 2015, require the Department of Motor Vehicles to begin issuing driver's licenses to undocumented immigrants under certain conditions. The licenses will show that the licensees have not presented a birth certificate or Social Security Card. Although the law is not specifically directed at housing, it does contain a provision making it illegal to discriminate against an individual because he or she holds or presents this type of license. These provisions also serve as a reminder that California Civil Code §1940.3 specifically prohibits a landlord from inquiring about or requiring an applicant or current resident to make any statement about his or her citizenship or immigration status.

### Federal Regulations, Rules & Guidelines

**HUD Regulation on LGBT Persons in Federally Funded Housing** In 2013, HUD amended the implementing regulations for the Fair Housing Act to provide equal access to HUD funded housing for persons without regard to their sexual orientation or gender identity. It also redefined the term "family" and added "gender identity" and "sexual orientation" to the definitions portion of the regulations. It further amended the regulations to prohibit inquiries regarding sexual orientation or gender identity. California already protects persons from discrimination in *all* housing based on sexual orientation, gender, gender identity and gender expression. However many other states do not provide such protections, so the amended regulations will provide protections for such persons in federally funded housing in states that do not recognize sexual orientation or gender identity as protected classes.

**HUD/DOJ Joint Statements** From time to time, the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) issue Joint Statements on topics relevant to fair housing and/or ADA laws. These Joint Statements are largely followed and often quoted by fair housing enforcing agencies at both the federal and state level. The following joint statements were issued in 2013:

**HUD/DOJ Joint Statement on Assistive Animal** On April 25, 2013, the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) issued a Joint Statement on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs. Some of the highlights of the Joint Statement are: it confirms that

an assistance animal is not a pet, but rather an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. It further confirms that there is no requirement for an assistance animal to be individually trained or certified and that while dogs are the most common type of assistance animal, other animals can also be assistance animals.

The Joint Statement specifically states that breed, size, and weight limitations may not be applied to an assistance animal and that conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. It further states that while a specific assistance animal can be denied if the specific animal in question poses a direct threat to the health and safety of others or the property that cannot be reduced or eliminated by another reasonable accommodation, a determination that a particular animal poses a direct threat must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.

**HUD/DOJ Joint Statement on Accessibility Design & Construction** On April 30, 2013, HUD and the DOJ also issued a Joint Statement on Accessibility (Design and Construction Requirements) for Covered Multifamily Dwellings under the Fair Housing Act. Covered Multifamily Dwellings are those built for first occupancy on or after March 13, 1991. The Fair Housing Act requires such housing to be readily accessible to and usable by persons with disabilities. There are seven technical requirements that are summarized in the Joint Statement as follows:

- The public and common areas must be readily accessible to and usable by persons with disabilities;
- All doors designed to allow passage into and within all premises must be sufficiently wide enough to allow passage by persons with disabilities, including persons who use wheelchairs;
- All premises within the covered dwellings must contain the following features:
  - An accessible route into and through the dwelling unit;
  - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - Reinforcements in bathroom walls to allow the later installation of grab bars; and
  - Usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about and use the space.

In buildings with four or more units at least one elevator, all public and common use areas are subject to the design and construction requirements. In buildings with four or more units and no elevator, all ground floor units and public common use areas are subject to the requirements.

The Joint Statement is 31 pages in length and answers commonly asked questions about the design and construction requirements. It can be accessed at: [http://www.ada.gov/doj\\_hud\\_statement.pdf](http://www.ada.gov/doj_hud_statement.pdf). The issuance of the Statement serves as a reminder that new construction is expected to be made accessible to the disabled and that the

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finances, penalties and monetary damages for failure to properly design and construct can be very steep – often running into the millions of dollars. California has added stricter requirements that must also be complied with. The best way to determine if a property is in compliance is to have an assessment by a Certified Access Specialist (CAsp). Kimball, Tirey & St. John can provide clients with a referral to a reliable consultant.

**HUD Rule on Discriminatory Effects in Housing** Disparate impact, or discriminatory effect, has long been recognized by fair housing enforcing agencies at both the California and federal level as a basis for fair housing complaints. Disparate impact can occur when a policy or practice that seems neutral on its face has the effect of discriminating against a particular protected group or groups of individuals when that policy is put into practice. Examples are: overly restrictive occupancy standards, which can have a disparate impact on families with children (familial status) or policies that require applicants to present a U.S. issued ID or Social Security Number in order to rent, which disparately impacts persons from other countries (national origin).

Most courts have also upheld disparate impact as a valid basis for discrimination liability. One recent case, Mt. Holly vs. Mt. Holly Gardens Citizens in Action, Inc., that was originally scheduled to be heard by the U.S. Supreme Court in December 2013, was recently settled out of court. Advocates have been concerned that the conservative U.S. Supreme Court would reverse a series of appeals court rulings which have upheld that disparate impact is a valid basis to show liability for discrimination (as opposed to showing that intentional discrimination took place.)

In 2003, the township of Mount Holly declared the Mt. Holly Gardens community blighted and sought to redevelop it, claiming that was the only way to end rising crime in the area and revive the township's economy. But the redevelopment included new housing that would be too expensive for residents who wanted to stay. They sued under the Fair Housing Act, saying that the township's redevelopment plan was a form of discrimination because it would have a disparate impact on the township's minority residents. Although the Mount Holly case has settled, many legal experts believe that it is only a matter of time before the US Supreme Court hears a case regarding whether disparate impact is a valid basis for discrimination liability.

In the meantime, HUD issued rules formalizing its standards on disparate impact. According to HUD Secretary Shaun Donovan, the rules were issued with the goals of reaffirming HUD's "commitment to enforcing the Fair Housing Act in a consistent and uniform manner" and ensuring "the continued strength of one of the most important tools for exposing and ending housing discrimination."

***Did you know that your leasing documents can be a source of unintended fair housing violations? Kimball, Tirey & St. John's Fair Housing Practice Group can review your leasing documents such as applications, rental criteria, leases, house rules, and pool & other amenity rules to help you identify problem areas that could lead to potential violations. Our detailed reviews include explanations as to why particular statements may be problematic and suggestions on how you can address your business goals without creating potential fair housing liability. You can contact our Fair Housing Practice Group by emailing [KTSFairHousing@kts-law.com](mailto:KTSFairHousing@kts-law.com).***

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