



Housing Practice Tip September 2018

The Immigrant Tenant Protection Act

During a year in which the President [engaged in and encouraged near-constant anti-immigrant rhetoric and policy](#), our state Legislature enacted the [Immigrant Tenant Protection Act, AB 291 \(Chiu, 2017\)](#). This law, which was sponsored by Western Center and the California Rural Legal Assistance Foundation, provides new tools to prevent landlords from harassing tenants out of housing due to their actual or perceived immigration status. The law complements existing state laws such as the Unruh Act (which prohibits discrimination based on immigration status) and new laws such as AB 1690 (which makes clear that a person's immigration status is irrelevant to liability in housing and consumer litigation).

What does the law do?

- Prohibits a landlord from disclosing or threatening to disclose someone's immigration status in order to:
 - coerce a tenant/occupant out of a unit;
 - harass, intimidate, or disrupt the quiet enjoyment of existing or prospective tenants/occupants; or
 - retaliate against a tenant/occupant exercising their rights. Civ. Code §§1940.2, 1940.3, 1940.35
- Clarifies that it is retaliatory conduct for a landlord to report or threaten to report immigration status to the authorities when a tenant exercises their housing rights. Civ. Code §1942.5(c),(e).
- Codifies as an affirmative defense to an unlawful detainer that an eviction cannot be based on the immigration or citizenship status of a tenant/occupant or an associated person. Civ. Code §1161.4(a), (b).

Note: The Act should not only protect overt threats to report immigration status, but also those that are ultimately intended to reveal indirectly a person's status. For example, if a landlord threatens to evict an existing tenant for having provided an incorrect social security number at application many years prior, you may be able to assert a violation of this statute.

- Provides that immigration status is irrelevant to liability or remedy in tenants' rights-related litigation (including unlawful detainers) and protects individuals

from civil discovery related to their immigration status in these cases. Civ. Code §3339.10(a),(b)(1). Tip: Should a landlord or other entity attempt to obtain such discovery, you should file for a protective order to prohibit such inquiry. Please contact us for assistance with this procedure.

- Subjects attorneys who report immigration status during cases or administrative actions related to tenants' rights to State Bar discipline. Cases or administrative actions could include evictions, affirmative litigation, as well as, for example, fair housing complaints to the Department of Fair Employment and Housing. Such complaints may be especially impactful if an attorney or firm has a regular practice of such reporting. Business and Professions Code §6103.7.

Do any exceptions apply?

- Yes. The landlord is obligated to comply with any federal requirements that restrict tenancy based on immigration status – such as the restrictions in public housing or Section 8. Civ. Code §§1940.3(c)(1); 1942.5(k). But remember that not every subsidized housing program has immigration status requirements.
- A landlord must also comply with any court order (subpoena or warrant) which seeks immigration status. Civ. Code §§ 1940.3(c)(1), 1940.35(c). The exception does not apply to Immigration and Customs Enforcement or Department of Homeland Security administrative subpoenas.

Who does this law apply to?

- The law's protections apply to all California tenants, whether the prohibited conduct is based on actual or perceived immigration or citizenship status. Civ. Code §1940.05. Conduct based on the actual or perceived status of a relative or other person associated with a tenant is also prohibited. *Id.* For example, if a landlord assumes a person is not authorized by the government to live in the United States because she has limited English proficiency, despite having lawful permanent resident status, the individual would be protected by these provisions.

How can a person enforce this law?

- The Act creates a private right of action against landlords who “willfully, recklessly, or intentionally” disclose actual or perceived immigration or citizenship status to any immigration authority, law enforcement authority, or local, state, or federal agency. Civ. Code §1940.35(a).
- A nonprofit organization can also sue and obtain injunctive relief with regard to disclosures. Civ. Code §1940.35(h).

What are the consequences if a landlord violates this law?

- If a landlord discloses actual or perceived immigration or citizenship status to the authorities, the mandatory penalties, pursuant to Civ. Code §1940.35, are:
 - Statutory damages of between six and twelve times the monthly rent.
 - Injunctive relief prohibiting the landlord from reporting others.
 - Referral to the district attorney for potential criminal prosecution.
 - The prevailing party (whether landlord or tenant) is entitled to attorneys' fees.
- If a tenant prevails on a violation of Civ. Code §1940.2, the landlord is subject to a civil penalty up to \$2,000 for each violation.

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