Chapter 4

Fair Housing & Environmental Acts

Chapter 4 Goals:

- Learn about the various housing laws
- Understand how enviornmental protections acts are meant to protect the enviornment
- Recognize which housing acts protect consumers
- Be aware of the restrictions that may potentially be imposed on land users

Chapter 4: Fair Housing & Environmental Acts

This chapter explores the various fair housing laws and environmental protection acts that are important in the world of real estate.

Key Terms

Administrative Procedures Act	Coastal Zone Conservation Act	Fair Housing Amendment Act of 1988
Alquist-Priolo Special Studies Zone Act	Civil Rights Act of 1866	familial status
Americans with Disabilities Act	Civil Rights Act of 1968	Housing and Urban Development (HUD)
Article 5	Endangered Species Act of 1973	Mineral, Oil, and Gas (M.O.G.) License
California Fair Employment and Housing Act	environmental impact report	National Environmental Policy Act (NEPA)
California Environmental Quality Act	Environmental Protection Act	negative declaration
California Housing Financial Discrimination Act of 1977	Environmental Protection Agency (EPA)	Rumford Act
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)	Equal Credit Opportunity Act	sexual harassment
	Equal Housing Opportunity	Unruh Civil Rights Act
	Equal Opportunity Commission	
	Federal Communication Commission	
	Fair Credit Reporting Act	

Fair Housing Laws

The federal government has passed various fair housing laws in order to prevent discrimination in the real estate industry. Violations of such legislation result in strict penalties, fines, and/or license suspensions.

Administrative Procedures Act (APA)

The **Administrative Procedures Act (APA)** requires federal agencies to disclose information to the public before they pass regulations. This allows the public to stay informed and to participate in the legislation process. The Act also establishes uniform standards for government procedures.

Civil Rights Act of 1866

The **Civil Rights Act of 1866** was the first federal housing law. It prevented landowners from discriminating against renters or buyers on the basis of race.

Although progressive for its time, there were no federal enforcement provisions in the

Act. It also did not protect against other forms of discrimination, such as disabilities or religion. Future housing laws would address these protections.

California Fair Employment Practices Act

The Fair Employment Practices Act (FEPA) was a statute passed in 1959. Drawing inspiration from a Fair Employment Practices Commission (FEPC) set up during World War II, FEPA barred businesses and labor unions from discriminating against employees or job applicants based on their color, national origin, ancestry, religion, or race. The statute was also used to combat sexual harassment and other forms of unlawful discrimination in employment and housing.

An associated commission was tasked with hearing, investigating, and resolving complaints involving discrimination. These included claims of housing abuse and violations of consumer rights in the housing industry.

Rumford Act

The California Fair Housing Act of 1963 -- more commonly known as the **Rumford Act** -- was a significant equal protection housing law that protected African Americans and people of color against housing discrimination in California. Passed amidst the sweeping social and geographical changes of the post-World War II period, it addressed the shortcomings of previous housing laws.

Upon the Act's ratification, however, the California Real Estate Association (CREA) launched a campaign to repeal it. A repeal referendum -- known as Proposition 14 -- was passed in November 1964. The referendum results subsequently went to the California Supreme Court where they were declared illegal. The United States Supreme Court affirmed the lower court's ruling, stating that the referendum violated the 14th Amendment and the Civil Rights Act of 1866.

The Rumford Act was restored in 1966.

Case Review: *Jones v. Mayer* (1968)

The case, *Jones v. Mayer* (1968) 392 U.S. 409., involved a buyer who was refused the right to purchase a property in Missouri because of his race.

A potential buyer (Jones) alleged that a seller (Mayer) refused to sell a property to him due to the fact that he was African American. Jones had the necessary money and could meet the requirements of the seller, however was not given the opportunity to purchase although Jones clearly qualified to purchase the

property.

The Superior Court initially dismissed the complaint. Jones appealed. The Court of Appeals affirmed the lower court's ruling. Jones appealed the case to The Supreme Court of the United States. The Supreme Court overturned the previous rulings. It contended that Jones' civil rights were violated according to the Rumford Act and found Mayer guilty of discrimination.

Civil Rights Act of 1968

The **Civil Rights Act of 1968** -- also known as the Fair Housing Act -- provided for equal housing opportunities and outlawed certain discrimination in the real estate market.

The Act made it a federal crime for real estate professionals and consumers to "by force or by threat of force, injure, intimidate, or interfere with" the selling, buying, renting, or leasing of property to individuals on the basis of race, color, religion, or national origin.

The Act was initially met with resistance in the federal government. However, the turbulent aftermath of the assassination of Martin Luther King, Jr. pressed the need for radical civil right protections. President Lyndon B. Johnson signed the Act into law on April 11, 1968, one week after Martin Luther King, Jr.'s death.

The Act made it illegal to discriminate in the following ways:

- by advertising only to a specific group of people, or intentionally indicating a preference towards a specific group of people
- by preventing a specific type of person from gaining access to a multiple listings service
- by refusing to show, sell, or rent available property to a specific type of person by falsely claiming that the property is not available
- by intentionally creating difficulty for a prospective renter or buyer belonging to a specific group in order to prevent him or her from renting or buying property
- by intentionally increasing rates or fees in order to prevent a specific type of person from renting or buying property
- by threatening, coercing, or intimidating a specific type of person's legal right to enjoyment of a property in order to make him or her terminate a lease or sell a property
- by redlining, or refusing to loan, to a specific type of person or group of people
- by intentionally moving a specific group of people to one part of the building

- by making threatening remarks or actions in order to prevent a violated party from reporting a violation

The Act does include several exemptions:

- Property owners of one to four residential units that are owner-occupied
- Private clubs or institutions that give preference to members
- Single family residence sales where the owner does not have a broker, or does not own more than three single family homes

Housing and Urban Development (HUD)

The Department of Housing and Urban Development (HUD) is the federal agency tasked with implementing and enforcing The Fair Housing Act and its provisions. HUD's mission is to:

- "build inclusive and sustainable communities free from discrimination",
- "strengthen the housing market to bolster the economy and protect consumers", and
- "utilize housing as a platform for improving quality of life".

Gender, Familial Status, & Disability Provisions

In 1974, the federal government added a provision that outlawed gender discrimination in the housing market.

The **Fair Housing Amendment Act of 1988** outlawed discrimination on the basis of familial status or disability.

Familial status refers to the makeup of a family unit. Individuals considered to have familial status include: those under the age of eighteen who are living with a parent or legal guardian; those who are seeking to secure custody of children under eighteen; and pregnant women.

For example, it is illegal for a landlord to intentionally not rent a property to a pregnant woman on the basis that she is pregnant. It is also illegal for a landlord to designate an adult-only area on the property.

Disabilities include both mental and physical handicaps. It is a violation of the Fair Housing Act to place an "undue hardship" on a handicapped individual. For example, it is illegal for a landlord to charge a handicapped tenant a higher security deposit, a higher rent, or additional fees due to their handicapped status.

Landlords must also make reasonable accommodations to assist a handicapped tenant with their handicap status. For example, a landlord must allow a blind tenant to keep a

guide dog.

A handicapped tenant is legally permitted to make reasonable adjustments to his or her unit. However, such alterations cannot place an "undue hardship" on the landlord, or be so drastic as to limit a landlord's ability to rent the unit in the future.

Should a handicapped tenant alter a unit, he or she is required to return it to its original condition upon the termination of the lease, or to pay the landlord to do so.

A handicap tenant also has the right to alter a common area of the property, if he or she pays for the alterations. In this case, the tenant is not required to restore the common area back to its original condition upon the termination of the lease.

Advertising Provisions

The Act makes it illegal for real estate professionals to advertise using exclusive content. Exclusive content is considered anything that exploits race, color, national origin, religion, familial status, gender, or disability.

Equal Housing Opportunity Violations

The Department of Housing and Urban Development (HUD) requires every real estate licensee to post an **equal housing opportunity** poster at his or her business. This poster states that housing discrimination is illegal, and also offers a point of contact for complaints about housing violations.

A violated party may file a complaint directly with the Department of Justice, or with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The FHEO will then investigate whether the violation actually violates the Fair Housing Act. If it does, the FHEO will refer the case to the proper legal authorities.

If a judge also determines that a violation exists, he or she will determine the penalty for such a violation. If a defendant is found guilty of a housing violation, he or she may be liable for a fine between $10,000-$50,000.

A violated party has up to a year to bring a complaint to HUD. If a complaint is not taken to HUD, a plaintiff has up to two years to take legal action against a violator in a state or federal court.

U. S. Department of Housing and Urban Development

EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

It is illegal to Discriminate Against Any Person Because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the provision of real estate brokerage services
- In the appraisal of housing
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:
1-800-669-9777 (Toll Free)
1-800-927-9275 (TTY)

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

Previous editions are obsolete form HUD-928.1 (2/2003)

Case Review: *Taylor v. Rancho Santa Barbara* (2000)

The case, *Taylor v. Rancho Santa Barbara* (2000) 206 F.3d 932., involved a mobile home owner who was denied entry to a mobile home park because of his age.

Mobile home owner, Taylor, was 41 years old when he was denied entry into a Santa Barbara mobile home park for senior citizens and individuals over the age of 55. Taylor brought legal action against the city of Santa Barbara.

Taylor argued that the mobile home park's age restrictions violated the Equal Protection Clause of both the 5th and 14th Amendments. The Superior Court ruled against Taylor. He appealed.

The appellate court affirmed the lower court's ruling. The court held that an age restriction was not a violation of state and federal law as such measures were created to protect senior citizens and older individuals who rely on affordable housing.

Case Review: *Giebeler v. M & B Associates* (2003)

The case, *Giebeler v. M & B Associates* (2003) 343 F.3d 1143., featured an HIV-positive tenant who was denied tenancy in a building.

The tenant, Giebeler, worked as a technician and earned about $36,000. When he was diagnosed as HIV positive, Giebeler could no longer work. He was forced to rely on social security and housing income from an AIDS fund.

When Giebeler applied for tenancy in a building, the landlord denied his application on the grounds that he did not qualify for the income requirement. Giebeler had his mother -- who had significant income and a perfect credit history -- co-sign on the application and re-submitted it to the landlord. The landlord denied that application as well, indicating that he did not allow co-signers.

Upon getting the second application denial, Giebeler contacted the AIDS Legal Services for assistance. The organization drafted a letter to the landlord, contending that the landlord was legally required to make reasonable accommodations for Giebeler's disability (in this case, by waiving his no co-signers policy). The landlord did not change his decision.

In response, Giebeler filed an action with the Federal Housing Administration

(FHA), citing the California Fair Employment and Housing Act (FEHA). He argued that the landlord had employed intentional discrimination against him by failing to reasonably accommodate his disability.

The U.S. District Court ruled in favor of the landlord. Giebeler appealed and the Court of Appeals ruled in his favor. The appellate court held that HIV qualifies as a physical impairment for the purposes of the Fair Housing Amendments Act. Therefore, the landlord was required to reasonably accommodate Giebeler by allowing him to use a co-signer, as such an accommodation did not place an undue hardship on the landlord. Consequently, the landlord was required to lease a unit to Giebeler.

Case Review: *Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission* (2004)

The case, *Auburn Woods I Homeowners Association v. Fair Employment and Housing Commission* (2004), 121 Cal.4th 1578., involved condominium owners suffering from depression who were prevented from owning a dog by their homeowners association.

The condominium owners -- who were a married couple -- both suffered from severe depression. The couple claimed that taking care of a dog alleviated the symptoms of their condition. The condominium owners petitioned their homeowners association (Auburn Woods) to allow them to keep the small dog. Auburn Woods refused, claiming that the condominium owners did not suffer from a physical disability and that the dog provided no real service to their condition.

The condominium owners filed a claim with the Fair Employment and Housing Commission (FEHC). The Commission ruled in favor of the condominium owners. In response, Auburn Woods filed a petition for a writ of mandate (a formal written command) to overturn the FEHC decision. A trial court overturned the FEHC decision. The condominium owners and the FEHC appealed.

The Court of Appeals reversed the lower court's ruling. The court contended that emotional disabilities were comparable to physical disabilities under the law. Therefore, the condominium owners' depression was considered a disability, and it was unlawful for Auburn Woods to refuse them reasonable accommodations for their condition.

Case Review: *Fair Housing Council of Orange County, Inc. v. Ayres* (1994)

The case, *Fair Housing Council of Orange County, Inc. v. Ayres* (1994) 855 F.Supp. 315., involved married tenants who were forced by their landlord to vacate their apartment due to the size of their family.

A married couple were tenants in an apartment building that had a maximum two person per unit occupancy rule. When the wife became pregnant and gave birth to a son, the landlord (Ayres) told the tenants that they would have to vacate the apartment. Ayres argued that having three occupants in the unit was a violation of the building's occupancy rule.

The tenants filed a complaint with the Fair Housing Council of Orange County on the grounds of familial status discrimination. The tenants alleged that Ayres was in violation of the Federal Housing Act and California's Unruh Act. The Council brought the case to a District Court.

In court, Ayres contended that his maximum two person per unit occupancy rule was a business practice and, therefore, it was justified. The District Court disagreed. It argued that Ayres could not prove that this occupancy rule was the least restrictive means through which to achieve his business goals. The Court held that alternative methods -- such as enforcing higher security deposits or adding additional inspections of units -- could accomplish the same goals without being so restrictive.

Consequently, the Court ruled that the landlord's occupancy rule unfairly discriminated against families with children and was therefore in violation of state and federal law.

Case Review: *Pfaff v. U.S. Department of Housing and Urban Renewal* (1996)

The case, *Pfaff v. U.S. Department of Housing and Urban Renewal* (1996) 88 F.3d 780., involved a family whose tenant application was denied by a landlord due to the family's size.

A family of five submitted a tenant application for a two-bedroom, 1,200-square foot property. The property's landlord (Pfaff) denied the application on the basis that having more than four people in the unit would dramatically reduce the value of the unit due to an increased usage rate. The family was then forced to

rent an alternative apartment, a process that it claimed was fraught with inconvenience and financial hardship.

The family filed a complaint with the Department of Housing and Urban Development (HUD) against Pfaff, alleging violations of the Fair Housing Act and the Fair Housing Amendments Act of 1988 in regards to familial status. The case was initially brought before an administrative law judge, who ruled in favor of the family. It awarded them $4,212 in damages and $20,000 in emotional distress claims, and demanded a $8,000 civil penalty of Pfaff.

Pfaff appealed, and the Court of Appeals overturned the administrative law judge's decision. The appellate court argued that HUD's occupancy guidelines were broad and unclear, a fact which made it difficult to ascertain whether an occupancy limit was reasonable or discriminatory. This lack of legal clarity, it argued, made it unfair to punish Pfaff for its decision to deny the family's tenant application.

Americans with Disabilities Act

The **Americans with Disabilities Act** was signed into law in 1990 by President George H. W. Bush. The law prohibits any form of discrimination against disabled individuals in employment and public accommodation.

A disability under the Act includes a physical impairment, mental impairment, or a record of impairment. It does not need to be severe or permanent to be valid.

The Act makes it unlawful for both public and private employers to discriminate against qualified individuals on the basis of a disability. This provision covers the hiring, firing, compensation, and availability of opportunities in employment.

The public accommodation provision expands the Fair Housing Amendment Act of 1988 to include nonresidential properties. This means that both public places and private businesses must make reasonable accommodations for disabled parties. An example of a reasonable accommodation is altering a walkway to make it wheelchair-accessible.

As with residential properties, however, an accommodation cannot produce an "undue hardship". If an accommodation is deemed significantly difficult based on a business's size and financial resources, the business is not required to make it.

The agencies tasked with enforcing the Americans with Disabilities Act include the **Equal Opportunity Commission (EEOC)**, **Federal Communication Commission** (FCC), Department of Transportation, and Department of Justice.

Case Review: *Gilligan v. Jamco Development Corporation* (1997)

In the case, *Gilligan v. Jamco Development Corporation* (1997) 108 F.3d 246., a prospective tenant was denied the right to inspect a potential unit because of the source of her income.

A prospective tenant (Gilligan) wished to tour a unit of an apartment building owned by Jamco Development Corporation. The building's manager denied Gilligan's request, however, when she discovered Gilligan's source of income: a government benefits program called Aid to Families with Dependent Children (AFDC). The manager indicated that the building was not a "welfare building", and denied Gilligan's ability to put in an application without looking at Gilligan's financial information or other qualification standards.

Gilligan filed a lawsuit. She alleged that Jamco Development Corporation's restrictions constituted a violation of the Fair Housing Act (FHA) on the basis of familial status discrimination. The Superior Court dismissed Gilligan's charges for failure to state a claim. Gilligan appealed.

The Court of Appeals overturned the lower court's ruling, contending that Gilligan had stated a disparate treatment claim under the FHA. The appellate court ruled that prospective tenants have the right to inspect -- and apply for occupancy in -- available units, and that it is unlawful for a landlord to deny tenancy on the basis of their source of income (unless illegal).

Case Review: *Madden v. Del Taco, Inc.* (2007)

The case, *Madden v. Del Taco, Inc.* (2007) 150 Cal.4th 294., involved a wheelchair-bound man whose entrance to a restaurant was blocked.

The wheelchair-bound plaintiff (Madden) went to a restaurant, Del Taco. A trash barrel had been placed on the wheelchair access ramp, making it too narrow for Madden to pass easily. In his effort to circumvent the barrel, Madden fell out of his wheelchair.

Madden sued for injunctive relief. He argued that the placement of the trash barrels had violated the public accommodation provision of the Americans with Disabilities Act of 1990.

In court, Del Taco claimed that the trash barrels had been a temporary

obstruction and that they were removed shortly after the incident. It also indicated that the restaurant had other wheelchair accessible entrances that were readily accessible at the time of Madden's attempt to enter. The trial court ruled that the temporary placement of the trash barrels did not form a basis for Madden's injunctive relief claim. It ruled in favor of Del Taco.

Madden appealed, and The Court of Appeals reversed the lower court's ruling. It argued that Del Taco was a place of public accommodation and, therefore, it was responsible for ensuring full and equal access for people with disabilities.

Case Review: *Long v. Coast Resorts, Inc.* (2002)

The case, *Long v. Coast Resorts, Inc.* (2002) 267 F.3d 918., was a lawsuit initiated by a couple of wheelchair-bound patrons who claimed that the Orleans Hotel was not handicapped accessible.

Several wheelchair-bound patrons (to be collectively referred to as "Long") went to the Orleans Hotel in Las Vegas. Long found that new renovations in the building failed to comply with several requirements of the Americans with Disabilities Act. For example, the bathroom door entrances were only 28-inches wide (federal law mandates them to be a minimum 32-inches) and the casino did not have wheelchair-accessible service counters.

Long sued for monetary and injunctive relief on the basis of the alleged deficiencies at the Orleans Hotel (owned by Coast Resorts, Inc.). The Superior Court granted partial summary judgment in favor of Coast Resorts, Inc. Long appealed. The Court of Appeals held that while Long was entitled to injunctive relief, he was not entitled to damages under the state's disability statute.

The appellate court mandated the Orleans Hotel to alter its bathroom entrances from 28-inches to 32-inches wide, and to modify casino bar areas to be more wheelchair-accessible.

Case Review: *Lonberg v. Sanborn Theaters, Inc.* (2001)

The case, *Lonberg v. Sanborn Theaters, Inc.* (2001) 259 F.3d 1029., involved a wheelchair-bound man bringing legal action against a movie theater due to its insufficient wheelchair access.

The wheelchair-bound plaintiff (Lonberg) brought suit against the movie theater

and its architect (collectively, "Sanborn Theaters, Inc.") for its failure to provide sufficient wheelchair access. Lonberg claimed that the theater was in violation of the Americans with Disabilities Act and sought injunctive relief.

The District Court ruled partially in favor of Sanborn Theaters. It contended that the Americans with Disabilities Act only applied only to owners, lessees, lessors, or operators; therefore, the theater's architect could not be held liable. However, the Court ruled in favor of Lonberg on the basis of his claims that the theater owner was in violation of the Act.

Unruh Civil Rights Act

The **Unruh Civil Rights Act** is a California law that prohibits discrimination in the business sector. The law applies to all businesses, including restaurants, hotels, retail stores, hospitals, office spaces, and housing accommodations.

Enacted in 1959 by California politician, Jesse Unruh, the Act has been subsequently amended to arrive at these current provisions:

"All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Although the Act highlights specific categories of people, it does not only protect people in those categories; rather, it covers all people from discriminatory acts.

For example, the Act did not include a provision relating to sexual orientation until 2005. However, if the rights of an LGBT party had been violated prior to that year, the violation would have been covered under the Unruh Act.

If one party is found to have violated the rights of another, he or she may be liable to pay the following:

- Damages for emotional distress
- Damages up to three times the amount of the actual damages, or up to $1,000 (whichever penalty is greater)
- The violated party's out-of-pocket expenses

If the violating party threatened, intimidated, or used physical force against the violated party, he or she may be subject to a $25,000 fine. If damages do not surpass $7,500, the California Small Claims Court is responsible for reviewing the case.

Case Review: *Hubert v. Williams* (1982)

The case, *Hubert v. Williams* (1982) 133 Cal.3d Supp.1., involved a quadriplegic who was evicted from his apartment for associating with a lesbian.

A quadriplegic tenant (Hubert) needed 24-hour assistance. He hired a caretaker, who happened to be lesbian. When the property owner (Williams) learned of the caretaker's sexual orientation, he evicted Hubert for his association with a homosexual. Hubert filed a lawsuit for discrimination.

The lower court concluded that the complaint did not have a cause of action and was, therefore, not admissible. It ruled in favor of Williams. Hubert appealed. The appellate court reversed the lower court's ruling. It held that homosexuals are a protected class under the Unruh Civil Rights Act -- even if the Act did not explicitly state so -- and that Hubert had the right to associate with a homosexual without facing eviction.

Case Review: *Beliveau v. Caras* (1995)

In the case, *Beliveau v. Caras* (1995) 873 F.Supp. 1393., a tenant sued her building's apartment manager for sexual harassment.

The tenant, Beliveau, endured multiple occasions of sexual harassment by her apartment's manager, Caras. While lying by the apartment's pool one day, Beliveau recounts how Caras made "off color remarks" and engaged in flirtatious and suggestive dialogue. On another occasion, Beliveau called Caras to fix a leak in her apartment. While Caras assisted with the repairs, he placed his arms around Beliveau and told her she was an attractive woman. Caras then made a remark about Beliveau's breasts and proceeded to grab them. As Beliveau pushed Caras away, Caras touched her buttock.

Beliveau filed a lawsuit against Caras and the building owner. In it, she cited housing discrimination, negligent hiring, negligent supervision, sexual assault, intentional infliction of emotional distress, and negligent infliction of emotional distress.

The Court argued that sexual harassment constitutes housing discrimination. It held Caras liable for the housing discrimination, sexual assault, and infliction of emotional distress charges. A leave to amend was granted with respect to the negligent hiring and negligent supervision charges made against the building

owner.

California Fair Employment and Housing Act

The **California Fair Employment and Housing Act** was enacted in 1959 to prohibit employers from discriminating in their hiring and employment practices.

"It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status." (Government Code §§12920)

The Act was created to protect victims from employers, labor organizations, and employment agencies. It specifically targets employer violations and prohibits employers from retaliating against employees.

The law also strengthens provisions against sexual harassment. **Sexual harassment** is the offensive, unwarranted sexual advance, action, or language that violates one or more parties.

If the rights of a party have been violated, he or she must file a formal complaint with the California Department of Fair Employment and Housing within one year of the violation. If a lawsuit ensues, the violating party will be required to pay the violated party's attorney fees and other related legal expenses.

Case Review: *Botosan v. Paul McNally Realty* (2000)

In the case, *Botosan v. Paul McNally Realty* (2000) 216 F.3d 827., a paraplegic consumer alleged that he was denied proper access to a real estate company's property.

A paraplegic plaintiff, Botosan, wished to enter the office of a real estate company, Paul McNally Realty. However, due to the company's lack of designated handicapped parking spaces, he was prevented from doing so.

Botosan did not notify any state or local authorities about the violation. Instead, he sued Paul McNally Realty for monetary damages, punitive damages, injunctive relief, and attorney's fees. He alleged that the company's lack of handicapped parking spaces violated the Unruh Civil Rights Act and the public

accommodation provision of the Americans with Disabilities Act.

The Superior Court entered judgment in favor of Botosan. Paul McNally Realty appealed. It argued that Botosan had failed to provide notice to the local or state agencies charged with civil rights enforcement before filing suit. The appellate court contended that Botosan was not required to notify those agencies prior to initiating a lawsuit. It awarded Botosan $1,000 in damages.

Case Review: *Smith v. Fair Employment & Housing Commission* (1996)

In the case, *Smith v. Fair Employment & Housing Commission* (1996) 12 Cal.4th 1143., a couple was denied a tenant application because they were unmarried.

An unmarried couple sought to rent a unit in an apartment building owned by a religious landlord, Evelyn Smith. Smith believed having sex outside of marriage was a sin and that renting to unmarried couples violated her religious convictions. Consequently, she refused to rent the unit to the couple.

The couple brought legal suit against Smith, contending that her decision to deny their application violated the Unruh Civil Rights Act and the Fair Employment and Housing Act.

An administrative judge agreed with the couple and awarded them damages. Smith appealed. The appellate court reversed the lower court's ruling. It contended that ordering Smith to rent to unmarried couples would be a violation of her right to free speech and religious freedoms.

Equal Credit Opportunity Act

The **Equal Credit Opportunity Act** promotes fair and equal credit opportunities for borrowers by prohibiting lenders from engaging in discrimination.

Lenders may not base a decision to provide a loan based on a borrower's race, color, origin, sex, age, or marital status; rather, they can only use a borrower's credit, income, and ability to repay the debt.

The Act applies to every entity involved in extending credit, including: banks, lenders, finance companies, credit card companies, and auto financiers. It is regulated by the Federal Trade Commission.

Fair Credit Reporting Act

Credit is one of the most significant factors in determining a borrower's loan qualification. The **Fair Credit Reporting Act** was passed to promote a full and accurate disclosure of a borrower's credit information. This helps borrowers verify the status of their credit, and allows them to check for inaccuracies.

The Fair Credit Reporting Act requires the following:

- A lender must respond to a borrower's request regarding why he or she was denied credit, including any aspects of the borrower's credit that may have affected approval
- A borrower has the right to know the file that a lender is using to determine loan eligibility
- A borrower has the right to get a copy of the credit score used to determine his or her loan eligibility
- A borrower has the right to dispute inaccurate or incomplete information

California Housing Financial Discrimination Act of 1977

The **California Housing Financial Discrimination Act of 1977** promotes fair access to credit for all borrowers.

It makes it illegal for lenders to discriminate regarding the availability and approval of credit based on a prospective borrower's race, religion, origin, sex, marital status, neighborhood of origin, or the geographic location of a business.

Provisions apply to the purchase or refinance of real estate and extend to one to four unit properties.

Environmental Protection Acts

The environment is a critical component of many real estate decisions, be it purchase or development. Important protective measures have been implemented over the past few decades in order to balance environmental concerns with human activity.

National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) was enacted in 1970 to promote the enhancement of environmental interests.

National concern for the environment had grown throughout the 1960s. Protests against the demolition of ecosystems during the construction of an interstate highway and the 1969 Santa Barbara oil spill heightened the demand for environmental protections. The Act was passed in an effort to balance environmental concerns with commercial activity.

The Act requires federal agencies to prepare environmental assessments and impact reports prior to implementing proposed federal actions. Based on their findings, federal agencies must develop policy that both protects the environment and maintains property rights.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) was passed shortly after NEPA in 1970. It establishes statewide environmental protection protocol.

CEQA requires that both public and private companies submit reports documenting the environmental impact of proposed projects. State and local agencies analyze these reports and offer their own in-depth evaluation.

These agencies release their findings as an impact assessment for public review.

A **negative declaration** affirms that a proposed project will do no substantial harm to the environment. If the public offers no opposition or further concern, the agency adopts the document and gives the company permission to develop its project as proposed.

An **environmental impact report** proposes changes to the project in order to reduce or avoid significant environmental risks. The agency may also suggest environmentally-superior alternatives, which could mean the cancellation of a project.

CEQA differs from NEPA in that it requires its agencies to adopt all feasible measures to alleviate any environmental impact.

Alquist-Priolo Special Studies Zone Act

The **Alquist-Polo Special Studies Zone Act**, also known as the Alquist-Priolo Earthquake Fault Zoning Act, was enacted in 1972 to promote standards and practices to improve earthquake safety.

The three main requirements within the Act are:

- The California Geological Survey agency must create detailed, geological maps of active faults lines;
- Property owners and real estate agents must disclose when a property lies within a defined fault zones; and
- A prohibition on the construction of residential properties within fault zones, unless it can be proven that a fault line does not pose a hazard to the proposed structure.

Coastal Zone Conservation Act

The Coastal Zone Conservation Act was also enacted in 1972. Its goal was to "preserve, protect, develop, and where possible, restore or enhance" coastal zones and their resources.

California's coastal zone is 1,800 square miles, and extends nearly 1,000 yards inland.

A property owner in a coastal zone must be issued a permit by the city prior to any development of his or her property. Without a permit, the owner cannot develop the property. Should a property owner wish to sell the property, he or she must disclose that the property cannot be developed.

Case Review: *Feduniak v. California Coastal Commission* (2007)

The case, *Feduniak v. California Coastal Commission* (2007) 148 Cal.4th 1346., touched on coastal regulations.

In May of 1983, the Bonanno family applied for a permit to demolish an existing house and build a larger one on their coastal land. The Bonannos' property was in what was deemed an "environmentally sensitive habitat area". The county approved their permit on the condition that the property would contain an open space easement (which is non-possessory right to use and/or enter a property) and keep the native vegetation intact. The Bonannos agreed and the permit was approved.

However, the Bonanno family later disregarded the original permit conditions and added a three-hole, pitch-and-putt golf course to the property without telling the Coastal Commission.

In 2000, the Bonannos put the property on the market. The Feduniak family became interested in buying the property -- specifically because of the golf course. The Bonannos did not inform the Feduniaks of the easement violations, and the Feduniak family bought the property for $13,000,000.

Three years later, the California Coastal Commission sued the Feduniak family

over the easement violations. They demanded that the Feduniaks restore the original native vegetation and remove the golf course. The Feduniak family petitioned for a writ of mandate (a formal documentation requiring one party to perform a specific task).

The Feduniak family argued that the Commission's case was invalid. 18 years had gone by after the property became in violation, and the Feduniaks were not aware of the easement violations because the Commission had not inspected the property.

Initially, the trial court ruled in favor of the Feduniak family. However, the Court of Appeals overturned the ruling. It held that the Commission was still able to enforce coastal regulations on the property, even regarding violations that occurred 18 years ago. The court imposed a writ of mandate against the Feduniaks, forcing them to remove the golf course and restore the native vegetation on the property.

Case Review: *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976)

The case, *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785., centered around a developer who wished to develop his coastal land.

Avco Community Developers, Inc. spent nearly $2,000,000 in preparation for a development of a subdivision. During this development period, however, the South Coast Regional Commission passed a Coastal Commission Act. The provisions within the Act subsequently denied the developers the right to develop the property without an approved permit. However, if the developers obtained a building permit and performed substantial work prior to February 1, 1973, they would be exempt from the Act's permit requirement.

Avco Community Developers filed for an exemption with the South Coast Regional Commission. As Avco had not obtained a building permit by the deadline, the Commission denied their request. The developers appealed to the statewide California Coastal Zone Commission, but they affirmed the regional commission's ruling.

Consequently, Avco brought a suit against the South Coast Regional Commission. Avco Community Developers argued that they had already begun the project and spent millions to initiate the development, which gave it a vested right in the property. The Superior Court suggested that while it seemed fair to allow Avco to complete the proposed development, its failure to obtain a building permit meant that it did not have a vested right to develop. Thus, it was not exempt from the permit requirement of the Act.
Avco Community Developers appealed, but the Court of Appeals upheld the

lower court's ruling.

Endangered Species Act

The **Endangered Species Act of 1973** was passed in order to protect imperiled species from extinction.

The Act places great restrictions on property owners who discover endangered species on their property. One of those restrictions may be an owner being unable to develop his or her property.

For example, if an endangered bird is located on the property where a public park is being built, the government may halt the park's construction.

Comprehensive Environmental Response, Compensation, & Liability Act

The **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**, was enacted by Congress in 1980 in order to reduce and eliminate potentially hazardous material nationwide.

The Act authorizes federal environmental agencies -- primarily the Environmental Protection Agency (EPA) -- to remove these hazardous substances. These agencies are also tasked with finding the perpetrators of substance release and requiring them to clean up hazardous sites.

While CERCLA is a federal law, states maintain their own versions of the Act.

Mineral, Oil, and Gas Regulation

In 1943, the federal government passed the Mineral, Oil and Gas Regulation that required real estate agents and brokers to have a special **Mineral, Oil, and Gas (M.O.G) license** to buy and sell properties that contain mineral, oil, and gas. The license was later discontinued because of the decreasing amount of land sales that involved mineral, oil and gas.

As of 1991, the government stopped issuing new M.O.G licenses. Those who already held licenses prior to the expiration of the licensing program could continue to hold their M.O.G licenses and renew it every four years. Rather than discontinue the field of oil, mineral, and gas sales, the government designated the role of mineral, oil, and gas sales to real estate brokers.

Individuals or parties who engage in mineral, oil, and gas sales without proper licensing are subject to a penalty of up to $500. California law states that a real estate broker or

agent may solicit, negotiate, and broker the sale or purchase of properties that possess oil, gas, and minerals.