

Fair Housing

**CONTINUING EDUCATION COURSE
(BY CORRESPONDENCE)
FOR CALIFORNIA REAL ESTATE LICENSE RENEWAL**

**(3 Hours Credit)
Fair Housing Requirement**

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To Comply with this Requirement, YOU MUST COMPLETE the Section Quizzes offered at the end of each Course Section before you can take the Course Final Exam.

There are 3 Quiz Sections to be completed for this Course "Fair Housing," As Follows:

- Quiz Section #1 is to be taken after reading pages 1 through 9
- Quiz Section #2 is to be taken after reading pages 10 through 16
- Quiz Section #3 is to be taken after reading pages 17 through 27

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*Please Note: The Written Assignment is not the “Mandatory Quizzes” The mandatory quizzes are separate and may be found in the loose papers Paper Clipped together, which came in the package that came with this booklet. Unless you are reading online PDF book, then you will, or may take them online via the Internet by login to the Examination System.

FAIR HOUSING

WHAT LICENSEES NEED TO KNOW

Every real estate licensee should know certain things in regards to fair housing laws. Licensees should have:

- knowledge of federal and state fair housing laws relating to the sale and rental of real estate;
- knowledge of selected federal and state civil rights and anti-discrimination laws relating to real property transactions and business establishments;
- the ability to avoid practices that could be considered discriminatory in commercial and residential transactions and facilities;
- an understanding of the Fair Housing Partnership Agreement and its application in the real estate industry; and
- the desire to commit to affirmative compliance with the fair housing laws.

INTRODUCTION

Federal and state regulations and guidelines relating to the sale and rental of real estate have been enacted over the years to ensure that Americans do not suffer from discriminatory policies and practices based upon race, color, creed, national origin, religion, sex, age, marital status, or ancestry.

The ban on such discriminatory policies and practices and the full compliance by all real estate licensees are of utmost importance to the integrity of government participation in real estate finance. Real estate licensees must be knowledgeable about and commit to complying with the pertinent federal and state fair housing laws relating to real property transactions. Specifically, every broker and salesperson must avoid any practices that could be considered discriminatory in commercial and residential transactions and facilities.

A broker licensee is responsible for taking 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. Many federal and state civil rights and anti-discrimination laws pertaining to the sale and rental of real estate are covered in this course. The relevant laws are but are not limited to the

current provisions and any amendments thereto of:

- 3
- Federal Fair Housing Act (Title VIII of U.S. Civil Rights Act of 1968; 1988 Amendments);
 - The Civil Rights Act of 1866 and 1870; 42 U.S.C. § 1981, 1982;
 - Americans With Disabilities Act;
 - Unruh Civil Rights Act: California Civil Code § 51-53;
 - California Civil Code § 54-55.2, Blind and Other Physically Disabled Persons;
 - California Fair Employment and Housing Act (Rumford Act) – California Government Code § 12900 et. seq.;
 - Equal Credit Opportunity Act (15 U.S.C. 1691, et. seq.);
 - The Housing Financial Discrimination Act of 1977 (Holden Act) – California Health and Safety Code § 35800-35833; and
 - The Home Mortgage Disclosure Act (HMDA) – California Health and Safety Code 35815-35816).

TOPICS COVERED

This course provides real estate licensees with information about federal and state fair housing laws relating to the sale and rental of real property. A number of topics will be addressed which are germane to fair housing laws. Some of the topics covered in this course include:

- redlining;
- advertising;
- refusing to show property; and
- blockbusting.

Finally, this course on fair housing covers two other special topics:

- the Fair Housing Partnership Agreement) and its application in the real estate industry; and
- complying with the Commissioner's Department of Housing and Urban Development (HUD) fair housing regulations.

FEDERAL FAIR HOUSING ACT (TITLE VIII OF U.S. CIVIL RIGHTS ACT OF 1968; 1988 AMENDMENTS)

The United States Congress' enactment of the Civil Rights Act of 1968 contained Title VIII, which detailed housing provisions applicable to a broad range of discriminatory practices and enforceable by federal authority. Title VIII of the 1968 Act contained comprehensive fair housing provisions, which became applicable on January 1, 1969, to persons who attempt to buy houses from developers. Under those provisions, such persons were entitled to injunctive relief and damages from developers who refused to sell to them on account of race or color.

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Specifically, this act prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. This act also prohibits discrimination in the financing of housing. This ban upon discriminatory policies and practices affects many Americans who, otherwise, might not benefit from federal assistance in the financing of housing. The ban upon discriminatory policies and practices based on race, color, creed, or national origin was promulgated by the late President John F. Kennedy, who declared in an executive order on November 21, 1962:

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“... the executive branch of the government in faithfully executing the laws of the United States which authorize federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin.”

The following acts are deemed to be discriminatory if based on race, color, religion, sex, handicap, familial status, or national origin:

- refusing to sell or rent after a bona fide offer has been made;
- discriminating on the terms, conditions, or privileges of a sale or lease or in providing services or facilities;
- indicating any preference in advertising or statements, oral or written;
- false representations as to the availability of a dwelling unit including "channeling" and "steering" to particular neighborhoods; and
- attempting to persuade owners to sell or rent dwellings by making representations about the entry into the neighborhood of certain classes of people.

The coverage of the Civil Rights Act of 1968 is markedly different from that of 42 U.S.C. §1982, described below.

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THE CIVIL RIGHTS ACT OF 1866 AND 1870, 42 U.S.C. §1981 AND §1982

This law (and its revised statutes §1981, §1982) provides protection to ~~individuals who are denied property rights based on race~~. This act provides that all persons have the same right to make and enforce contracts to the full and equal benefit of all laws and proceedings for the security of persons and property.

Let us begin with the language of the statute itself. In plain and unambiguous terms, §1982 grants to all citizens, without regard to color or race, "the same right" to purchase and lease property "as is enjoyed by white citizens."

On its face, the language of §1982 appears to prohibit all discrimination against individuals because of their race in the sale or rental of property. Both Houses of Congress believed that they were enacting a comprehensive statute forbidding every form of racial discrimination affecting the basic civil rights of American citizens, including the right to purchase or lease property. The Civil Rights Act of 1866 was also intended to protect all such rights against interference from any source whatever, whether governmental or private.

In its original form, 42 U.S.C. §1982 was part of §1 of the Civil Rights Act of 1866, authored by Senator Trumbull of Illinois.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, ... are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, ... shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, and law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

The Congress which approved the 1866 statute wished to eradicate the recently enacted Black Codes – laws which had saddled blacks with "onerous disabilities and burdens, and curtailed their rights...to such an extent that their freedom was of little value..." On January 5, 1866, Senator Trumbull introduced the bill which later became the Civil Rights Act of 1866. He described its objectives in terms that belie any attempt to read it narrowly:

"Mr. President, I regard the bill to which the attention of the Senate is now called as the most important measure that has been under its consideration since the adoption of the constitutional amendment abolishing slavery. That amendment declared that all persons in the United States should be free. This measure is intended to give effect to that declaration and secure to all persons within the United States practical freedom. There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be affected by them have some means of availing themselves of their benefits."

Of course, Senator Trumbull's bill would, as he pointed out, "destroy all [the] discriminations" embodied in the Black Codes, but it would do more. It would secure for all [men], whatever their race or color: "the right to acquire property, the right to go and come at pleasure to enforce rights in the courts, to make contracts, and to inherit and dispose of property."

That the bill would have so sweeping an effect was seen as its great virtue by its supporters and as its great danger by its opponents. Opponents of the bill charged that it would not only regulate state laws but would directly "determine the persons who [would] enjoy...property within the States," threatening the ability of white citizens "to determine who [would] be members of [their] communities..." The bill's advocates did not deny the accuracy of those characterizations. Instead, they defended the propriety of employing federal authority to deal with "the white man...[who] would invoke the power of local prejudice" against blacks.

Thus, when the Senate passed the Civil Rights Act on February 2, 1866, it did so fully aware of the breadth of the measure it had approved. When the House passed the Act on March 13, 1866, it did so on the same assumption that had prevailed in the Senate. It too believed that it was approving a comprehensive statute forbidding all racial discrimination affecting the basic civil rights enumerated in the Act. President Andrew Johnson vetoed the Act on March 27, 1866. On April 6 the Senate, and on April 9 the House, overrode the President's veto by the requisite majorities, and the Civil Rights Act of 1866 became law.

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The scope of the 1866 Act was not altered when it was re-enacted by §18 of the Enforcement Act of 1870 (and codified in §1977 and §1978 of the Revised Statutes of 1874, now 42 U.S.C. §1981 and §1982), two years after the ratification of the Fourteenth Amendment.

Congress had the power under the Thirteenth Amendment to carry out the provisions of 42 United States Code (U.S.C.) and the re-enactment of the Civil Rights Act of 1982 (§1982). Specifically, §1 of the Thirteenth Amendment states: "Neither slavery nor involuntary servitude...shall exist within the United States..."

Congress was vested with the power to enact laws "operating upon the acts of individuals, whether sanctioned by State legislation or not." §2 of the Amendment provides: "Congress shall have power to enforce this article by appropriate legislation." The Thirteenth Amendment gave Congress the power to determine what are the badges and the incidents of slavery and the authority to translate that determination into effective legislation. This included restraints upon those fundamental rights which are the essence of civil freedom, namely, "the same right...as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

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CASE EXAMPLE: JONES V. MAYER

The Supreme Court of the United States decided the case of JONES v. ALFRED H. MAYER CO. in 1968 which relied in part upon 42 U.S.C. §1982. The petitioners alleged that the respondents had refused to sell them a home for the sole reason that the petitioner, Joseph Lee Jones, was an African American. Mr. Jones filed a complaint in 1965 in the District Court for the Eastern District of Missouri, seeking injunctive and other relief. The District Court dismissed the complaint and the Court of Appeals for the Eighth Circuit affirmed their ruling, concluding that §1982 applied only to state action and did not reach private refusals to sell.

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The U.S. Supreme Court reversed the judgment of the Court of Appeals and ruled in favor of the petitioner, stating that "§1982 bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment."

It is important to make clear precisely what this case does not involve. Whatever else it may be, 42 U.S.C. §1982 is not a comprehensive open housing law.

In sharp contrast to the Fair Housing Act (Title VIII of the Civil Rights Act of 1968), the statute in this case deals only with racial discrimination and does not address itself to discrimination on

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the two acts in regards to how they are enforced. §1982 provides only for an injunction, whereas Title VIII also provides for damages and a penalty plus attorney's fees, and for enforcement by the Attorney General. Other differences between the two acts relate to the groups defined as a protected class.

For example, §1982 relates only to discrimination because of race or color. But in Jones v. Mayer, the Court held that §1982 "bars all racial discrimination." Title VIII prohibits discrimination because of "race, color, religion, or national origin." While "religion and national origin" are not the same concepts as "race," the courts will probably not make distinctions of this kind. In addition, Title VIII relates only to "dwellings" and land intended to be used for a "dwelling," but the act enforced in Jones v. Mayer applies to any real and personal property.

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The sum of the matter is that real estate licensees must not discriminate and should not accept restrictive listings or make, print, or publish any notice, statement or advertisement with respect to a sale or rental of a dwelling (or any real or personal property) which suggests discrimination because of race, color, religion, or national origin. Should a principal seek to restrict a listing according to any of these "protected classes," the licensee must refuse to accept the listing.

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AMERICANS WITH DISABILITIES ACT OF 1990

This law prohibits discrimination against individuals with disabilities in employment, public services, telecommunications, public accommodations, and commercial facilities. The provisions regarding commercial facilities and public accommodations affect the real estate industry by requiring owners or lessees of such buildings to make sure that their buildings comply with the rules.

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UNRUH CIVIL RIGHTS ACT: CALIFORNIA CODE § 51-53

In this section of the course, the law will be explained as it relates to real estate brokers and business establishments. Stated simply, this law prohibits real estate offices, property management companies, homeowners' associations, and other businesses from discriminating based on essentially the same classes as the federal Fair Housing Act: race, color, religion, sex, handicap, familial status, or national origin.

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The scope of this act applies to real estate activities. Thus, real estate brokers who unlawfully deny full and equal accommodations, advantages, facilities, privileges and services of their business establishment on the grounds covered and protected in the federal Fair Housing Act and the

Unruh Civil Rights Act are in violation of the law. For more specific information in regards to how the law applies to real estate brokers, see the law review article on the subject in the Hastings Law Journal (vol. 13:120).

The Unruh Civil Rights Act prohibits all forms of arbitrary discrimination by business establishments including arbitrary discrimination based on age. However, business establishments may lawfully establish reasonable regulations that are rationally related to the services performed and the facilities provided, so long as the restrictions are not arbitrary.

§51.2 was enacted to clarify cases dealing with age discrimination. §51.2 states:

“§51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve such housing for senior citizens, pursuant to §51.3 of the Civil Code.

§51.3 specifically addresses housing for senior citizens and states:

“...this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.”

and:

“...different age limitations for senior citizens housing are appropriate in recognition of the size of a development in relationship to the community in which it is located.”

For the purposes of this section, the following definitions apply:

- "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.
- "Qualified permanent resident" means a person who meets both the following requirements:
 - (a) was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen; and
 - (b) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the

qualifying resident or senior citizen.

Qualifying permanent resident also refers to some disabled persons.

- "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units.
- "Dwelling unit" or "housing" means any residential accommodation other than a mobilehome.
- "Cohabitant" refers to persons who live together as husband and wife or persons who are domestic partners within the meaning of Section 297 of the Family Code.
- "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care.

§51 of the Act prohibits a business establishment from discriminating in the sale or rental of housing based upon age. However, where accommodations are designed to meet the physical and social needs of senior citizens, a business establishment may establish and preserve that housing for senior housing, pursuant to §51.3, except housing as to which §51.3 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 and implementing regulations against discrimination on the basis of familial status.

For accommodations constructed before February 8, 1982, that meet all the criteria for senior citizen housing specified in Section 51.3, a business establishment may establish and preserve that housing development for senior citizens without the housing development being designed to meet physical and social needs of senior citizens.

Relevant California statutes allow for restricting residency at mobilehome parks to senior citizens age 55 or older. The express purpose of Civil Code §51.3 is to establish accessible housing for senior citizens. Amendments to the Act addressing age-based discrimination in housing, Civil Code §51.2 and §51.3, reflect a legislative intent specifically to exclude mobilehome parks from the reach of the act. Moreover, rules restricting residency at mobilehome parks do not violate the constitutional rights to equal protection or familial privacy of couples with newborn children.

Continuing with the subject of age discrimination, under the Unruh Act, a landlord may not exclude all families with minor children, even assuming children as a class are noisier, rowdier, more mischievous and more boisterous than adults. The rights afforded by the Unruh Act are enjoyed by all persons, as individuals.

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Along these lines, the Unruh Act does not permit a business enterprise to exclude an entire class of individuals on the basis of generalized prediction that the class as a whole is more likely to commit misconduct than some other class of the public.

Children may not be excluded from apartments and condominiums, but mobilehome parks are a different matter. For example, a private mobilehome park rule limiting residence in the park to persons 25 years or older, as permitted by Civil Code §798.76, did not violate the broad antidiscrimination policy embodied in the Unruh Civil Rights Act, even though the effect of the rule was to exclude families with children younger than 25 years. The language of the Unruh Act amendments addressing age-based discrimination in housing clearly indicates a legislative intent to exclude mobilehome parks from the reach of the act. For more specific information about this ruling, see *Schmidt v. Superior Court* (1989) 48 Cal 3d 370.

There are serious penalties for violating the Unruh Civil Rights Act, including actual damages, punitive damages, and attorney's fees. Civil Code §52 is concerned specifically with actions for damages and other relief for denying rights provided by this law.

Specifically, §52 states:

(a) Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

(b) Whoever denies the right provided by Section 51.7 or 51.9, or aids, incites, or conspires in that denial, is liable for each and every offense for the actual damages suffered by any person denied that right and, in addition, the following:

(1) An amount to be determined by a jury, or a court sitting without a jury, for exemplary damages.

(2) A civil penalty of twenty-five thousand dollars (\$25,000) to be awarded to the person denied the right provided by Section 51.7 in any action brought by the person denied the right, or by the Attorney General, a district attorney, or a city attorney. An action for that penalty brought pursuant to Section 51.7 shall be commenced within three years of the alleged practice.

(3) Attorney's fees as may be determined by the court.

CALIFORNIA CIVIL CODE § 54-55.2 – BLIND AND OTHER PHYSICALLY DISABLED PERSONS

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Under California Civil Code Section 54, individuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places. A violation of the right of an individual under the Americans With Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.

They are also entitled to full and equal access to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law or state or federal regulation.

"Full and equal access" means access that meets the standards of Titles II and III of the Americans With Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto. However, if the laws of this state prescribe higher standards, it means access that meets those higher standards.

Any person renting, leasing, or otherwise providing real property for compensation may not refuse to permit an individual with a disability, at that person's expense, to make reasonable modifications of the existing rented premises if the modifications are necessary to afford the person full enjoyment of the premises. However, any modifications may be conditioned on the disabled tenant entering into an agreement to restore the interior of the premises to the condition existing prior to the modifications. No additional security may be required on account of an election to make modifications to the rented premises.

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CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (RUMFORD ACT) – CALIFORNIA GOVERNMENT CODE §12900 ET. SEQ.

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This law prohibits discrimination based on age, sex, race, color, religion, ancestry, or national origin in the areas of employment and housing. With

respect to housing, the law prohibits discrimination in the sale, rental, lease, or financing of virtually all types of housing. Individuals may file complaints alleging discrimination with the Department of Fair Employment and Housing.

The Rumford Act states that it shall be unlawful:

- for the owner of any housing accommodation to discriminate against any person because of the race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability of that person.
- for any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability or an intention to make any such preference, limitation, or discrimination.
- for any person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability of that person or persons, or of prospective occupants or tenants, in the terms, conditions, or privileges relating to the obtaining or use of that financial assistance.
- for any owner of housing accommodations to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, informed law enforcement agencies of practices believed unlawful under this section, has testified or assisted in any proceeding under this part, or has aided or encouraged a person to exercise or enjoy the rights secured by this part. Nothing herein is intended to cause or permit the delay of an unlawful detainer action.
- for any person to aid, abet, incite, compel, or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so.
- for any person, for profit, to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, marital status, ancestry, disability, familial status, or national origin.
- for any person or other organization or entity whose business involves real estate related transactions to discriminate against any

person in making available a transaction, or in the terms and conditions of a transaction, because of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.

- to deny any person access to, or membership or participation in, a multiple listing service, real estate brokerage organization, or other service because of race, color, religion, sex, marital status, ancestry, disability, familial status, or national origin.
- to otherwise make unavailable or deny a dwelling based on discrimination because of race, color, religion, sex, familial status, disability, or national origin.

CASE EXAMPLE: HILL V. MILLER

The California Health and Safety Code §35700 et seq. (Rumford Fair Housing Act) prohibits discrimination in the sale or rental of public assisted housing accommodations and in any private dwelling containing more than four units. Hill v. Miller (1966) 64 C2d 757, 51 Cal Rptr 689, 415 P2d 33.

CASE EXAMPLE: STEARNS V. FAIR EMPLOYMENT PRACTICE.COM

There was substantial evidence to support the findings of the Fair Employment Practice Commission and of the reviewing court that an apartment landlord had discriminated against a black applicant in violation of §35720 Subdivision 6, where the record of the administrative proceedings showed that the landlord had refused to rent an apartment to the applicant until a credit investigation had been conducted and had refused his offer to secure the leasehold with a deposit, but, less than three hours later, had offered the same leasehold to a white man without even receiving a completed credit application form and had twice solicited such a deposit from him, and had thus employed a procedure to discourage black applicants or at least to delay their applications until an eligible white applicant could be found to fill the vacancy. Stearns v. Fair Employment Practice Com. (1971) 6 C3d 205, 98 Cal Rptr 467, 490 P2d 1155.

CASE EXAMPLE: ATKISSON V. KERN COUNTY HOUSING AUTHORITY

California Health and Safety Code 35720 prohibits evictions from or denials of publicly assisted housing on the basis of marital status. A county housing authority was prohibited from forbidding low income public housing to tenants who lived with anyone of the opposite sex not related by blood, marriage, or adoption. Atkisson v. Kern County Housing Authority (1976) 59 CA3d 89, 130 Cal Rptr 375.

Landlords who declined to accept a rental application from an unmarried couple on the basis that they objected to cohabiting unmarried couples discriminated against that couple in violation of

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(cc) 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.

(dd) 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.

FAIR LENDING: EQUAL CREDIT OPPORTUNITY ACT

(15 U.S.C. 1691, ET. SEQ.)

This act became effective on October 28, 1975. This federal law prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, or on the grounds of receipt of income from a public assistance program.

The law also requires that a lender/creditor who denies an application for credit must provide the applicant with a statement of reasons or a written notification of the applicant's right to obtain a statement of reasons.

In addition, state law regulates the issuance of consumer credit reports, access by the consumer to such reports, and the obligations of credit reporting agencies. Also, users of consumer credit reports are subject to the requirements of state law and must provide notice to the consumer when credit is denied. (This law is found in California Civil Code §1785.1 et seq.)

THE HOUSING FINANCIAL DISCRIMINATION ACT OF 1977 (HOLDEN ACT) – CALIFORNIA HEALTH AND SAFETY CODE §35800-35833

IMPORTANT GOVERNING DEFINITIONS

- "Agency" means the Business, Transportation and Housing Agency.
- "Fair market value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. The use of this definition of fair market value by a financial institution in an appraisal made at any time on or after July 1, 1986, does not

violate the provisions of this part.

- "Financial institution" includes any bank, savings and loan association, or other institution in this state, including a public agency, that regularly makes, arranges, or purchases loans for the purchase, construction, rehabilitation, improvement, or refinancing of housing accommodations.
- "Housing accommodation" includes any improved or unimproved real property, or portion thereof, that
 - (1) is used or is intended to be used as a residence, and
 - (2) is or will be occupied by the owner, and
 - (3) contains not more than four dwelling units.
- "Housing accommodation" shall also include any residential dwelling containing not more than four dwelling units where the owner thereof, whether or not the owner will occupy the property, applies or has applied for a secured home improvement loan from a financial institution, the proceeds of which loan will be used to improve the security property.
- "Secretary" means the Secretary of the Business, Transportation and Housing Agency.

IMPORTANT PROVISIONS OF THE LAW

The practice of denying mortgage loans or adversely varying the terms of such loans because of conditions, characteristics, or trends in a neighborhood or geographic area that are unrelated to the creditworthiness of the applicant or the value of the real property security offered is against public policy. This is known as "redlining" and is a practice commonly associated with low and moderate income areas.

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The only occasion in which a financial institution can discriminate in this way is when it can demonstrate that such consideration in the particular case is required to avoid an unsafe and unsound business practice.

In 1976, state regulations and guidelines were adopted to prohibit the practice of redlining. All home mortgage loans are affected, including FHA insured, VA guaranteed, and conventional loans, that apply to the financing one to four family units which are owner occupied.

The regulatory control of the Federal Home Loan Bank Board over federal savings and loan associations is so pervasive as to leave no room for state regulatory control; thus the provisions of the California Health and Safety Code §35800 et seq. (Housing

*Q-3
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Final*

Financial Discrimination Act of 1977; also known as the Holden Act) are preempted by federal legislation and federal savings and loan associations may not be subjected to state regulation and discipline in the area of anti-redlining practices.

The Act of 1977 affects state savings and loan associations, banks, personal property brokers, industrial loan companies, insurance companies, credit unions, thrift companies, and mortgage bankers. In addition, the law applies to those investors who seek secured home improvement loans or mortgage financing in combination with rehabilitation financing on one -to-four-unit dwellings.

No financial institution shall discriminate in the availability of, or in the provision of, financial assistance for the purpose of purchasing, constructing, rehabilitating, improving or refinancing housing accommodations due, in whole or in part, to the consideration of race, color, religion, sex, marital status, national origin, or ancestry. And no financial institution shall utilize inconsistent appraisal practices in determining whether or not, and under what terms and conditions, to provide financial assistance for the purpose of purchasing, constructing, rehabilitating, improving, or refinancing a housing accommodation.

This means that the racial, ethnic, religious, or national origin composition of a neighborhood or geographic area surrounding a housing accommodation is not to be considered when making an appraisal.

Specifically, the California State Legislature has declared:

(a) The subject of housing is of vital statewide importance to the health, safety, and welfare of the residents of the state.

(b) A healthy housing market, where residents of this state have a choice of housing opportunities and where the housing consumer may effectually choose within a free market place, is necessary to achieve a healthy state economy.

(c) The equities that California residents accumulate in family homes must be protected and conserved.

(d) The Legislature has the responsibility to direct the discontinuance of injurious practices.

(e) With respect to certain geographic areas, financial institutions have sometimes denied financial assistance or approve assistance on terms less favorable than are usually offered in other geographic areas, regardless of the creditworthiness of the applicant or the condition of the real-property security offered, and this practice has the following effects:

Q-3
3-b

1. contributes to the decline of available family housing in such areas and is likely to continue to do so;
2. limits the choice of housing opportunities and inhibits the operation of a healthy housing market in such areas;
3. leads to the abandonment of such areas;
4. adversely affects the health, welfare, and safety of the residents of this state;
5. undermines the value of the equity of current owners of property in such areas;
6. inhibits the granting of amortized loans; and
7. perpetuates racially and economically segregated neighborhoods and geographic areas.

The purposes of the Holden Act include the following:

1. to prevent discrimination in the provision of financial assistance for financing or refinancing the purchase, construction, rehabilitation, or improvement of housing accommodations because of conditions, characteristics, or trends in the neighborhood or geographic area surrounding the security property;
2. to encourage increased lending in neighborhoods or geographic areas in which conventional residential mortgage financing has been unavailable.
3. to increase the availability of housing accommodations to creditworthy persons;
4. to ensure the supply of decent, safe housing; and
5. to prevent the abandonment and decay of neighborhoods and geographic areas.

Nothing in the Holden Act requires a financial institution to provide financial assistance if it is clearly evident that occupancy of the housing accommodation would create an imminent threat to the health or safety of the occupant, or be construed to preclude a financial institution from considering the fair market value of the property which will secure the proposed loan.

TO WHOM DOES THIS ACT APPLY?

This act applies to one to four dwelling unit property to be used as a residence and is owner occupied. The Act also applies to owners seeking home improvement loans, even if the owner will not occupy the property.

Final
#14-c

**RESPONSIBILITIES OF THE SECRETARY OF BUSINESS, TRANSPORTATION,
AND HOUSING**

The secretary or his or her designee shall monitor and investigate the lending patterns and practices of financial institutions for compliance with the Holden Act, including the lending patterns and practices for housing accommodations which are not occupied by the owner. If a finding is made that a violation has been committed, the secretary may take appropriate action.

For example, the secretary may recommend to the treasurer that state funds not be deposited in a financial institution where it has been determined that such financial institution has engaged in a lending pattern and practice which violates the Act. The secretary reports to the Legislature on an annual basis about the compliance with this law by appropriate regulatory agencies and departments.

The secretary shall adopt regulations applicable to all persons who are in the business of originating residential mortgage loans in California, including, but not limited to, insurers, mortgage bankers, investment bankers and credit unions.

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#4-A

Any applicant for a real estate loan in connection with a housing accommodation who claims to be aggrieved by an alleged violation of this Act may file a complaint with the secretary. Immediately upon receipt of the complaint, the secretary shall endeavor to eliminate any alleged unlawful practice by conference, conciliation, or persuasion.

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#5-b

If, in accordance with procedures established for the resolution of complaints by the secretary, and within 30 days of receiving the complaint, the secretary finds that a financial institution has engaged in any unlawful practice as defined in this section, the secretary shall state in a written decision his or her findings of fact and shall cause the financial institution to be served with a copy of the decision and an order issued by the secretary requiring it to cease and desist from such practice and to take one of the following steps:

Final
#15-d

1. the making of the financial assistance or the making of the financial assistance on nondiscriminatory terms; or
2. the payments of damages to the complainant in an amount not to exceed one thousand dollars (\$1,000), if the secretary finds that effective relief under the above-stated remedy in (1) is no longer available.

The secretary may require a report of the manner of compliance by the financial institution.

NOTICE: Keep these questions, but mark your answers on the accompanying quiz answer form and return to:
REAL ESTATE LICENSE SERVICES, 5059 NEWPORT AVENUE #209, San Diego, California 92107.

15 Hours Combined Quizzes

On, April 1, 2011 the Bureau of Real Estate began enforcement of new regulations regarding how real estate licensees must do their continuing education courses to renew their licenses. In accordance with those new regulations, the student must do mandatory quizzes prior to taking the final exam(s). Please note that your score on the mandatory quizzes will not determine in any way if you pass or fail your course. Only the final will determine if you pass or fail the course.

After you answer your quizzes, please mail your answers to us. After we receive them, you may take your final exam. If you want the answers to the quizzes, you must send a self-addressed stamped envelope. The quiz answers will not be sent to you unless you send a self-addressed stamped envelope with one ounce First-Class postage attached.

To expedite the completion of your final exams and courses, you may complete your quizzes online by logging in with your email address and password to www.RELSTONEexams.com

Fair Housing

Review for Section #1

For the course Fair Housing, Quiz Section #1 is to be taken after reading pages 1-9.

- 1-3 1. Real estate brokers and salesperson must avoid discriminatory practices in commercial and residential transactions.
a. True b. False
- 3-2 2. The federal Fair Housing Act prohibits discrimination with respect to renting and selling property based on race, color, religion, sex, handicap, familial status, or national origin.
a. True b. False
- 2-2 3. The original Civil Rights Act providing protection to those denied property rights based on race was enacted in 1966.
a. True b. False
- 6 4. Jones v. Alfred H. Mayer Co. was a case barring racial discrimination, both private and public.
a. True b. False
- 9-2 5. A California real estate licensee may assist a property owner in discriminating against so-called "protected classes."
a. True b. False

Review for Section #2

For the course Fair Housing, Quiz Section #2 is to be taken after reading pages 10-16.

- 9-4 1. California law prohibits real estate offices, property management companies, homeowners' associations, and other businesses from discriminating based on the same classes as the federal Fair Housing Act.
a. True b. False
- 11-4 2. Under California's Unruh Act, a landlord may refuse to rent to families with minor children.
a. True b. False

14-1 3. Under California Civil Code Section 54, those with disabilities have the same rights as the general public to the full and free use of medical facilities and public places.
a. True b. False

14-4 4. The California Fair Employment and Housing Act is also known as the Rumford Act.
a. True b. False

16-7 5. In California, a landlord may evict a tenant in publicly assisting housing on the basis of marital status.
a. True b. False

Review for Section #3

For the course Fair Housing, Quiz Section #3 is to be taken after reading pages 17-27.

- 23-1 1. The Fair Lending: Equal Credit Opportunity Act does not speak to discrimination on the grounds of receipt of income from a public assistance program.
a. True b. False
- 24-1 2. Denying or limiting financial services to specific neighborhoods, generally because its residents are people of color or are poor, is known as blockbusting.
a. True b. False
- 25-5 3. In California, it is the responsibility of the Real Estate Commissioner to stop housing discrimination.
a. True b. False
- 27-4 4. In California, a person discriminated against with respect to a real estate loan should file a complaint with the Secretary of Business, Transportation, and Housing.
a. True b. False
- 27-5 5. There are no provisions for the payment of damages when a financial institution engages in redlining.
a. True b. False

NOTICE: These questions must be returned with your answer sheet.
REAL ESTATE LICENSE SERVICES, 5059 NEWPORT AVENUE #209, San Diego, California 92107

15 Hours Combined Exams

FINAL EXAM ANSWER FORM INSTRUCTIONS

The Final Exam Answer Form is the blue answer card marked "SCANTRON FORM 90311-RELS." Before beginning your final exam, fill in your name and student file number on the line marked "NAME" on both sides of the form. Write the date on the "DATE" line and beginning time as the "HOUR".

The Final Exam Answer Form has room for 50 questions on each side. Answer 1 thru 15 multiple-choice questions. As you answer the questions on the final exam, make sure that you mark your answers in the appropriate row for each question number.

USE A NO. 2 PENCIL ONLY. Using a pencil other than a No. 2 may cause the computer to incorrectly score your final exam. For each answer, choose the best answer and fill in the appropriate box (A-D) on the Answer Form. Fill in the box completely and dark. For example, if your answer on question 11 was "B" you would do the following:

11. [A] [C] [D]

THIS IS AN "OPEN BOOK" EXAMINATION. THE TEXTBOOK MAY BE USED DURING THE EXAM.

Fair Housing

1. Which of the following is a correct statement about California real estate licensees and discriminatory policies and practices?

- P.1
- a. Every broker and salesperson must avoid any practices that could be considered discriminatory in commercial and residential transactions.
 - b. Brokers and salespeople must avoid discriminatory practices in residential transactions, but the rules do not apply to commercial transactions.
 - c. Brokers must avoid discriminatory practices in all transactions, but salespeople are excused.
 - d. Brokers may determine whether their salespeople must follow anti-discrimination policies.

2. A property owner wants to restrict his listing to include only potential buyers who are Christian. What should you do?

- P.2
- a. accept the listing but do not follow the seller's instructions.
 - b. refuse the listing.
 - c. follow the seller's instructions.
 - d. the licensee's broker.

3. The original Civil Rights Act providing protection to those denied property rights based on race was enacted in:

- P.4
- a. 1950
 - b. 1900
 - c. 1866
 - d. 1960

4. Which of the following cases barred racial discrimination, private as well as public?

- P.6
- a. United States v. South-Eastern Underwriters Association
 - b. Heart of Atlanta Motel v. United States.
 - c. Jones v. Alfred H. Mayer, Co
 - d. U. S. Dept. of Treasury v. Fabe

5. The federal Fair Housing Act prohibits discrimination with respect to renting and selling property based on which of the following once a bona fide offer has been made?

- P.3
- a. gender
 - b. race and color
 - c. religion
 - d. all the above

6. Which of the following is subject to anti-discrimination laws?

- P.9
- a. real estate offices
 - b. property management offices
 - c. homeowners' associations
 - d. all the above

7. Under the Unruh Act, may a landlord refuse to rent to families with minor children?

- P.11
- a. yes because children as a class are noisier and rowdier than adults
 - b. only if the particular children are noisy and mischievous
 - c. It depends on the number of minor children
 - d. no, a landlord may not exclude families with minor children

8. Denying mortgage loans or adversely varying the terms of such loans because of conditions or trends in a neighborhood that are unrelated to the creditworthiness of an applicant is termed:

- P.24
- a. blockbusting
 - b. bluelining
 - c. redlining
 - d. zoning

9. The California Fair Employment and Housing Act is also known as:

- P.14
- a. the Unruh Act
 - b. the Rumford Act
 - c. the Civil Rights Act
 - d. the Holden Act

10. In California, when may a landlord evict a tenant in publicly assisted housing based on that person's marital status?

- P.16
- a. when the tenant is not divorced, but merely separated
 - b. never
 - c. when a couple is living together unmarried.
 - d. when the tenant is divorced and the landlord does not believe in divorce.

11. Can a landlord refuse housing to a person because she receives income from a public assistance program?

- P.16
- a. no
 - b. yes because receiving income from a public housing program is not a prohibited class.
 - c. yes, if a real estate licensee is not involved in the transaction.
 - d. yes, if no other tenant in the unit or complex is on public assistance.

12. Under California Civil Code Section 54, those with disabilities have the same rights as the general public to the full and free use of which of the following?

- P.14
- a. streets
 - b. public buildings
 - c. medical facilities
 - d. all the above

13. Which of the following has the responsibility to direct the discontinuance of injurious housing practices?

- P.9
- a. the Legislature.
 - b. the Real Estate Commissioner.
 - c. the Office of the Attorney General.
 - d. the Department of Consumer Affairs.

14. In California, an applicant for a real estate loan in connection with a housing accommodation who claims to be aggrieved by a violation of the Holden Act may file a complaint with:

- P.27
- a. the U.S. Department of Housing and Urban Development
 - b. the Real Estate Commissioner
 - c. the Secretary of Business, Transportation, and Housing
 - d. the Office of Fair Housing and Equal Opportunity

15. In California, a financial institution found to have engaged in discrimination when financing the purchase or construction of housing accommodations because of conditions or trends in a geographic area may have to pay damages to the complainant in an amount as much as:

- P.27
- a. \$50,000
 - b. \$5,000
 - c. \$10,000
 - d. \$1,000