

# SELECT LEGISLATIVE UPDATES: AB 291 (2017), AB 2413 (2018), AB 686 (2018)

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# AB 291 (2017)

Tenant Protections Based on Immigration Status

## AB 291 PROTECTIONS BASED ON IMMIGRATION STATUS AND PERCEIVED IMMIGRATION STATUS

AB 291 prohibits:

- threats to report immigration status;
- retaliatory reporting of immigration status;
- inquiries about immigration status in litigation.

Also codifies affirmative defense to eviction action.

Codified at: CC §§1940.2, 1940.3, 1940.35, 1942.5, 3339.10, CCP §1161.4

# AB 291 REMEDIES

Relief for unlawful disclosure of immigration status (CC §1940.35):

- Injunctive relief
- Damages: 6-12 times monthly rent
- Potential for criminal prosecution
- Attorneys' fees
- In addition to other remedies
- Standing for nonprofits



## ADDITIONAL PROTECTIONS FOR IMMIGRANTS

A local jurisdiction may not “compel a landlord or any agent of the landlord to make any inquiry, compile, disclose, report, or provide any information, prohibit offering or continuing to offer, accommodations in the property for rent or lease, or otherwise take any action regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.” Civ. Code § 1940.3.

# AB 2412 (2018)

The Right to a Safe Home Act

## TWO CATEGORIES OF CRITICAL FAIR HOUSING PROTECTIONS

- Prohibits “nuisance” ordinances or other local government policies that require landlords to evict for 911 calls, etc.
- Strengthens tenant protections for survivors of domestic violence and other tenants who have been victims of crimes and/or have made calls for emergency services.

## WHAT ARE NUISANCE ORDINANCES?

- Local laws and policies that penalize landlords and tenants for certain activity that occurs at a given property.
- Such activity can include when police are called too many times to a property within a certain time period (e.g., a certain number of times in 3 months).



# NUISANCE ORDINANCES AND FAIR HOUSING

- These laws and policies can:
  - Harm and punish domestic violence survivors and persons with disabilities who seek help from the police or emergency services (e.g., calling 911).
  - Fail to make exceptions for 911 calls made by people who need police or emergency assistance (e.g., domestic violence survivors).
  - Fail to distinguish between victims and perpetrators of crime.
  - Impose penalties on owners, leading to evictions of tenants (or denial of admission of tenants) – even those who are actually *victims*.
  - Broadly define nuisance activities, ranging from disorderly conduct to violent crime.
  - Negatively impact communities of color.
- Learn more!
  - HUD 2016 Guidance:  
<https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>
  - NHLP Nuisance and Crime Free Ordinances Initiative:  
<https://www.nhlp.org/initiatives/nuisance/>

## AB 2413 AND NUISANCE ORDINANCES

- Prohibits local jurisdictions from penalizing LLs and/or tenants because a person at a property called for police or emergency assistance.
- Gives LLs and tenants the ability to get a court to order local governments to stop punishing for calls to the police.
- Establishes that state law overrides existing local ordinances that penalize tenants and LLs due to police calls and/or calls for emergency assistance.

Gov. Code § 53165.

## AB 2413 PROTECTIONS FOR TENANTS— CALLS FOR EMERGENCY ASSISTANCE

- Lease terms that prohibit or limit calls for emergency assistance are invalid.
- LL may not penalize or evict tenants for calls for emergency assistance.
- Affirmative defense in unlawful detainer. Rebuttable presumption in certain circumstances.
- Affirmative claims for injunctive relief.

Civ. Code § 1946.8.

## UNLAWFUL DETAINER DEFENSE BASED ON DOMESTIC VIOLENCE, ETC.

- **Civil Code § 1161.3:** a landlord cannot seek to evict a tenant based on acts against the tenant or a household member that constitute domestic violence, stalking, sexual assault, human trafficking, or abuse of an elder or dependent adult.
  - Abuse must be documented by protective order, police report, or tenant statement + 3<sup>rd</sup> party statement (see Civ. Code § 1161.3(a)(1)).
  - Person named as abuser in documentation may not also be a tenant at the same dwelling.
- Exceptions:
  - The tenant allows the abuser to visit the property; or
  - The LL “reasonably believes” that the tenant’s continued presence at the property “poses a physical threat” to others at the property, or to a tenant’s right to quiet possession.
- Before invoking either of the above exceptions, the LL must have given a the tenant a 3DN to comply or quit.

# AB 686 (2018)

California's Affirmatively Furthering Fair Housing Requirement

## SUPER-ABBREVIATED AFFH TIMELINE

- 1968—Congress passes the Fair Housing Act, including 42 U.S.C. § 3608.
- 2015—HUD adoption of AFFH Final Rule 2015.
- February 2018—HUD suspends AFFH final rule.
- September 2018—AB 686 adopted.
- January 2019—AB 686 goes into effect.
- 2021—Housing Elements must include AFFH analysis.

## WHAT DOES AB 686 DO?

- Creates state law AFFH obligation. AFFH = taking meaningful actions that “overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity” for communities of color, people with disabilities and others protected by California law.
- Requires **state, cities, counties, and PHAs** to affirmatively further fair housing in the administration of their programs.
- Requires AFFH obligation to be interpreted consistently with 2015 HUD AFFH reg.
- Adds requirements for AFFH analysis and programs for Housing Elements due starting 2021.

## AFFH CORE DUTIES

- Analysis of impediments to fair housing choice, including historical patterns of segregation, unequal provision of infrastructure and utilities, displacement due to gentrification, etc.
- Develop and commit to programs that will affirmatively address impediments to fair housing choice.
- Ensure that local policies, funding decisions, programs, and practices are consistent with the duty to affirmatively further fair housing.



*AB 686 IN ACTION: COMUNIDADES UNIDAS  
POR UN CAMBIO V. COUNTY OF FRESNO ET AL.*

- Lawsuit regarding Fresno County's failure to implement Housing Element programs and failure to analyze infrastructure needs and deficiencies in disadvantaged unincorporated communities.
- Complaint alleges violation of duty to affirmatively further fair housing, including violation of Gov. Code § 8899.50.

**AB 686 ADVOCACY OPPORTUNITY:  
HOUSING ELEMENT UPDATE**

## WHAT IS A HOUSING ELEMENT?

- Element of the City's or County's (or City's and County's) General Plan.
- Requirements set forth in Housing Element Law, Gov. Code § 65580 et seq.
- Must be updated every 8, 5, or 4 years depending on location and past compliance with Housing Element Law.
- Includes analysis of existing and projected housing needs, quantified goals and objectives, and program of actions.

# HOUSING ELEMENT ACRONYMS

- HCD = California Department of Housing and Community Development
- COG = Council of Governments
- ABAG = Association of Bay Area Governments
- RHNA = Regional Housing Needs Allocation



# HOUSING ELEMENT CONTENTS

- Evaluation of Prior Housing Element
- Assessment of Needs, Resources & Constraints:
  - Needs
  - Inventory of Sites
  - Analysis of Zoning, Infrastructure, Redevelopable sites
- Analysis of Constraints – Governmental & Non-Governmental
- Goals & Quantified Objectives
- Programs with a Schedule of Actions
  - To Address ALL Identified Needs, Resource Shortfall & Constraints
  - Specific Date required for programs

Gov. Code § 65583.

## AB 686 HOUSING ELEMENT REQUIREMENTS\*

- The housing element must include a program of actions to “[p]romote and affirmatively further fair housing opportunities and promote housing throughout the community or communities regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, disability, and other characteristics protected by [FEHA].” Gov. Code § 65583(c)(5).
- Assessment of fair housing. Gov. Code § 65583(c)(9).
- Must identify sites throughout the community consistently with the duty to affirmatively further fair housing.

\*For housing elements due on or after January 1, 2021.

## HOUSING ELEMENT ADVOCACY TO AFFIRMATIVELY FURTHER FAIR HOUSING

- ABAG Housing Elements will be due approximately January 2023. For Housing Element due dates see: [http://www.hcd.ca.gov/community-development/housing-element/docs/6th\\_web\\_he\\_duedate.pdf](http://www.hcd.ca.gov/community-development/housing-element/docs/6th_web_he_duedate.pdf).
- Housing Element requirement for public participation. Gov. Code § 65583(c)(8).
- Comments to staff, Planning Commission, City Council/Board of Supervisors, and HCD.
- PILP Housing Element Manual: <http://www.pilpca.org/publications-trainings/>.

# THANK YOU!

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