9-1-1977

Sex Discrimination in Housing

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Recommended Citation
Available at: https://digitalcommons.lmu.edu/lrlr/vol10/iss4/5
SEX DISCRIMINATION IN HOUSING

In amending the fair housing laws to include “sex” as a protected category, both Congress and the California Legislature have recently acknowledged sex discrimination in rental housing to be a significant problem requiring a remedy. Although these newly amended laws do not provide the sole remedy for discriminatory housing practices, the specific inclusion of “sex” within the fair housing acts provides for broader enforcement and generates greater publicity condemning

3. Both statutes now make sex an unlawful basis for refusing to rent, to vary terms or conditions of rental, to advertise a preference in a rental unit, or for aiding or inducing such acts. California’s amendment provides added protection by also prohibiting discrimination on the basis of “marital status.” This is a significant addition because it prevents a landlord from excluding “singles” and thereby discriminating against women who are seeking housing without a man.
5. Historically, the most effective means of dealing with discrimination in property transactions has been the use of the Civil Rights Act of 1866, 42 U.S.C. § 1982 (1970), a statute enacted to enforce the rights established by the thirteenth amendment. In the landmark decision of Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), § 1982 was held to apply to private discrimination in the sale and rental of all private property. Unfortunately, the Jones Court did not limit itself to expanding the class of defendants in a § 1982 action. It also narrowed the class of plaintiffs to those suffering “racial discrimination,” stating that the statute “does not address itself to discrimination on grounds of religion or national origin,” nor, by implication, to discrimination on grounds of sex. Id. at 413.


Without the broad coverage of §§ 1981 and 1982, federal relief for sex discrimination in housing was, until the amendment to title VIII, limited to the more specific
these practices than would otherwise exist.

To date, the new statutes have received scant attention, and the fair housing law amendments were enacted with little debate. While the financial aid portions of the Federal Housing and Development Act of 1974 were discussed at length by the Congress, the section prohibiting sex-based discrimination in housing was given only token reference. In California, the opposition to passage of the amendment to the Runford Fair Housing Act centered upon equal treatment regardless of “marital status” rather than equal treatment regardless of sex. The

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6. Many women fail to perceive sex-based discrimination when it occurs. McKinney, Housing—Women, Kids Not Wanted, Oakland Tribune, Mar. 10, 1975, at EE 17, col. 3 [hereinafter cited as Oakland Tribune]. Even if they feel they have been the victims of bias, many women are so glad to find housing that they will not “make waves” or complain after they have found a place to live. Id. Moreover, as many women do not know that discrimination in the rental of housing is illegal, they are unfamiliar with available remedies. NATIONAL COUNCIL OF NEGRO WOMEN, INC., WOMEN & HOUSING: A REPORT ON SEX DISCRIMINATION IN FIVE AMERICAN CITIES 128-30 (1975) (published by the U.S. Dep't of Housing & Urban Dev.) [hereinafter cited as WOMEN & HOUSING].

7. Only two major considerations of the problem have been undertaken previously. WOMEN & HOUSING, supra note 6; Note, Pioneering Approaches to Confront Sex Bias in Housing, 24 CLEV. ST. L. REV. 79 (1975) [hereinafter cited as Sex Bias in Housing].


The only comment on the proposed section was made by Senator Brock:

Another important provision in the bill is section [3610] designed to prevent discrimination on the basis of sex in housing. This section is patterned after the Fair Housing Opportunity Act which I introduced during the last session of Congress after it had come to my attention that in too many cases, women are discriminated against in housing transactions. For example, very often a wife's income is not counted toward a purchase of a home. Section [3610] would amend the Civil Rights Act of 1968 to include as a prohibited activity discrimination on the basis of sex in housing transactions.

120 CONG. REC. 3353 (daily ed. Mar. 11, 1974).

9. California State Senator Petris has pointed out both the lack of information on the problem and the focus of the debate surrounding Cal. S.B. 844, law of Sept. 30, 1975, now found in CAL. HEALTH & SAFETY CODE §§ 35700-35745 (West Supp. 1977), amending CAL. HEALTH & SAFETY CODE §§ 35700-35745 (West 1973), in a letter written before its passage:

It is true that there is little statistical information on the extent of sex discrimination in housing; however the passage of legislation to prohibit such discrimination does not require a showing of extensive discrimination. Some women have experienced the problem of discrimination, and the mechanism which already exists for dealing with racial discrimination can be broadened to cover sex discrimination. It is a wrong which requires a remedy.

... [W]e can only get valid statistics after we have established a method of proving individual cases, and that is what the bill will accomplish. Hopefully, its enactment will reduce the extent of discrimination, so that the incidence of sex discrimination, whatever it may now be, will be reduced. But it doesn't seem to me that there is any way of establishing its success in this regard.

... Please note that SB 844 includes marital status discrimination. It is that aspect
limited public awareness of the existing problem is the product of scattered public hearings and newspaper articles relating reports of personal experiences.

This lack of public awareness is reflected in the paucity of sex discrimination housing cases brought to date. The result is that evidence of sex discrimination sufficient to justify legal action is undefined by case law. Moreover, available remedies, the advisability of referral to a governmental housing agency, and the advantages of the available causes of action are equally unclear. In light of this lack of definition, this comment will provide a guide for legal action in instances of sex discrimination in rental housing under both federal and California law.

I. THE PROBLEM OF DEFINING AND PROVING SEX DISCRIMINATION

In defining and proving sex discrimination, the concern is only with of the bill which has generated most of the opposition. Included in marital status is the question of whether cotenants are married to each other.

Letter from California State Senator Nicholas C. Petris, Chairman, Senate Select Committee on Housing and Urban Affairs to Elyse Kline (Aug. 7, 1975).

10. Public hearings provided the source of information in Women & Housing, supra note 6. These hearings also generated newspaper publicity. Oakland Tribune, supra note 6. Hearings have also been held in regard to the amendment of the Unruh and Rumford Acts. In addition, the United States Department of Housing and Urban Development (HUD) sponsored a conference on April 5-6, 1976 entitled Housing & Community Development—Making It Work for Women. With some effort, additional information may be obtained from government agencies and other fair housing organizations. For example, HUD statistics show that 167 complaints based on sex discrimination were made under title VIII in fiscal 1975. Of these, 67 were in Region IX, encompassing California, Arizona, Hawaii, and Nevada. In 1974, approximately 43% of all sex-based title VIII complaints originated in California. See letter from A. Joyce Skinner, Director, Federal Women's Program, HUD to Elyse Kline (July 17, 1975).

The California Attorney General's office reported that, before the Rumford Act was amended, about one complaint alleging sex discrimination in housing was received each week. Most complaints involved widows or divorced women with children trying to rent apartments or spaces in mobile home parks. Interview with Judith Ashmann, Deputy Attorney General, in Los Angeles (May 29, 1975).

In the central Los Angeles area, the Fair Housing Congress of Southern California received 239 complaints of discrimination between October, 1974, and June, 1975. Of these, twelve cases clearly involved sex bias, although some also contained racial issues. Interview with Staff, Fair Housing Congress of Southern California in Los Angeles (July 2, 1975).

11. The focus of this comment will be on discrimination against women in housing, but the principles discussed herein are equally applicable to discrimination against men. See P-H Equal Opp. in Housing Rep. Bull. ¶ 14.4 (Feb. 24, 1975).

12. Despite the paucity of sex discrimination cases, it is nonetheless possible to formu-
whether the fact of discrimination is present. Proof of the fact of discrimination can be direct or circumstantial.

The existence of discrimination can be exposed circumstantially by reference to the facts surrounding the refusal to rent, the proportion of tenants of one sex presently living in the building, the subsequent acceptance of similarly situated tenants of the other sex, or the questionable validity of the reasons given for the refusal. If the unit is still available for occupancy after the complainant was told it was rented,

late criteria for identification of actionable discrimination by analogy to racial discrimination cases. That such analogy is appropriate may be inferred from the inclusion of "sex" as a protected category along with "race" in the fair housing acts. 42 U.S.C. §§ 3601-3619 (Supp. V 1975); CAL. HEALTH & SAFETY CODE §§ 35700-35745 (West Supp. 1977).

13. Fact is distinguished from intent to discriminate. Thus, discrimination may be present even though the landlord is unaware that the criteria used for selecting tenants result in the exclusion of single women from the dwelling. See United States v. Real Estate Dev. Corp., 347 F. Supp. 776, 782 (N.D. Miss. 1972).

Experience in conciliation has proved that the term "discrimination" means many things to many people, depending upon their position in the discrimination process. It is a rare case where there is specific evidence of a person's motivation to discriminate. If motivation were necessary very few people would be proven guilty of discrimination. All that is necessary is to prove the effects of his acts were discriminatory. Intent may be inferred from the fact of the discrimination itself. Discrimination, therefore, may be defined as any act or institutional practice which adversely affects an individual's opportunity to rent, purchase, or enjoy decent housing because of race, color or creed.


14. This occurs, for instance, when the landlord states, "I don't rent to single women." Many examples were reported by Maxine Brown, Chairperson of the California Housing Task Force of the National Organization for Women. Hearings on S.B. 1380 Before the Cal. Senate Judiciary Comm. (Jan. 22, 1974).


16. Id. In that case, where a black woman was falsely told that the apartment was rented and that there was a policy against renting to employed mothers with infant children, racial discrimination was at least a partial reason for the refusal.

17. See, e.g., United States v. Youritan Constr. Co., 370 F. Supp. 643 (N.D. Cal. 1973) (where there had been only 14 black tenants in 1,133 rental units prior to filing of suit, a prima facie case of racial discrimination was established).

18. See, e.g., Williamson v. Hampton Management Co., 339 F. Supp. 1146 (N.D. Ill. 1972) (where two single black women were refused a lease because one of them might get married, but two single white women who were testers were accepted, proof of racial discrimination existed).

19. See, e.g., Stearns v. Fair Employment Practices Comm'n, 6 Cal. 3d 205, 490 P.2d 1155, 98 Cal. Rptr. 467 (1971) (where a black man had to submit to a credit investigation before renting an apartment but a white man did not, a discriminatory application of rental requirements was established).
if no single women live in the complex, or if a test is later made with a less-qualified person of the other sex who is accepted as a tenant, there will be sufficient grounds upon which to base a charge of discrimination. 20

The more difficult problem in proving sex discrimination arises where the landlord states an apparently valid reason for refusing to rent but actually bases his decision on improper bias. The landlord may believe that he or she has legitimate grounds for refusing the applicant—and the fact finder may agree that the reasons given are adequate. Thus, it is imperative to appreciate the source of the bias and to prepare to challenge it by probing beneath the surface of the stated grounds for refusal in order to expose a landlord’s stereotyped assumptions about women. 21

Landlords have a justifiable concern in selecting tenants whom they will not have to evict, who will pay their rent, and who will not cause expensive damage. While the tenant’s credit standing is relevant, a landlord may fail to appreciate that a woman who has recently been divorced, separated, or widowed may not have developed a credit rating of her own even though for years she paid the bills, kept the family accounts in order, or held a job. 22

20. For a good explanation of how to investigate the facts of a housing discrimination case, see LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES, GUIDE TO PRACTICE OPEN HOUSING LAW 6-8 (1974). Although this pamphlet is concerned with racial discrimination, the information it offers on how to handle a fair housing case is extremely valuable for any type of housing discrimination.

21. The assumptions are occasionally blatant, as with a New York woman who reported that when she wore everyday clothes to apply for an apartment, she was told by the landlord that he did not want any welfare mothers. When, on the other hand, she got dressed up, she was told by the landlord that he did not want any hookers. WOMEN & HOUSING, supra note 6, at 36. In another instance, when a San Francisco woman asked to see a three-bedroom apartment for her family, renting for $400 per month, the landlord told her that the deposit would be $100. When he learned she was divorced, he added another $400 to the deposit. Id. at 38. The landlord was not opposed to children in the building; he was opposed only to a single mother.

Apparent neutral grounds for refusal typically involve marital status. For example, in Atlanta, a woman looking for an apartment was asked to fill out an elaborate application by the landlord before being shown any units. She indicated on the application that her marital status was “separated.” The manager refused her application because of a policy against renting to separated individuals. Id. at 40. Whether this policy was neutrally applied to both sexes would have to be determined by investigation, but often such policies are no more than a pretext for the assumption that a single woman “would be bringing men into the house and destroying the property and just giving them a bad name from the kind of house that she would run.” Id. at 41.

22. The irony of these credit practices is that when a woman is divorced, separated or widowed she is often denied credit . . . on the grounds that she has no estab-
Landlords may assume that when a woman becomes bored with her job, she will change to a less stable source of income or change her marital status, thereby possibly altering her living arrangements. Managers may also assume women are incapable of dealing with routine home maintenance and thus feel the property is better cared for if there is a man on the premises. Other assumptions are that women will have loud parties and that they will have men in their apartments at late hours.

A close examination of these and related assumptions will demonstrate that they are too often false to be valid criteria for selecting tenants. The assumption that single women form a more transient tenant class ignores the fact that, in a transient society, changes in housing needs may occur for all tenants. Moreover, the assumption that a single woman's income is less stable than a single man's is unrealistic where unemployment for a large proportion of the population is a fact of life. Thus, the question should be whether the job held by the particular applicant pays enough to meet the rental obligation, whether it has been held for a sufficient length of time, and whether it appears secure.

Other assumptions regarding unacceptable forms of income tend to fall most heavily on women. Since a woman is often dependent on income derived from social security benefits, pension plans, annuities, insurance benefits, trust distributions, welfare, alimony, or court-ordered child support, the assumption that any of these are necessarily

lished credit record. Many of these women could easily present a credit record had they not been forced to give up their economic identity by creditors. Representative Martha W. Griffiths, Opening Statement before the Joint Economic Committee Hearing on Discrimination Against Women in Credit (July 12, 1973), quoted in 1 WOMEN'S L. REP. 1.122 (1975).

23. This assumption was recognized as valid in Williamson v. Hampton Management Corp., 339 F. Supp. 1146 (N.D. Ill. 1972), where the court suggested in dictum that a lessor's rejection of two single women could be lawfully based on the likelihood that one would get married and cause the other to vacate. The statement, however, is of dubious authority in view of the recent amendment to the fair housing laws including “sex” as a protected category. 42 U.S.C. §§ 3601-3619 (Supp. V 1975), amending 42 U.S.C. §§ 3601-3619 (1970).

24. See WOMEN & HOUSING, supra note 6, at 13.

25. See id. at 41.

26. See id. at 41.

27. For instance, higher unemployment rates were reported for single males than for single females in March, 1973. U.S. DEP'T OF LABOR, 1974 MANPOWER REPORT OF THE PRESIDENT, Table B-1 (Government Printing Office 1974).

28. In 1971, 80% of female-headed families had income other than earnings. The largest proportion of these women had income from social security (34%) or public
undependable sources must be examined. For example, if a woman has received welfare regularly for a number of years, if she has young children or a disability which will require her to remain on welfare, and if she has paid her bills and lived within her budget, then she is entitled to the same treatment as anyone with other sources of income. Likewise, a person receiving social security benefits has a minimum income with guaranteed cost-of-living increases. Although other retirement or death benefit plans may not have similar guaranteed increases, such income is no less stable than is job-related income.

More subtle discrimination results when women tenants are rejected because they have children. Landlords often assume that children make noise and cause damage, but this characteristic is not unique to children. Again, it should be those who actually have the undesirable characteristic that are excluded and not a group assumed to have that characteristic. This discrimination against children has been ban-


29. In Male v. Crossroads Assocs., 469 F.2d 616 (2d Cir. 1972), where the landlord ignored welfare payments as a source of income, the court held that the resulting exclusion of welfare recipients from a government subsidized housing project violated the equal protection clause of the fourteenth amendment. Id. at 622; see also Colon v. Tompkins Square Neighbors, Inc., 294 F. Supp. 134 (S.D.N.Y. 1968). But cf. Boyd v. Lefrak Organization, 509 F.2d 1110 (2d Cir. 1975), cert. denied, 423 U.S. 896 (1976) (economic criteria applied equally to all is not discrimination just because it falls harder on minorities).

The rationale of Male supports the conclusion that considerations similar to those employed by a landlord in evaluating welfare income are equally applicable to alimony and child-support income. This is particularly true inasmuch as recent efforts to prosecute those who are delinquent in their support payments should contribute to the stability of such income. Blake, Child-Support Enforcement Effort Grows Rapidly, L.A. Times, Feb. 17, 1976, pt. II, at 1, col. 1.


31. To date, however, such discrimination has not been found actionable. In Flowers v. John Burnham & Co., 21 Cal. App. 3d 700, 98 Cal. Rptr. 644 (1971), when the court was faced with a distinction based on the age and sex of children as tenants, it balked at finding arbitrary discrimination. The landlord allowed girls of any age, but boys over five were excluded. The court upheld the family's eviction "[b]ecause the independence, mischievousness, boisterousness and rowdymosity of children vary by age and sex" and "[r]egulating tenants' ages and sex to that extent is not unreasonable or arbitrary." Id. at 703, 98 Cal. Rptr. at 645. Moreover, at least one court has held that restrictive covenants against children do not violate equal protection. Riley v. Stoves, 526 P.2d 747 (Ariz. Ct. App. 1974). Note, however, that a rejection in part because of children and in part because of sex may be actionable. See notes 115-16 infra and accompanying text.
ned in San Francisco by city ordinance.32 The San Francisco Board of Supervisors found that such discrimination encourages families to leave the city causing a "detrimental effect on the composition of the City, the stability of neighborhoods, the preservation of family life within the City, the living conditions of our children, the quality of our schools, and the viability of children's activities and organizations."33

While the San Francisco ordinance may indirectly mitigate sex discrimination by prohibiting child-based exclusionary housing practices, it does not provide a cause of action for sex discrimination. It is imperative that such categorical restrictions be legally challenged so that the scope of sex discrimination will become defined and all parties made forcefully aware that sex-based discrimination is unlawful.

II. Statutory Remedies

Although the federal and state amendments to the fair housing laws have given a fresh impetus to the enforcement of women's rights, all have unique possibilities and limitations, and therefore should be analyzed comparatively to elicit their particular strengths. The amendments must also be compared to other federal and state remedies which may on occasion be more appropriate. To facilitate the consideration of the remedies available, a chart summarizing each statute in relation to relevant considerations is presented:

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<td>REMEDIES</td>
<td>(1) Temporary restraining order,34 (2) Preliminary and/or permanent injunction,35 (3) Actual damages,36 (4) Punitive damages to $1,000,37 (5) Affirmative relief,38 and</td>
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33. Id.
34. 42 U.S.C. § 3612(c) (1970). For a discussion of the relationship between the use of a temporary restraining order and a preliminary injunction, see notes 184-86 infra and accompanying text.
35. Id.
36. Id. Actual damages may include mental anguish. See notes 194-95 infra and accompanying text.
37. Id. For a comparison of punitive damages available under other statutes, see notes 131, 204-06 infra and accompanying text.
38. Id. Affirmative relief would seem appropriate under the broad language of § 3612: "The court may grant as relief, as it deems appropriate, any . . . other order . . . ." Id. For examples of affirmative relief that have been granted under § 3613, see note 187 infra. To date, however, no affirmative relief has been granted solely on the basis of § 3612(c).
| DEFENDANTS | Person who engages in discriminatory housing practices in regard to all dwellings except:
|            | (1) any single-family house sold or rented by any owner who does not own more than three houses, who does not use a real estate broker, and who does not advertise in a discriminatory manner; or
|            | (2) units intended to be occupied by no more than four families, one of which the owner occupies.
| JURISDICTION | (1) United States District Court.
|            | (2) State court.
| STATUTE OF LIMITATIONS | 180 days from date of discriminatory act.
| RELATION TO OTHER REMEDIES | Requires no election or exhaustion of remedies, but the court may continue the case if HUD appears likely to achieve conciliation.
| STATUTE | Title VIII: HUD Action
| ACTION | HUD administrative action.
| REMEDIES | (1) Voluntary compliance of the landlord through conciliation.
|            | (2) If conciliation fails, a private civil action for injunctive and/or affirmative relief.
| DEFENDANTS | (1) Same as under Title VIII private action.
|            | (2) Owner of dwelling where discriminatory practice "is about to occur."

39. *Id.* § 3612(c). Reasonable attorney's fees will be granted to a prevailing plaintiff who is "not financially able to assume [them]." *Id.* See notes 215-16 infra and accompanying text.
40. *Id.* § 3612(b). See note 214 infra.
44. *Id.* § 3612(a). No minimum amount in controversy is necessary for jurisdiction.
45. *Id.*
48. HUD has regional offices throughout the United States where complaints may be filed.
49. 42 U.S.C. § 3610(a) (1970) provides for the Secretary of HUD to use "informal methods of conference, conciliation, and persuasion."
50. *Id.* § 3610(d). For a discussion of the issues involved in proceeding with a civil suit under this section, see notes 221-22, 236-40 infra and accompanying text. For examples of affirmative relief that may be sought, see note 187 infra.
51. *Id.* § 3603. See notes 129-30 infra and accompanying text.
52. *Id.* § 3610(a).
| JURISDICTION | (1) HUD for conciliation 53  
|             | (2) United States District Court for civil action 54 |
| STATUTE OF LIMITATIONS | (1) For complaint to HUD, 180 days from date of discriminatory act 55  
|                     | (2) For civil action, 60 days from date of complaint to HUD 56 provided HUD has not obtained compliance, or 30 days from date of notification from HUD that conciliation efforts have failed 57 |
| RELATION TO OTHER REMEDIES | Requires exhaustion of "substantially equivalent" state or local fair housing remedies 58 |
| STATUTE | Title VIII: Attorney General Action  
| ACTION | 42 U.S.C. § 3613 |
| REMEDIES | (1) Temporary restraining order 60  
|          | (2) Preliminary and/or permanent injunction 61  
|          | (3) Declaratory judgment 62 and  
|          | (4) Affirmative relief 63 |
| DEFENDANTS | Person or group that engages in a "pattern or practice" of discrimination in housing 64 |
| JURISDICTION | United States District Court 65 |
| STATUTE OF LIMITATIONS | No limit 66 |

53. Id.  
54. Id. § 3610(d). See notes 221-22 infra and accompanying text.  
55. Id. § 3610(b).  
56. Section 3610(d) provides that if the Secretary is unable to obtain voluntary compliance within thirty days after a complaint is filed, the person aggrieved has thirty days in which to commence a civil suit. Id. § 3610(d). This provision allows for a total of sixty days from the initial complaint to HUD in which to file suit in a federal court. However, if the filing is more than 180 days from the date of the discriminatory act, there is a split of authority as to whether the civil action is time-barred. See notes 239-40 infra and accompanying text.  
57. See notes 236-40 infra and accompanying text.  
58. Section 3610(c) requires HUD to refer the complaint to a state or local agency if that agency has jurisdiction over "alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter." Id. § 3610(c). For a discussion of the impact of this provision on the effectiveness of HUD procedures, see note 221 infra and accompanying text.  
59. Id. § 3613.  
60. Id.  
61. Id.  
64. Id. See notes 133-35 infra.  
65. Id.  
RELATION TO OTHER REMEDIES

Totally independent. Individual complainant may bring private suit as well.\(^7\)

STATUTE

Conspiracy Statute

42 U.S.C. § 1985(3)

ACTION

Civil action.

REMEDIES

(1) Temporary restraining order,\(^6\)
(2) Preliminary and/or permanent injunction,\(^6\)
(3) Actual damages,\(^7\)
(4) Punitive damages,\(^7\) and
(5) Attorney’s fees.\(^7\)

DEFENDANTS

Two or more persons who conspire and act to deprive a class of persons from enjoying equal protection in housing.\(^7\)

JURISDICTION

(1) United States District Court.\(^7\)
(2) State court.\(^7\)

STATUTE OF LIMITATIONS

No provision; hence “that state limitation period which seems best to effectuate the federal policy

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68. See Fed. R. Civ. P. 65(b).


“In a claim for the violation of constitutionally guaranteed rights damages are recoverable, nominal damages may be presumed, and such may in appropriate circumstances support an award of exemplary damages.” Tracy v. Robbins, 40 F.R.D. 108, 113 (D.S.C. 1966) (footnotes omitted).

71. See note 199 infra and accompanying text.


73. For a discussion of the issues involved in a cause of action under § 1985(3), see notes 140-55 infra and accompanying text.


underpinning the claims asserted." In California, the applicable limitation is three years from the date of the discriminatory act.

### RELATION TO OTHER REMEDIES
Requires no election or exhaustion of remedies.

### STATUTE
"Color of Law" Statute
42 U.S.C. § 1983

### ACTION
Civil action.

### REMEDIES
(1) Temporary restraining order,
(2) Preliminary and/or permanent injunction,
(3) Declaratory judgment,
(4) Actual damages,
(5) Punitive damages,
(6) Affirmative relief, and
(7) Attorney's fees.

### DEFENDANTS
Person who acts under "color of state law" to deprive another person of the right to equal protection in housing.

### JURISDICTION
(1) United States District Court.
(2) State court.

### STATUTE OF LIMITATIONS
Same as for section 1985(3).

### RELATION TO OTHER REMEDIES
Requires no election or exhaustion of remedies.

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76. Peterson v. Fink, 515 F.2d 815, 816 (8th Cir. 1975) (footnote omitted).
77. Smith v. Cremins, 308 F.2d 187, 189 (9th Cir. 1962). See notes 241-42 infra and accompanying text.
78. Powell v. Workman's Comp. Bd., 327 F.2d 131, 135 (2d Cir. 1964).
79. See Fed. R. Civ. P. 65(b); note 68 supra; see also note 184 infra and accompanying text; Woods v. Wright, 334 F.2d 369 (5th Cir. 1964) (temporary restraining order granted to prevent student suspension).
80. See Fed. R. Civ. P. 65(a). See note 68 supra; see also note 184 infra and accompanying text.
82. Id.
83. Id. See notes 194-96 infra and accompanying text.
84. See note 199 infra and accompanying text.
85. Section 1983 provides for any other "proper proceeding for redress." While this has generally been limited to injunctive relief, the court may direct the administration of a nondiscriminatory project necessary to assure compliance. 42 U.S.C. § 1983 (1970); County School Bd. v. Thompson, 252 F.2d 929 (4th Cir.), cert. denied, 356 U.S. 958 (1958) (the court directed details of school integration because of prior violations of injunctive orders).
86. See notes 213-17 infra and accompanying text.
87. For a discussion of the problem of proving that defendant acted "under color of law," see notes 162-66 infra and accompanying text.
90. See notes 241-42 infra and accompanying text.
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<td>(5) Punitive damages,97</td>
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<td>(6) Statutory damages of at least $250 for each offense up to treble damages,98 and</td>
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<td>(7) Attorney's fees, in the court's discretion.99</td>
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<tr>
<td>DEFENDANTS</td>
<td>(1) Any person who discriminates in any housing accommodation other than an owner-occupied single-family dwelling, or</td>
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<td>(2) Any person who aids, abets or incites such discrimination.100</td>
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<td>(1) California Superior or Municipal Court.101</td>
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<td>STATUTE OF LIMITATIONS</td>
<td>One year or three years from date of discriminatory act.103</td>
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<td>RELATION TO OTHER REMEDIES</td>
<td>Requires election of remedy between this Act and the Rumford Act, but can be used in conjunction with other federal statutes.104</td>
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93. Id. §§ 526, 527. See note 184 infra and accompanying text. See also the discussion of O’Beck v. Jackson in 7 Clearinghouse Rev. 219 (1973), where the California Superior Court granted a temporary restraining order and the case was then settled by stipulation.
95. CAL. CIV. CODE §§ 51, 53 (West Supp. 1977). Section 53(c) provides for a declaratory judgment that a discriminatory restriction or prohibition upon transfer of real property in a written instrument is void.
96. CAL. CIV. CODE § 52(a) (West Supp. 1977). See notes 194-95 infra and accompanying text. See also Colley, Civil Actions for Damages Arising Out of Violations of Civil Rights, 17 HASTINGS L.J. 189 (1965) [hereinafter cited as Colley].
97. CAL. CIV. CODE § 3294 (West 1970). See notes ‘121 & 204-06 infra and accompanying text.
98. Id. § 52(a). See text accompanying note 203 infra.
99. Id.
100. Id. § 51 (West Supp. 1977); 56 CAL. OP. ATT’Y GEN. 546 (1973). See notes 174-75, 180 infra and accompanying text.
102. Id. § 116.2. See notes 209-12 infra and accompanying text.
103. Id. § 340 (one year), § 338 (three years). For a discussion of which section is more appropriately applied to the Unruh Act, see note 243 infra.
| STATUTE                        | Rumford Fair Housing Act  
| CAL. HEALTH & SAFETY CODE §§ 35700-35745 |
| REMEDIES                      | (1) Temporary restraining order and/or preliminary injunction,\(^{105}\) |
|                               | (2) Sale or rental of the disputed housing accommodation if it is available, or |
|                               | (3) Sale or rental of a like accommodation or the promise of the next available one, or |
|                               | (4) If (2) or (3) are not possible, damages to $1,000,\(^{106}\) and |
|                               | (5) Affirmative actions.\(^{107}\) |
| DEFENDANTS                    | (1) Owner of any dwelling that is rented, leased or sold, other than an owner-occupied single-family dwelling, who discriminates in housing accommodations, or |
|                               | (2) Anyone who aids, abets, incites, compels, or coerces the discriminatory owner.\(^{108}\) |
| JURISDICTION                  | FEPC.\(^{109}\) |
| STATUTE OF LIMITATIONS        | (1) 60 days from the date of discriminatory act, or |
|                               | (2) 60 additional days if claimant learned of facts of discriminatory act after the initial 60-day period.\(^{110}\) |
| RELATION TO OTHER REMEDIES    | Requires waiver of rights and claims under the Unruh Act.\(^{111}\) |

### III. PURSUIT OF A REMEDY

The various statutes have advantages and disadvantages which make the desirability of each depend upon the complainant's situation and

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105. CAL. HEALTH & SAFETY CODE § 35734 (West 1973) provides for the FEPC to obtain a temporary restraining order or preliminary or permanent injunction from the superior court in accordance with CAL. CIV. PROC. CODE § 527 (West Supp. 1977). See notes 184-85 infra and accompanying text.

106. CAL. HEALTH & SAFETY CODE § 35738 (West Supp. 1977). This amendment increased the maximum damages to $1,000 but retained the hierarchical form of relief. See notes 191-93 infra and accompanying text.

107. CAL. HEALTH & SAFETY CODE § 35711 (West Supp. 1977) defines “affirmative actions" as “any educational activity for the purpose of eliminating discrimination in housing accommodations . . . and any promotional activity designed to achieve such a result on a voluntary basis." The FEPC is given authority to "engage in affirmative actions with owners" to achieve this purpose. Id. For examples of affirmative relief, see note 187 infra and accompanying text.

108. Id. § 35720. See notes 169-75 infra and accompanying text.


110. Id. § 35731.

111. Id. See note 234 infra.
remedial goals. In selecting which statute[s] to pursue, a complainant should consider: (1) whether the facts of her situation will constitute a prima facie case under the desired cause of action; (2) what remedial goals are desired—possession of the unit, compensation for costs, lost time, and annoyance resulting from denial of the unit, vindication, deterrence, or publicity; and (3) what procedural concern is most important—cost, time, or effectiveness in achieving the remedial goal.

A. The Prima Facie Case

1. Federal Law

Each cause of action requires that the complainant make a prima facie showing of discrimination. Once it is shown that the landlord has discriminated, "the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the plaintiff's rejection." Although the landlord may state apparently valid policies for selecting tenants, a policy that may appear "neutral on its face, cannot stand if it in its operation serves to discriminate." 114

112. Discrimination is present where it appears from the circumstances surrounding the refusal that the dwelling would have been rented to the plaintiff were she of the opposite sex. Because cases of purely sex-based discrimination have rarely been reported, it is necessary to analogize from race-based discrimination cases to formulate the criteria for determining what facts will constitute a prima facie showing. For a discussion of the problem of proof of discrimination, see notes 12-20 supra and accompanying text.

The cases involving purely sex-based discrimination in housing have not been decided on the merits. Girard v. 94th St. & Fifth Ave. Corp., 396 F. Supp. 450 (S.D.N.Y. 1975) was dismissed on the pleadings for failure to allege facts constituting a conspiracy under 42 U.S.C. § 1985(3) (1970). Voloshen v. Jordan, P-H EQUAL OPP. IN HOUSING REP. BULL., ¶ 9.2 (Dec. 16, 1974), the first sex discrimination lawsuit filed under title VIII, involved a landlord who refused to rent to a divorced woman and her son because he felt she could not function adequately without a man in the house. This case resulted in a consent decree. Other cases involving women as tenants have been decided on other grounds of discrimination. See, e.g., Smith v. Sol D. Adler Realty Co., 436 F.2d 344 (7th Cir. 1970) (race); Thomas v. Housing Auth., 282 F. Supp. 575 (E.D. Ark. 1967) (unwed mother).


114. Williams v. Matthews Co., 499 F.2d 819, 828 (8th Cir. 1974) (discrimination on the basis of race). The rule is derived from Griggs v. Duke Power Co., 401 U.S. 424 (1971), wherein the Court ruled that requirements of high school graduation and intelligence tests could not be used when unrelated to successful job performance, and when serving to disqualify blacks at a disproportionately higher rate than whites. Stated affirmatively, the selection criteria must be based on "business necessity." 499 F.2d at 828.

Business necessity is "the absence of any acceptable alternatives that will accomplish the same business goal with less discrimination."
The refusal to rent need not be based solely on the sex of the applicant. As long as sex plays a role in the rejection, discrimination may be established. Thus, if the applicant is refused because she is a woman as well as because she has a child, the landlord is liable for the sex-based discrimination even though he may have a right to discriminate against children.

For each cause of action, it must be alleged that defendant's acts caused the plaintiff injury: for instance, deprivation of rights, damage to feelings, loss of money or loss of the desired dwelling. If punitive damages are sought, there must be sufficient allegations of ill will or wanton and willful conduct by the defendant. Where injunctive relief is sought, there must also be claims of irreparable injury and an inadequate remedy at law; where attorney's fees are desired, the plaintiff may be required to allege that she is financially unable to assume that cost.

Title VIII of the Federal Civil Rights Act of 1968 provides for a private civil action and an administrative action through the De-
partment of Housing and Urban Development (HUD).\textsuperscript{128} In either action, the complainant must allege that the defendant did one or more of the following: (1) refused because of the plaintiff's sex to make a dwelling available; (2) discriminated against plaintiff because of sex in the terms or provision of services in the sale or rental of a dwelling; (3) publicly indicated a preference based on sex in the sale or rental of a dwelling; or (4) because of plaintiff's sex, falsely represented that a dwelling was not available for inspection, sale or rental.\textsuperscript{127} To initiate an investigation through HUD, the complainant need merely allege that she "will be irrevocably injured by a discriminatory housing practice that is about to occur."\textsuperscript{128}

While title VIII applies to most multiple units available for rent, there are limitations to its scope. Certain types of property and landlords are exempted from civil suits under both sections 3610 and 3612.\textsuperscript{129} Moreover, because HUD has no enforcement power, it is limited to achieving equitable remedies through voluntary compliance.\textsuperscript{130} Although a plaintiff may seek damages in a private civil action under section 3612, punitive damages may not exceed $1,000.\textsuperscript{131}

Relief under section 3613 is limited to equitable remedies\textsuperscript{132} but, unlike HUD, the Attorney General may initiate a civil action where "any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of the rights granted by this title . . . [if] such denial raises an issue of general public importance."\textsuperscript{133} Whether "an issue of general public importance" is involved in a particular case is left to the discretion of the Attorney General,\textsuperscript{134} except

\textsuperscript{126} Id. § 3610.
\textsuperscript{127} Id. § 3604.
\textsuperscript{128} Id. § 3610(a).
\textsuperscript{129} Exempted are: (1) single-family houses sold or rented by an owner who does not own more than three of these, who does not use a real estate broker, and who does not advertise discriminatorily, id. § 3603(b); (2) dwellings containing units intended for no more than four families, one of which is occupied by the owner, id.; (3) structures or land intended for non-residence purposes, id.; and (4) religious and non-profit organizations and private clubs. Id. § 3607.
\textsuperscript{130} Id. § 3610(a). See notes 228-31 infra and accompanying text for a discussion of the effectiveness of utilizing HUD to achieve a remedy.
\textsuperscript{131} A court "may award to the plaintiff actual damages and not more than $1,000 punitive damages." Id. § 3612(c).
\textsuperscript{132} Id. § 3613 provides for "preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order . . . necessary to insure the full enjoyment of the rights granted by this subchapter."
\textsuperscript{133} Id.
\textsuperscript{134} United States v. Northside Realty Assocs. Inc., 474 F.2d 1164, 1167-68 (5th
that a "pattern or practice" of discrimination requires more than a single act of discrimination.\textsuperscript{135}

The conspiracy statute, section 1985(3),\textsuperscript{136} overcomes some of the serious restrictions on title VIII actions: there is no limitation on damages\textsuperscript{137} or type of housing\textsuperscript{138} and the six month statute of limitations is inapplicable.\textsuperscript{139} Nonetheless, the prima facie case may be difficult to establish.

The elements necessary to establish a cause of action under section 1985(3) are well settled. The plaintiff must allege: (1) a conspiracy by two or more persons; (2) a conspiratorial purpose to deprive another, as a member of a class, of the equal protection or the privileges and immunities of the laws; (3) an overt act in furtherance of the conspiracy; and (4) resultant injury or deprivation of rights.\textsuperscript{140} Although section 1985(3) derives its authority from the enforcement clause of the fourteenth amendment,\textsuperscript{141} its purview includes private action.\textsuperscript{142}


\textsuperscript{136} 42 U.S.C. § 1985(3) (1970). This statute provides in pertinent part: if two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages.

\textsuperscript{137} See note 131 \textit{supra} and accompanying text.

\textsuperscript{138} See note 129 \textit{supra} and accompanying text.

\textsuperscript{139} While §§ 3610(b) and 3612(a) specify that a complaint must be filed "within one hundred and eighty days after the alleged discriminatory housing practice occurred," §§ 1985(3) and 1983 are not so restricted. For the means of determining the statute of limitations under these sections, see notes 236-42 infram and accompanying text.


\textsuperscript{141} U.S. Const. amend. XIV, § 5.

\textsuperscript{142} Griffin v. Breckenridge, 403 U.S. 88 (1971). The extent to which § 1985(3) includes within its ambit private action remains an unsettled question. In two Seventh Circuit opinions, Justice Stevens limited the categories of interests protected by § 1985 (3) to the federally protected right of racial equality, the right to interstate travel, and rights derived from the fourteenth amendment which would require state action. Cohen v. Illinois Inst. of Tech., 524 F.2d 818 (7th Cir. 1975); Dombrowski v. Dowling, 459 F.2d 190 (7th Cir. 1972). But cf. Weise v. Syracuse Univ., 522 F.2d 397 (2d Cir. 1975) (no state action requirement under 42 U.S.C. § 1985(3)); Westberry v. Gilman Paper
The first element of the cause of action, a conspiracy, may be the most difficult to prove. Where a landlord makes an individual decision to rent to only one sex, there is no conspiracy since, by definition, a conspiracy requires "two or more persons."\footnote{144} Even where a manager acts as an agent for the owner, some courts have not found a conspiracy.\footnote{144} Other courts have construed the conspiracy requirement more liberally, allowing its assertion "on more or less traditional principles of agency, partnership, joint venture, and the like."\footnote{146} Unless this liberal position is accepted, it will be difficult to prove a conspiracy without showing that the landlord acted in conjunction with another,\footnote{146} such as a rental agent, a publisher of a discriminatory advertisement, an attorney who was involved in the contract, or a lender who had a duty not to finance a discriminatory business.\footnote{147}

The plaintiff need not specifically show the second element, that the conspirators intended to deprive the plaintiff of her civil rights,\footnote{148} inasmuch as the focus of the action is on proving the overt discriminatory

\begin{footnotes}
\item[144] "[I]f the challenged conduct is essentially a single act of discrimination by a single business entity, the fact that two or more agents participated in the decision or in the act itself will normally not constitute the conspiracy contemplated by this statute." Dombrowski v. Dowling, 459 F.2d 190, 196 (7th Cir. 1972). Accord, Milburn v. Blackfrica Promotions, Inc., 392 F. Supp. 434, 436 (S.D.N.Y. 1974); Fallis v. Dunbar, 386 F. Supp. 1117, 1121 (N.D. Ohio 1974). In a recent case, where corporate officers refused to accept the assignment of a proprietary lease to a female tenant, no conspiracy was shown because the officers were part of a single business entity. Girard v. 94th St. & Fifth Ave. Corp., 396 F. Supp. 450 (S.D.N.Y. 1975).
\item[145] Nesmith v. Alford, 318 F.2d 110, 126 (5th Cir. 1963). See also Rackin v. University of Pa., 386 F. Supp. 992, 1005-06 (E.D. Pa. 1974) (a complaint alleging a conspiracy by a university and faculty to deprive plaintiff of her tenure on account of sex stated a cause of action under § 1985(3)). Under this construction, an agreement between co-owners, or between the owner and the manager, not to accept members of a particular sex would constitute a conspiracy.
\item[146] The narrow view will prevent § 1985(3) from overcoming some of the limits of title VIII. Under § 3603(b)(1), the lessor of a single-family dwelling is liable only if the services of a rental agent are used or if a discriminatory advertisement is placed, unless more than three single-family dwellings are rented. Meeting the first condition thus effectively requires a showing of a conspiracy by two or more persons. In a multiple dwelling, the lessor will not be liable for discriminatory conduct if he resides in one unit in a building intended for no more than four families. 42 U.S.C. § 3603(b)(2) (1970). Thus the conspiracy statute, if liberally construed, can provide a cause of action against lessors exempted by § 3603(b)(2).
\item[147] Cf. Conner v. Great W. Sav. & Loan Ass'n, 69 Cal. 2d 850, 447 P.2d 609, 73 Cal. Rptr. 369 (1968) (court found financer of housing development had duty to buyers for major structural defects, but refused to find joint venture with developer).
\end{footnotes}
acts which caused plaintiff's injury. The focus was established in Griffin v. Breckenridge, where the Supreme Court held that the requisite mental state is not a specific intent but a "class-based, invidiously discriminatory animus." Although this may be established through circumstantial evidence, the requirement is strictly observed. While the Griffin Court expressly refrained from extending section 1985(3) to embrace non-racial discrimination, subsequent circuit opinions have acknowledged in dicta the possibility of such an extension and several district courts have actually included sex as a protected class.

The use of section 1983 in housing cases is more limited than the other remedies, although like section 1985 it allows for expanded damages and an extended statute of limitations which are not available under title VIII. The prima facie showing of injury under section 1983 requires the plaintiff to demonstrate both a deprivation of rights, privileges or immunities secured by the Constitution or laws of the United States and the causation of such deprivation by a person acting under color of state law. Although the plaintiff may claim denial of rights

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149. In a civil conspiracy, the damage flows from the overt acts and not from the conspiracy. "Therefore, the certainty we look for in a proper complaint under the Civil Rights Statutes, is not in the general allegations of conspiracy, purpose, intent and color of authority but the certainty and substance in the particular acts which are alleged to have caused damage." Hoffman v. Halden, 268 F.2d 280, 295 (9th Cir. 1959).

151. Id. at 102. Sufficient allegations of such animus have been found in a claim of numerous denials of plaintiff's rights. Azar v. Conley, 456 F.2d 1382, 1386 n.4 (6th Cir. 1972).


Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any . . . person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, a suit in equity, or other proper proceeding for redress.

Id.

157. See note 131 supra.
158. See note 139 supra.
under either the equal protection clause of the fourteenth amendment or title VIII, it is difficult to show that a landlord acted "under color of state law."

While various tests have been devised for determining whether a private individual is acting under color of state law, courts in racial and sex discrimination cases have principally required that state involvement be both "substantial" and "other than neutral," going beyond minor regulation or funding of the housing entity.

Although most courts have hesitated to find that a private landlord's utilization of judicial eviction procedures is action under color of state law, action taken by public housing projects has consistently been found to involve state action. Even where the entity is managed by a private corporation, sufficient state involvement occurs where the project is financed by an FHA mortgage, substantially assisted by city, public housing authorities. See note 163 infra and accompanying text.

160. See, e.g., Cohen v. Illinois Inst. of Tech., 524 F.2d 818 (7th Cir. 1975); Weise v. Syracuse Univ., 522 F.2d 397 (2d Cir. 1975); Smith v. Sol D. Adler Realty Co., 436 F.2d 344 (7th Cir. 1970).

161. Few housing units have the extensive supervision and subsidization necessary for their discrimination to qualify as state action unless they are operated by the public housing authorities. See note 163 infra and accompanying text.

162. Girard v. 94th St. & Fifth Ave. Corp., 396 F. Supp. 450, 455 (S.D.N.Y. 1975), Section 1983 "color of law" is equivalent to fourteenth amendment "state action." Id. at 453.

163. The court in Barrio v. McDonough Dist. Hosp., 377 F. Supp. 317, 320 (S.D. Ill. 1974), held that "to state a claim under Section 1983, it will be necessary for any . . . complaint to allege facts in addition to the facts of state regulation and the receipt of public funds . . . ."

164. In considering whether the landlord's use of the courts to evict a tenant on account of sex amounted to state action because of both "substantial" and "other than neutral" involvement, the court in Girard v. 94th St. & Fifth Ave. Corp., 396 F. Supp. 450, 455 (S.D.N.Y. 1975), held that the state only provided an enforcement mechanism for a contract "nondiscriminatory on its face." Girard is thus distinguishable from Shelley v. Kraemer, 334 U.S. 1 (1948), where court enforcement of a restrictive covenant discriminatory on its face amounted to state action. See also Fallis v. Dunbar, 386 F. Supp. 1117 (N.D. Ohio 1974) (tenant evicted for organizing a tenant's union); Barber v. Rader, 350 F. Supp. 183 (S.D. Fla. 1972) (eviction of tenants and impressing of lien pursuant to statute constituted state action); Hosey v. Club Van Cortlandt, 299 F. Supp. 301 (S.D.N.Y. 1969) (court eviction for organizing a tenant's union labelled, in dictum, state action); Abstract Inv. Co. v. Hutchinson, 204 Cal. App. 2d 242, 255, 22 Cal. Rptr. 309, 317 (1962) (defense could be raised in an unlawful detainer action that the landlord was motivated by an unlawful bias "because such 'state action' would be violative of both federal and state Constitutions.").

state and federal subsidies, and ultimately supervised by the state housing administration.166

2. California Law

In California, the Unruh Civil Rights Act167 and the Rumford Fair Housing Act168 have also been amended to include sex as a protected category. The broad interpretation of these statutes to include all business-related discriminatory housing practices169 results in their application to all rental property except non-publicly assisted, owner-occupied single-family dwellings.170

Under the Rumford Act, an aggrieved person may file a verified complaint with the State Fair Employment Practices Commission (FEPC) stating the name and address of the alleged violator and the particulars of the violation.171

The Rumford Act prohibits the owner of publicly-assisted housing from: (1) withholding housing because of a person's sex or marital status; (2) discriminating because of sex or marital status in the terms or

169. Defendants under the statutes include: the developer of a housing tract, Burks v. Poppy Constr. Co., 57 Cal. 2d 463, 370 P.2d 313, 20 Cal. Rptr. 609 (1962); a real estate broker, Lee v. O'Hara, 57 Cal. 2d 476, 370 P.2d 321, 20 Cal. Rptr. 617 (1962); the owner of a triplex, Swann v. Burkett, 209 Cal. App. 2d 685, 26 Cal. Rptr. 319 (1962); and should also cover "an owner of a non-owner occupied single family dwelling who sells, rents, or leases it for income or gain." 56 CAL. OP. ATT'Y GEN. 546, 551 (1973).
170. The Rumford Act defines "publicly assisted" housing as any housing accommodation within the state:

(a) Which at the time of any alleged unlawful discrimination . . . is granted exemption in whole or in part from taxes levied by the State or . . . its . . . subdivisions . . . .
(b) Which is constructed on land sold below cost . . . pursuant to the Federal Housing Act of 1949.
(c) Which is constructed in whole or in part on property acquired . . . through the power of condemnation or otherwise for the purpose of such construction.
(d) The acquisition or construction of which is . . . financed in whole or in part by a loan . . . guaranteed or insured by the federal government . . . or the State . . . .

CAL. HEALTH & SAFETY CODE § 35710(3) (West 1973).
171. Id. § 35731.
services furnished in the provision of housing accommodations; (3) inquiring into the sex or marital status of a person seeking housing; (4) retaliating against a person who has opposed these unlawful practices; or (5) abetting the foregoing unlawful acts. Since it includes those who are subject to the Unruh Act as well as those who aid or abet the discriminatory practices, the Rumford Act may be invoked not only against owners of housing but also against managers, sub-lessors, real estate brokers and agents who publish discriminatory advertisements.

The Unruh Act, which provides for a private civil action, is more comprehensive and flexible than most of the other statutes. It applies to "all business establishments," including all housing other than owner-occupied single-family dwellings. Under section 52 of the Civil Code, "whoever makes any discrimination, distinction or restriction on account of sex" in a business establishment is liable. This

172. Id. § 35720 (West Supp. 1977).
174. Cal. HEALTH. & SAFETY CODE § 35720(6) (West Supp. 1977), providing in part that the Rumford Fair Housing Act applies to all persons subject to the Unruh Act, has formed the basis for the expansion of the scope of the Rumford Act. Although § 37520(5) exempts dwellings of four units or less, the Unruh Act applies to all business establishments, regardless of size. The California Attorney General has concluded that § 37520(6) thus permits application of the Rumford Act to dwellings of less than four units. 56 CAL. OP. ATTY GEN. 546 (1973). See Swann v. Burkett, 209 Cal. App. 2d 685, 26 Cal. Rptr. 319 (1962); but see Hill v. Miller, 64 Cal. 2d 757, 415 P.2d 33, 51 Cal. Rptr. 689 (1966) (neither Unruh nor Rumford Act would support cause of action for eviction from single-family dwelling on account of race).
175. See 53 CAL. OP. ATTY GEN. 196 (1970) for a discussion that focuses on the liability of real estate brokers but is applicable to all agents of the property owner.
176. Cal. CIV. CODE §§ 51-53 (West Supp. 1977). Section 51 provides in pertinent part: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Id.

Section 52(a) provides:

Whoever denies, or who aids, or incites such denial, or whoever makes any discrimination, distinction or restriction on account of sex . . . contrary to the provisions of Section 51 of this code, is liable for each and every such offense for the actual damages, and such amount as 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 two hundred fifty dollars ($250), and such attorney's fees as may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51 . . . of this code.

Id.

177. Id. § 51.
provision has been interpreted to prohibit exclusion of a prospective customer without reasons that are rationally related to the services performed or facilities provided.\textsuperscript{180}

In order to establish a prima facie case under the Unruh Act, plaintiff must allege that (1) she is a member of a protected class (women) (2) who was within the jurisdiction of the State of California (3) when she attempted to obtain housing accommodations (4) from named defendant[s] at a specified location (5) but was denied the full and equal accommodations, advantages, facilities, privileges and services in defendant's business establishment on account of her sex.\textsuperscript{181} To obtain actual damages, plaintiff must allege resulting financial injuries or emotional distress; to obtain punitive damages, plaintiff must allege intentional and malicious conduct.\textsuperscript{182} The Unruh Act additionally provides that a person is entitled to treble damages of at least $250 for each offense.\textsuperscript{183}

\subsection*{B. Remedial Goals}

Although the ability to meet the burden of proof initially governs the selection of a cause of action, if more than one statute is available, other factors must then be taken into account. If the primary goal is to obtain the unit, the aggrieved party should initially seek a temporary restraining order, either by separate motion or simultaneously with the filing of the complaint. This immediate ex parte relief is available in all statutory actions\textsuperscript{184} except administrative actions through HUD.\textsuperscript{185} If irreparable injury can be demonstrated, the order will provide that the property be kept vacant until a full hearing can be conducted.\textsuperscript{186}

\begin{footnotes}
\item[180] In re Cox, 3 Cal. 3d 205, 217, 474 P.2d 992, 999, 90 Cal. Rptr. 24, 31 (1970). "Our modern society has become so interdependent and interrelated that those who perform a significant public function may not erect barriers of arbitrary discrimination in the marketplace." \textit{Id.} at 218, 474 P.2d at 1000, 90 Cal. Rptr. at 32. In Cox, the exclusion of an "unconventional" person from a public shopping center was found to be arbitrary discrimination under the Unruh Act.
\item[182] \textit{See} notes 96-97 \textit{supra} and accompanying text.
\item[186] \textit{Fed. R. Civ. P.} 65 and \textit{Cal. Civ. Proc. Code} § 527 (West Supp. 1977) have similar provisions. Both allow the court to grant a temporary restraining order without notice to the adverse party if it appears from facts shown by affidavit or verified complaint that irreparable injury or loss will result before the adverse party can be heard, and if adequate reasons support the claim that notice should be required.
\end{footnotes}
Moreover, the restraint on further transactions involving the premises will tend to encourage the expeditious processing of the case. Since all of the statutes provide for equitable relief, the landlord may be compelled to take specific action to prevent future discrimination.\textsuperscript{187} Agency actions by the FEPC, HUD, or the Attorney General may accomplish the same goal with little cost or effort to the plaintiff.\textsuperscript{188} If expediency and effectiveness are of primary concern, however, they may be frustrated through bureaucratic inefficiency.\textsuperscript{180}

Where a plaintiff’s primary goal is to obtain damages, then the choice between the statutes is of critical importance. While no damages are available through the Attorney General or HUD actions,\textsuperscript{190} in California, damages may be obtained through an FEPC action, but only under prescribed circumstances.\textsuperscript{191} Moreover, even though the amount of facts usually exist to prove that irreparable injury is imminent. Once the landlord has rented to another innocent tenant, the courts are reluctant to deny the new tenant the unit. In fact, 42 U.S.C. § 3612(a) (1970) provides that “a bona fide . . . tenant without actual notice . . . of the filing of a complaint . . . shall not be affected.” Moreover, the equity courts have historically agreed that real property is unique and the loss of it is not easily compensated. Kitchen v. Herring, 42 N.C. 137 (1851). The foregoing also supports the argument that notice to the adverse party should not be required prior to the issuance of the temporary restraining order, for notice would give the landlord time to find an innocent tenant to occupy the dwelling.

If a temporary restraining order is granted without notice, the longest it may remain in effect is twenty days. The federal rule allows an initial ten day period which may be extended another ten days for good cause. Fed. R. Civ. P. 65. The California rule allows for an initial fifteen day period which may be extended to twenty days for good cause. Cal. Civ. Proc. Code § 527 (West Supp. 1977). Within that time period, at the earliest possible date, a hearing on a motion for a preliminary injunction must be held with both parties present or the temporary restraining order will be dissolved.

Both federal and California jurisdictions recognize the need for temporary injunctive relief in housing discrimination cases pending a full hearing on the merits, for both title VIII and the Rumford Act specifically make such relief available where necessary. See also Brown v. Lo Duca, 307 F. Supp. 102 (E.D. Wis. 1969).

187. Affirmative relief may require that defendant's advertising include the equal opportunity-in-housing symbol, that defendant's employees be instructed in fair housing law, that written objective criteria for judging future applicants be established, and that periodic reports on processing and acceptance of applicants be filed. United States v. West Peachtree Tenth Corp., 437 F.2d 221, 229-31 (5th Cir. 1971).

188. See note 208 infra and accompanying text. In California the Attorney General may bring a civil action or may intervene in a private action. Cal. Civ. Code § 52(c), (d) (West Supp. 1977).


190. It is possible, however, for an individual to seek damages in a suit independent of the Attorney General action. Boyd v. United States, 345 F. Supp. 790, 793 (E.D. N.Y. 1972). It is also possible to obtain some compensation through a voluntary settlement under the auspices of HUD. See Hearings, supra note 13, at 606.

191. If the housing unit or one similar to it is still available, then its sale or rental
maximum damages has recently been increased from $500 to $1,000,\textsuperscript{192} the FEPC has tended to award less than the maximum allowed.\textsuperscript{193}

All of the statutes providing for private civil actions allow for actual damages.\textsuperscript{194} In most rental cases, large monetary losses occur only when the plaintiff is forced to obtain more expensive accommodation to replace the one that was denied or to incur unusual costs for traveling and temporary shelter or storage. The largest claim for compensatory damages in rental cases has usually been the emotional distress caused by the arbitrary denial of housing.\textsuperscript{195} Although judges and juries may not yet fully appreciate the humiliation that results from sex-based discrimination, as they now do for racial discrimination, a lawyer can sensitize the judge and jury to the assumptions that are made about women

is the relief plaintiff must take. Only if the FEPC determines that no like housing is available may it award "the payment of damages to the aggrieved person in an amount not to exceed one thousand dollars." \textsuperscript{192} CAL. HEALTH & SAFETY CODE § 35738 (West Supp. 1977).

\textsuperscript{192} Id.

\textsuperscript{193} Because FEPC cases are not published, there is no way to truly determine a pattern. Only when an appeal is made to the state courts are the facts of a case made public (even though a "public hearing" may have been held). From the few cases made available, the tendency appears to be to grant the maximum damages only when exaggerated circumstances exist and to reduce the amount when more than one complainant is involved to prevent too great an overall award.

Two unpublished FEPC decisions are illustrative. Where a single black complainant had been put in fear of harassment if he took the apartment, he was granted the full $500 in damages (now the maximum is $1,000). \textit{In re Accusation of Percy Wimer}, Case No. FHL72-73-B8-112 L7608 (Cal. FEPC, Dec. 27, 1974). But where two black complainants were refused the rental of an apartment because the landlord falsely claimed their credit application was lost and showed they were poor risks, they were granted $300 each. \textit{In re Accusation of M. Possey}, Case No. FHL72-73-A8-069 N4925 (Cal. FEPC, Feb. 28, 1975).

In Stearns v. Fair Employment Practices Comm'n, \textit{6 Cal. 3d 205, 490 P.2d 1155, 98 Cal. Rptr. 467 (1971)}, only $250 in damages was awarded to a prospective black tenant who had been required to wait for a credit check before being accepted, while a white applicant was offered the apartment without one.


\textsuperscript{195} "An award of . . . actual damages under § 3612 is appropriate for humiliation caused by the type of violation of rights established here. Humiliation can be inferred from the circumstances as well as established by the testimony." Seaton v. Sky Realty Co., \textit{491 F.2d 634, 636 (7th Cir. 1974)} (award of $500 given for mental anguish caused by racial discrimination in the sale of a house). \textit{See also} Steele v. Title Realty Co., \textit{478 F.2d 380 (10th Cir. 1973)} ($1,000 compensatory damages mainly for mental suffering); Smith v. Sol D. Adler Realty Co., \textit{436 F.2d 344 (7th Cir. 1971)} (trial court to determine on remand damages up to $1,000 for mental anguish).
in their search for housing. Sizable awards have been given for mental anguish in racial housing cases, and should be obtainable for sex-based discrimination as well. A plaintiff can maintain a cause of action even though her housing needs have been met elsewhere and even after the landlord has offered her the property in settlement, since the discriminatory treatment itself is a compensable injury.

Other plaintiffs may want to vindicate rights to equal accommodations by punishing the defendant and by making the cost of discrimination sufficiently onerous to deter future arbitrary denials of housing. For these complainants, the administrative remedies will prove unsatisfactory because of the limitation to injunctive relief and minimal damages. Of the civil remedies, title VIII is the least desirable, because punitive damages are limited to $1,000. Sections 1983 and 1985(3) do not impose such limitations and can potentially be the sources of the highest damage awards. Because of the potentially unlimited damages offered by the Civil Rights Acts, most racial discrimination cases have included a cause of action under section 1982.

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196. See note 195 supra.

197. Neither the settlement of the parties as to the rental of the apartment nor the awarding of costs and waiver of fees and security mutes the question of damages. Indeed section 3612 . . . is a strong congressional condemnation of unlawful discrimination in housing. Such a provision prevents a landlord from following a willful pattern of discrimination or from resisting certain applicants and withdrawing his resistance when the applicant seeks relief by court litigation, without an accounting therefor.

Cash v. Swifton Land Corp., 434 F.2d 569, 572 (6th Cir. 1970) (injunctive relief became moot when the plaintiff accepted the apartment). Compare Brown v. Ballas, 331 F. Supp. 1033 (N.D. Tex. 1971) (although the plaintiff had found other housing, she was still able to recover $750 in actual damages and $500 in attorney's fees under a 42 U.S.C. § 1982 cause of action).

198. See notes 49-50, 105-07, 191 supra and accompanying text.

199. 42 U.S.C. § 3612(c) (1970). Even though the language of the statute provides for punitive damages without specifying any required showing, courts have only granted them to the extent that willful or wanton conduct has been demonstrated. Steele v. Title Realty Co., 478 F.2d 380 (10th Cir. 1973). See Williams v. Matthews Co., 499 F.2d 819 (8th Cir.), cert. denied, 419 U.S. 1021, 1027 (1974) (up to $1,000 in punitive damages under §§ 3612 and 1982); Seaton v. Sky Realty Co., 491 F.2d 634 (7th Cir. 1974) ($1,000 in punitive damages awarded against each of three defendants under § 3612); Allen v. Gifford, 368 F. Supp. 317 (E.D. Va. 1973) ($5,000 in punitive damages under § 1982); Marshall v. Pendley, P-H EQUAL OPP. IN HOUSING [Transfer Binder] ¶ 13,615, at 14012 (N.D. Ga. 1973) ($9,593 total award including $350 for humiliation and $1,000 punitive damages awarded to each of five plaintiffs for racial discrimination under § 3612). See also Colley, supra note 96.

200. 42 U.S.C. § 1982 (1970) has been construed to bar "all racial discrimination, private as well as public, in the sale or rental of property." Jones v. Alfred H. Mayer Co., 392 U.S. 409, 413 (1968). As a § 1982 claim may be supported by merely showing the fact of discrimination, most racial discrimination claims prosecuted by private action have been brought under that section.
While sex-based discrimination is not prohibited by section 1982, the same advantages may be obtained through sections 1983 and 1985(3) if creative investigation is used to show that the landlord acted under color of law201 or as part of a conspiracy.202

In California state courts, the most advantageous statute for large punitive awards is the Unruh Act. In addition to providing for actual damages, there may be statutory damages of at least $250 and up to treble damages, as well as attorney's fees for each "offense . . . suffered by any person denied the rights provided in section 51 . . . ."203 Moreover, the possibility of additional punitive damages when the defendant landlord is "guilty of oppression, fraud, or malice"204 can greatly increase the plaintiff's recovery. In a clear case of discrimination, all that must be proved is the wrongful intent to discriminate.205 The California Supreme Court has recognized that statutory damages provisions do not preclude additional punitive damages when appropriate.206

C. Procedural Concerns

Although most plaintiffs are primarily concerned with the remedial goals of specific relief and compensation, the procedural concerns of cost, time, and effectiveness may nonetheless limit the choice of statutory remedy.

1. Cost

The cost of seeking a remedy is a major concern to a large portion of potential plaintiffs inasmuch as most of these women are in low to middle income groups.207 For these plaintiffs, the agencies may provide reasonable relief. Neither HUD nor the FEPC charges for in-

201. See notes 159-66 supra and accompanying text.
202. See notes 143-46 supra and accompanying text.
203. CAL. CIV. CODE § 52(a) (West Supp. 1977).
204. Id. § 3294 (West 1973) provides:

In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.


vestigatory or conciliatory efforts. Where obvious discrimination is present and the complainant presents the hearing officer with the information necessary for easy investigation, the FEPC may obtain the desired housing. 208

A civil action may be brought for a nominal fee in the small claims court. 209 The need for an attorney is eliminated, 210 but acting without counsel will be effective only if plaintiff is articulate or especially well prepared to present the legal issues. Aside from the limited relief, 211 the most serious drawback is the denial to plaintiff of the right of appeal. 212

In a conventional civil action, the financial burden of bringing an action may be shifted to the defendant through the inclusion of costs 213 and attorney's fees in the award. Moreover, in actions brought under title VIII, a court-appointed attorney will be provided where appropriate. 214 Where plaintiff retains private counsel, attorney's fees may be

208. While the FEPC has the power necessary to obtain the landlord's compliance, this power is used only where the evidence of discrimination is clear. Moreover, the FEPC has increasingly shown a reluctance to find sufficient evidence of discrimination. In the period 1963-74, the FEPC found no discrimination in 35% of the complaints, but in the period 1973-74, it found no discrimination in 54% of the complaints. FEPC REP. JULY 1, 1972-JUNE 30, 1974, at 34 (Table 12: Housing Cases Closed: Type of Dispositions) (1975). The likelihood of obtaining the housing is even less through HUD than through the FEPC. See notes 220-23 infra and accompanying text.

209. The fee is $2 for filing or for mailing a copy of the claim, and $1.50 for issuance of a writ of execution. CAL. CIV. PROC. CODE § 118.6 (West Supp. 1977); CAL. GOV'T CODE § 72065 (West 1976).

210. Representation by an attorney is not permitted, although an attorney may advise a party either before or after commencement of the action. CAL. CIV. PROC. CODE § 117.4 (West Supp. 1977).

211. Damages are limited to $750 and injunctive relief is unavailable. Id. § 116.2.

212. Id. § 117.8.

213. CAL. CIV. PROC. CODE §§ 1031 and 1032 (West Supp. 1977) provide that the prevailing party, whether plaintiff or defendant, is entitled to costs in both municipal and superior courts under specified conditions.

FED. R. CIV. P. 54(d) provides: "Except when express provision is made either in a statute of the United States or in these rules, costs shall be allowed as a matter of course to the prevailing party, unless the court otherwise directs." Note that 42 U.S.C. § 3612(c) (1970) limits an award of costs to a prevailing plaintiff whereas in an action brought under Civil Rights Acts subject to rule 54(d), the defendant also may be awarded costs.

In federal court, costs are limited to court fees, such as filing fees, service-of-process fees, and witness fees. C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 2666 (1973). In California, costs include deposition and jury fees as well. CAL. CIV. PROC. CODE §§ 1032a, 1032.5 (West 1972).

214. 42 U.S.C. § 3612(b) (1970) provides in part:

Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commence-
recovering if plaintiff is not financially able to bear the cost.\textsuperscript{215} While courts have been quick to find such inability,\textsuperscript{216} recovery of attorney's fees under sections 1983 and 1985(3) is potentially more limited.\textsuperscript{217} The Unruh Act allows recovery of attorney's fees.\textsuperscript{218}

\begin{quote}
...ment of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State . . . may do likewise . . . .
\end{quote}

\textit{Id.}

\textsuperscript{215} \textit{Id.} § 3612(c).

\textsuperscript{216} Adoption of indigency as the test would summarily preclude recovery of any fees by persons with the financial ability to own any kind of home or to seriously seek home ownership. . . . Therefore, the Court will consider financial inability within the special context of § 3612(c) to mean a homeowner or prospective homeowner of limited financial ability who clearly lacks the resources to fight a legal battle under the "anti-blockbusting" Act without endangering his status as a homeowner or potential homeowner.


The motive for this generosity was perhaps explained by the United States Supreme Court:

\begin{quote}
[MJost of the fair housing litigation conducted by the Attorney General is handled by the Housing Section of the Civil Rights Division, which has less than two dozen lawyers. Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits in which . . . the complainants act not only on their own behalf but also "as private attorneys general in vindicating a policy that Congress considered to be of the highest priority."

\end{quote}

\textsuperscript{217} Courts have traditionally been liberal in the awarding of attorney's fees to prevailing plaintiffs in actions brought under the Civil Rights Acts. The rationale has been thus explained:

\begin{quote}
The violation of an important public policy involves little by way of actual damages, so far as a single individual is concerned, or little in comparison with the cost of vindication, as the case at bar illustrates. If a defendant may feel that the cost of litigation, and, particularly, that the financial circumstances of an injured party may mean that the chances of suit being brought, or continued in the face of opposition, will be small, there will be little brake upon deliberate wrongdoing. In such instances public policy may suggest an award of costs that will remove the burden from the shoulders of the plaintiff seeking to vindicate the public right.

\textit{Knight v. Aucilleo, 453 F.2d 852, 833 (1st Cir. 1972). See also Newman v. Piggie Park Ent., 390 U.S. 400 (1968); Lee v. Southern Homes Sites Corp., 444 F.2d 143 (5th Cir. 1971).}
\end{quote}

The decision in Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240 (1975) may hinder plaintiffs from recovering attorney's fees. The Court there held that a prevailing litigant is not entitled to attorney's fees absent statutory provision. So long as the plaintiff prevails under title VIII, \textit{Alyeska} will pose no obstacle, inasmuch as § 3612 includes the necessary provision. Rios v. Steamfitters Local 638, 400 F. Supp. 993 (S.D. N.Y. 1975). Despite the absence of statutory authority, it may still be possible to recover the fees. In Morris v. Board of Educ., 401 F. Supp. 188 (D. Del. 1975), attorney's fees were awarded where a black teacher was not retained because of racial discrimination and the defendant conducted a bad faith defense. \textit{Alyeska} was distinguished; the defendant "knew that the position taken by him in defense of this case was meritless." \textit{Id.} at 215.

\textsuperscript{218} \textsc{Cal. Civ. Code} § 52(a) (West Supp. 1977).
2. Time

A major concern of a plaintiff who desires to rent a disputed unit is the ability to secure a swift remedy. If such a remedy is unavailable, the unit will be rented to someone else, and the plaintiff may have to rent another dwelling or continue in temporary quarters, either of which may be expensive or inconvenient.

Although section 3614 provides for assignment for hearing "at the earliest practicable date," the administrative action through HUD has not been given the same urgency. Because HUD has no authority to obtain a temporary restraining order or injunction, the unit cannot be kept available until the case is settled. HUD has thirty days in which to secure voluntary compliance from the landlord, but this may be too long to prevent an innocent tenant from taking possession. Further delay may result when the state wherein the complaint arose has "substantially equivalent" rights and remedies. HUD must then refer the complaint to the appropriate local agency for resolution and only when that agency fails to commence proceedings within thirty days may HUD undertake its own conciliation efforts. If HUD cannot obtain a conciliation agreement within thirty days, the aggrieved person then has thirty days in which to file a complaint in district court. Thus, it is apparent that use of HUD to obtain specific relief is likely to prove

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219. Section 3612(a) protects the innocent lessee and provides in part:

That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected. 42 U.S.C. § 3612(a) (1970). This provision applies to actions brought under § 3610 as well, since § 3610(d) makes § 3610 actions "subject to the provisions of § 3612."

220. Id. § 3614 provides: "Any court in which a proceeding is instituted under section 3612 or 3613 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited."

221. Id. § 3610(c) provides in part:

Whenever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed which appears to constitute a violation of such . . . law, and the Secretary shall take no further action . . . if the appropriate . . . official has, within thirty days . . . commenced proceedings . . . .

California's fair housing laws have been tentatively recognized to be substantially equivalent to the federal fair housing laws. 24 C.F.R. § 115.12 (1977).

222. 42 U.S.C. § 3610(d) (1970). There is a split in the jurisdictions as to whether the thirty-day period is tolled until notification is received from HUD of failure to obtain compliance, if this period is longer than 180 days from the date of the discriminatory act. See notes 238-40 infra and accompanying text.
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frustrating, since the potential delays inherent in HUD procedures make immediate satisfaction of the complaint unlikely.\textsuperscript{228}

Although sections 1983 and 1985(3) contain no provisions for expediting the court proceedings, the availability of temporary restraining orders and preliminary injunctions\textsuperscript{224} will effectively compensate for this deficiency. Further hastening of the resolution of the case is possible through consolidation of the initial hearing with the trial on the merits.\textsuperscript{225}

The FEPC has maintained a policy of giving priority to housing cases,\textsuperscript{226} since the administrative action was devised to procure compliance cheaply and efficiently:

In providing an administrative remedy for housing discrimination the Legislature undertook to make sure that individual actions did not become burdened with procedural technicalities.

To achieve this end the FEPC established procedures that are as simple and uncomplicated as possible. Complaints are drafted by laymen; the commission informally attempts to eliminate discriminatory practices before instituting formal accusations; the commission, on a finding of discrimination, may fashion remedies both to correct unique cases of such practice as well as to curb its general incidence.\textsuperscript{227}

3. Effectiveness

It is finally necessary to determine which statutes are most effective in achieving the complainant's remedial goals. From all standpoints, the procedures employed by HUD have the least potential for success. Not only are delays and inefficiency built into the system, but HUD lacks any enforcement powers.\textsuperscript{228} Furthermore, if actions are pending under both sections 3610 and 3612,\textsuperscript{229} the district court must continue

\textsuperscript{223} The success record of HUD has been less than satisfactory. In 1971, for example, of 1,570 complaints, there were only 351 completed conciliations, 204 of which were successful. Chandler, \textit{Fair Housing Laws: A Critique}, 24 Hastings L.J. 159, 190-91 (1973).

\textsuperscript{224} Fed. R. Civ. P. 65.

\textsuperscript{225} Id. 65(a)(2). In California, consolidation is provided for in Cal. Civ. Proc. Code § 1048(a) (West Supp. 1977), which gives the court discretion to order consolidation "of any or all the matters in issue in the actions . . . as may tend to avoid unnecessary costs or delay."

\textsuperscript{226} Interview with Leonora Stopol, Attorney, FEPC, in Los Angeles (July 11, 1975).


\textsuperscript{228} See notes 221-23 supra and accompanying text.

the civil case if it "believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement." Thus, HUD's procedural delays can be avoided only by pursuing civil remedies exclusively. Moreover, the initiation of a civil action with its attendant bad publicity and costs for defendant will encourage speedy settlement.

In contrast, the FEPC has broader powers than HUD. The FEPC has the power to seek a temporary restraining order on behalf of the complainant as soon as sufficient evidence of discrimination is determined to exist. It can also make findings of fact and issue cease and desist orders requiring the landlord to make a dwelling available or to respond in damages. Seeking relief through the FEPC, however, has its drawbacks. The complainant must waive all rights under the Unruh Act, and must accept either a promise of housing (which may never be fulfilled) or monetary compensation; the complainant is unlikely to obtain both unless they are included in the settlement agreement.

The primary remedial advantage of a civil action is the potential for a damage award. Where plaintiff obtains a verdict, monetary compensation is more likely to be awarded in addition to injunctive relief, particularly where counsel can sensitize the fact-finder to the cost of finding alternative shelter and the mental anguish of arbitrary refusal.

230. Id. § 3612(a).
233. Id. § 35738 (West Supp. 1977).
234. Id. § 35731 (West 1973). The statute provides in part: "However, no such complaint [by the FEPC] may be made or filed unless the person claiming to be aggrieved waives any and all rights or claims that he may have under Section 52 of the Civil Code and signs a written waiver to that effect." Id. At the time that the complainant signs the waiver, FEPC practice is to inform her regarding the waived rights. Nonetheless, the complainant may not appreciate the implications of such a waiver, particularly when unassisted by counsel. Note, however, that the waiver is directed only to Unruh Act rights; the complainant is not foreclosed from bringing a federal action.
235. Interview with Leonora Stopol, Attorney, FEPC, in Los Angeles (March 1, 1976). For the hierarchy of relief established by the Rumford Act, see note 191 supra. This hierarchy is also followed when the FEPC seeks a voluntary settlement agreement. Accordingly, few settlements involve both injunctive and monetary relief. Id.
236. Moreover, the likelihood of recovering just monetary relief through the FEPC is slight. In 1972-73, of 173 housing cases closed, only 35 involved a monetary settlement; in 1973-74, of 115 housing cases closed, only 5 involved a monetary settlement. FEPC REPORT, JULY 1, 1972—JUNE 30, 1974, at 37 (Table 16: Housing Cases Closed by Corrective Action: Type of Corrective Action) (1975).
D. The Statute of Limitations

The running of the limitations period for all statutes herein considered begins on the date on which the discriminatory act occurred. The period for title VIII actions is 180 days, but computation of the period is complicated when HUD conciliation is invoked. HUD has thirty days to secure compliance; upon expiration of that period, the complainant has thirty days in which to bring an action in district court. Considerable confusion exists over the relationship between this latter thirty-day period and the usual limitations period of 180 days.

Some courts have ruled that the civil action must be filed within 180 days of the discriminatory act, irrespective of when the HUD action was commenced or when HUD notified the complainant of failure to obtain compliance. Other courts have ruled that the complainant has 180 days in which to commence the HUD action and 60 days thereafter to file. Still other courts have ruled the 180 day period irrelevant, so long as the district court action is commenced within thirty days following notice of HUD's failure to obtain compliance.

The limitations period for sections 1983 and 1985(3) is determined by reference to the most closely related statute of the state where the cause of action arose. This often results in a much longer period than is possible under title VIII. In California, for example, the period is three years. The limitations period is probably three years for the Unruh Act also, and a maximum of 120 days for the Rumford

237. Id. § 3610(d).
241. Smith v. Cremins, 308 F.2d 187 (9th Cir. 1962).
242. Willis v. Reddin, 418 F.2d 702 (9th Cir. 1969); Smith v. Cremins, 308 F.2d 187 (9th Cir. 1962); Williams v. Harvath, 45 Cal. App. 3d 422, 119 Cal. Rptr. 413 (1975).
243. The applicable statute of limitations depends upon whether the Unruh Act provides for a liability created by statute or for a penalty. If a liability is created by statute, the limitations period is three years. CAL. CIV. PROC. CODE § 338(1) (West Supp. 1977). For a penalty, the limitations period is one year. Id. § 340.
244. No court has yet determined whether the one year or the three year period governs Unruh Act actions. While the remedy provided in the predecessor statute to the Unruh Act was once termed a penalty, Greenberg v. Western Turf Ass'n, 140 Cal. 357, 364 73 P. 1050, 1052 (1903), other analogous provisions have been held to have a three year period. Culver v. Bell & Lofland, 146 F.2d 29 (9th Cir. 1944) (additional recovery
IV. CONCLUSION

It is apparent that there are real differences in the efficacy and potential remedies of each of the actions previously described. For those complainants willing to seek redress only through an agency, where little cost and effort are required, the FEPC action is preferable to HUD inasmuch as an FEPC action may result in injunctive or monetary relief; HUD can only pursue unenforceable conciliation efforts.

Of the civil actions, the best overall remedy available in California is an action brought pursuant to the Unruh Civil Rights Act since its purview includes the widest range of defendants and conduct and provides for money damages as well as injunctive relief. However, where assurance of attorney's fees to a prevailing plaintiff is important, a title VIII cause of action should be pursued. Where possible, sections 1983 or 1985(3) should be pleaded as an alternative to section 3612 of title VIII.

As awareness of the illegality of discrimination is heightened, women will be encouraged to charge a landlord with a violation of fair housing laws instead of merely searching elsewhere for housing. As a consequence, landlords too will recognize their vulnerability to legal action if they discriminate on the basis of sex. The result of this process will be an equal opportunity for all to housing.

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