

## **Landlord May Refuse to Participate in Section 8 Program by Matthew M. Gorman, Esq. and Anthony Marinaccio, Esq.**

In a case with important and lasting implications for landlords, the California Courts of Appeal has found that a landlord may legally refuse to participate in the Section 8 Program.<sup>1</sup> This important case interprets the California Fair Employment and Housing Act (“FEHA”), and in particular, California Government Code Section 12955 which prohibits discrimination based upon source of income. The Court of Appeal’s decision ends several years of conflict between tenant advocacy groups and landlords who disputed whether FEHA prohibited a landlord from refusing to accept Section 8 rental assistance payments.

In this case, *Sabi v. Sterling*, the resident was a fifty-two year old disabled widow who suffered from physical and psychological disabilities and received SSI from the Social Security Administration. She had lived in the same apartment in Santa Monica since 1987, but after her husband died in 2004, found that she would be unable to afford the apartment on her SSI. Subsequently, the resident applied for assistance under the Section 8 Program which provides rental assistance to eligible individuals. She was issued a Section 8 voucher and sought to fund a portion of her rent through Section 8.

However, the landlord refused to accept Section 8 payments. After attempting to require the landlord to accept her Section 8 voucher, she decided that she would remain in the apartment and pay for rent independently. ***In short, although the resident sued the landlord for refusing to accept Section 8 rental assistance, the Resident has remained at her apartment and has been paying rent without Section 8 rental assistance since that time.***

Section 12955(p) defines “source of income” as any lawful, verifiable income that is paid directly to a tenant or paid to a tenant’s representative. However, a landlord is not considered a representative of a tenant. In addition, and very important for reviewing applications, a landlord is allowed to make a written or oral inquiry concerning the level or source of income.

Although familiar to many landlords, the Section 8 Program provides tenant-based assistance when a tenant finds a suitable unit. Although a federal program under the Department of Housing and Urban Development (“HUD”), state or local government entities called public housing agencies (“PHAs”) administer the program, including issuing rent checks to landlords. Partial or complete rental payments are processed by HUD, through the PHA. When approved, the resident enters into a rental agreement with the PHA, and the PHA enters into an agreement with the landlord. In this manner, all parties are contractually bound to the Section 8 requirements.

In *Sabi v. Sterling*, the Court clarified that a PHA does not pay tenants the voucher amount, but merely *issues* vouchers to tenants notifying them of their eligibility to receive Section 8 assistance. Once a tenant submits a voucher to a landlord the PHA pays the voucher amount directly to the landlord and thereby does not pass through the resident. Because the voucher is not paid directly to the tenant but to the landlord, the Section 8 assistance payments would not be included in income directly paid to the tenant.

Further, the Court found that a landlord is not acting as a representative of a tenant when he or she receives a Section 8 rental assistance payment from the PHA. In sum, the Court found that Section 8 rental assistance is not “source of income” for purposes of FEHA.

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***Consequently, the Court found that refusing to accept Section 8 vouchers from potential and current tenants would not constitute unlawful discrimination under FEHA.***

In addition, the resident alleged that the landlord violated the Unruh Civil Rights Act which requires that a landlord make reasonable accommodations in rules, policies, practices, or services when the reasonable accommodation may be necessary to allow disabled individuals equal opportunities to enjoy the premises.<sup>2</sup> Federal law has a similar reasonable accommodation provision in the FEHA<sup>3</sup>. The Resident claimed that, by refusing to accept Section 8 assistance payments, the landlord interfered with her use and enjoyment of her apartment because she would be unable to afford her rent without Section 8 rental assistance. She argued such refusal violated the Unruh Civil Rights Act and that her awareness that her landlord would not accept Section 8 rental assistance interfered with her right to use and enjoy the premises.

The Court dismissed her argument because she was still living in her apartment and was able to enjoy the premises. Although the issue of reasonable accommodation was left open by the Court, it tended to agree that it would have made a similar decision on that issue.

This case has important implications for landlords who do not wish to participate in the Section 8 Program. Up to this time, there was some concern that it would be unlawful discrimination to refuse to accept Section 8 rental assistance. However, the Court has clarified that refusing to accept Section 8 rental assistance does not constitute unlawful discrimination. Consequently, a landlord may legally refuse to rent to someone who is participating in the Section 8 program.

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*The foregoing discussion is intended for information purposes only and is not intended to be considered legal advice or legal opinion. Readers are cautioned to consult an attorney of their own selection with respect to any particular situation.*

<sup>1</sup> *Sabi v. Sterling*, 2010 WL 1382333 (April 8, 2010); <sup>2</sup> Civil Code § 54.1; <sup>3</sup> 42 U.S.C. § 3604(f)(3)(B).

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<sup>2</sup> Civil Code § 54.1

<sup>3</sup> 42 U.S.C. § 3604(f)(3)(B)