

# Know Your Disability Rights in California: Rental Housing & COVID-19

## What rights do I have as a disabled tenant in California?

The California Fair Employment and Housing Act (FEHA) and the federal Fair Housing Act (FHA) prohibit discrimination in rental housing based on disability.<sup>1</sup> A landlord or management company cannot:

- refuse to rent to people with disabilities<sup>2</sup>
- advertise a preference for nondisabled tenants<sup>3</sup>
- ask prospective tenants if they have a disability<sup>4</sup>
- charge higher rent or offer poorer quality units to people with disabilities<sup>5</sup>
- refuse to make reasonable accommodations that are necessary for a disabled tenant to have an equal opportunity to use and enjoy the premises<sup>6</sup>
- refuse to allow disabled tenants to make reasonable changes to their unit, at their own expense, that are necessary for them to fully enjoy the property<sup>7</sup>
- harass or retaliate against tenants with disabilities<sup>8</sup>
- have other policies or practices that deny access to housing for people with disabilities<sup>9</sup>

## What is a “disability” under state and federal housing laws?

Under California law, a “disability” is a physical or mental impairment that limits a major life activity.<sup>10</sup> This means the impairment makes it more difficult to do physical, mental, or social activities, to work, or to do other activities.<sup>11</sup>

Disability” includes having a history of disability, including a history of special education.<sup>12</sup> “Disability” includes being regarded or treated as having a disability, or as having a condition that may become a disability.<sup>13</sup> Disability also includes being associated with someone with a disability.<sup>14</sup> The definition of “disability” under federal housing law is similar, but the limitation in a major life activity must be “substantial.”<sup>15</sup>

California housing law also incorporates the definitions of “disability” from the Americans with Disabilities Act (ADA) as a minimum standard.<sup>16</sup> This means that a person

regarded as having an impairment is protected from disability discrimination, regardless of whether there is any limitation.<sup>17</sup>

Examples of disabilities under California housing law include:

Psychiatric Disabilities

- Clinical Depression
- Bipolar Disorder
- Post-Traumatic Stress Disorder (PTSD)
- Obsessive Compulsive Disorder

Sensory Disabilities

- Being Blind
- Being Deaf or Hard of Hearing

Mobility Disabilities

- Cerebral Palsy
- Partially or Completely Missing Limbs

Other Disabilities

- Cancer
- Intellectual Disability
- Autism
- HIV/AIDS
- Autoimmune Diseases
- Diabetes
- History of Receiving a Transplant<sup>18</sup>

These are just examples – other conditions may also be disabilities.

**Does a medical condition that puts me at higher risk for serious outcomes from COVID-19 count as a “disability”?**

The CDC has identified certain medical conditions that place an individual at higher risk of severe illness from COVID-19. Virtually all of these medical conditions are also “disabilities” under California housing law.<sup>19</sup>

This means that a tenant who is at higher risk from COVID-19 due to a pre-existing medical condition is generally protected from disability discrimination in housing, and is entitled to any needed reasonable accommodations.

**Are there any exceptions?**

There are a few exceptions. Being pregnant is considered a risk factor for COVID-19, but by itself pregnancy is usually not considered a “disability” under California housing

law.<sup>20</sup> Fortunately, pregnant tenants are also protected from pregnancy discrimination in housing,<sup>21</sup> must be treated equally to other nonpregnant tenants, and are entitled to receive needed reasonable accommodations.<sup>22</sup>

Similarly, being over 65 is a risk factor for COVID-19 but is not a “disability.” Older tenants are protected from age discrimination by state law,<sup>23</sup> and must be treated equally to younger tenants.

Being higher weight (often referred to as “obesity”) is considered a risk factor for COVID-19 but is not automatically a “disability” under California law as currently construed by courts. In order to be considered a disability, a higher weight plaintiff must show that their weight has some kind of “physiological cause,” such as by presenting a doctor’s opinion that their weight has a genetic cause.<sup>24</sup> A tenant who has a disability due to weight is protected from disability discrimination in housing and is entitled to any needed reasonable accommodations.

### **If I have COVID-19 am I protected from disability discrimination under California housing law? What if it is a mild or asymptomatic case?**

A tenant with COVID-19 (or perceived as having COVID-19) is protected against disability discrimination. It is unlawful for a landlord or management company to discriminate against a tenant based on an actual or perceived “impairment,” even if the impairment does not limit a major life activity.<sup>25</sup> An “impairment” includes a “physiological disease, disorder [or] condition” that affects one or more specified body systems.<sup>26</sup> COVID-19 is an impairment because it affects many bodily systems, including the respiratory, cardiovascular, and digestive systems.<sup>27</sup>

A tenant with COVID-19 is also entitled to reasonable accommodations, so long as the COVID infection limits a major life activity.<sup>28</sup> In most or virtually all cases, COVID-19 will limit major life activities. Because COVID-19 is so contagious, having the disease limits major life activities such as interacting with others, functioning socially in everyday life, attending school, traveling, buying groceries, and working.<sup>29</sup> And because of the way that the virus interacts with the body, having the disease appears to limit the major bodily function of normal cell growth, even in mild or asymptomatic cases.<sup>30</sup>

A tenant with a history of COVID-19 that limited a major life activity is also protected from discrimination and entitled to reasonable accommodation.<sup>31</sup>

Hypothetically, if the person with COVID-19 has a mild or asymptomatic case and recovers quickly, the landlord or management company might argue that the illness is too minor and limited in duration to “count” as the kind of disability that entitles the tenant to reasonable accommodations.<sup>32</sup> That would mean that the landlord or management would not have to provide reasonable accommodations to you (but would still not be allowed to discriminate against you because you have COVID-19). There are

no court cases yet about whether COVID-19 infection is an impairment that limits a major life activity.

### **What about “long haulers”? What if I still have problems from having had COVID-19 in the past?**

If you still have physical or mental symptoms from having had COVID-19, and those symptoms make it more difficult for you to do physical, mental, or social activities, to work, or to do other activities, then you are protected as having a “disability” under California law.

### **What are some examples of reasonable accommodations in housing? What accommodations can I request during the COVID-19 pandemic?**

There is no single list of all possible reasonable accommodations in housing during COVID-19. Many accommodations that were needed prior to COVID-19 are still needed. Others are needed due to the pandemic and how it affects the lives of disabled tenants. Some examples include:

- Additional time to come into compliance with necessary rules
- Scheduling the payment of rent to coincide with benefit payments
- Flexibility or additional time with scheduling (e.g. more time for an inspection, more time to provide paperwork)
- A closer parking spot and/or an accessible parking spot
- A parking spot for a personal care attendant
- Moving to a more accessible vacant unit
- Modification of visiting rules to accommodate a caregiver or support person
- A video inspection rather than an in-person inspection
- A video showing rather than an in-person showing (when the landlord wants to rent or sell the unit)
- Communicating by email or telephone, and signing lease documents digitally
- A clear face mask<sup>33</sup> for necessary face-to-face communication with a tenant who relies on lipreading
- Permission to have an animal needed for disability, including an emotional support animal
- Permission to have delivery items brought up directly to the unit, rather than collected in the lobby
- Permission to send a friend or caregiver to collect delivery items
- Permission to use a less-frequently-used service or freight elevator
- Posting and implementation of COVID protocols to protect high-risk tenants, with case-by-case modifications if needed by other disabled tenants
- Permission to pass through common areas without a mask (for a tenant who cannot wear a mask reliably or at all due to an intellectual or developmental disability or another disability)

- Flexibility and adjustments for a tenant who struggles to follow COVID-19 protocols such as social distancing due to disability

### **How do I request a reasonable accommodation?**

Requests for reasonable accommodations can be made in a variety of ways. Some general guidelines are:

- **Make it in writing.** Even though it is not required, it is usually best to make requests in writing. Written requests are generally easier for the person receiving the request, are more likely to be taken seriously, and they create a record in case of any confusion or later dispute.
- **Be polite.**
- **Keep it clear and simple.** Requests should clearly say what accommodations are requested and why they are needed. Minimize unnecessary details to keep the request simple and easy to understand.
- **Make sure it gets to the right place.** Requests should usually go to the landlord, the property management company, or both. Follow up after sending the request to be sure that it was received.
- **Keep track.** Make note of the requests that were sent, who the requests were sent to, what their response was, and any further follow up by the tenant. It is helpful to include the dates and times in your notes. Sending written requests by email can make it easier to keep track of these details.

### **How will my landlord respond to a request for reasonable accommodation?**

A landlord should respond to a request for reasonable accommodations by either: (1) granting the accommodation; or (2) engaging in an informal interactive discussion with tenants about the nature of the disability and what accommodations are needed. A landlord is not required to engage in an interactive process under federal housing law,<sup>34</sup> but it is good practice because it allows a landlord an opportunity to explore ways to address the need for accommodation. Additionally, if a court determines that an accommodation was necessary and available, the landlord's failure to engage in an interactive process may be evidence that the landlord violated the law.<sup>35</sup>

A landlord may respond to a request for accommodation by asking for reliable information that demonstrates the existence of disability, describes the requested accommodation, and shows the need for the requested accommodation.<sup>36</sup> Such information should be kept confidential by the landlord and only shared with people who need the information to make or assesses a decision to grant the request.<sup>37</sup>

### **What if someone close to me has a disability?**

Tenants are also protected from being discriminated against for being associated with someone with a disability.<sup>38</sup> That means you cannot be discriminated against because a

roommate, partner or relative has or is regarded as having a disability, including COVID-19.

### **What can I do if I believe I have experienced disability discrimination?**

Tenants have several options for handling disability discrimination in housing. It might be possible to resolve instances of discrimination informally by discussing it with the landlord. If tenants do not want to or are unable to resolve issues of discrimination through informal means, the law provides several options for tenants, including filing an administrative complaint or a lawsuit. You should consult with a local legal services provider (use <https://www.LawHelpCA.org>) or a private attorney to explore your options.

Where to file an administrative complaint depends on which laws you believe were violated.

- **California law.** Tenants may file an administrative complaint with the California Department of Fair Employment and Housing (DFEH) if they believe they have experienced housing discrimination that violates California law.<sup>39</sup>
- **Federal law.** Tenants may file administrative complaints about discrimination that violates the FHA with:
  - The Housing and Urban Development Office of Fair Housing and Equal Opportunity (FHEO)<sup>40</sup>; and/or
  - The Department of Justice Civil Rights Division (DOJ).<sup>41</sup>

Tenants who believe that they have experienced discrimination that violates both California and federal law can submit an administrative complaint to all three agencies. However, because DFEH and HUD accept broader complaints than DOJ, and both DFEH and HUD may respond in different ways, it is often a good idea to file a complaint with both DFEH and HUD to maximize your opportunities to get the solution that you are looking for.

Administrative complaints can be filed **up to one year after the alleged discrimination** occurred or ended.<sup>42</sup>

Instead of or in addition to administrative complaints, tenants can file a lawsuit in court **within two years after the alleged discrimination** occurred or ended.<sup>43</sup> That time period may be paused or extended while an administrative complaint is pending.<sup>44</sup> That means that filing an administrative complaint may also extend the time you have to bring a lawsuit.

### **What other rights do I have as a tenant during the pandemic?**

The COVID-19 Tenant Relief Act of 2020, which was amended in January 21, 2021<sup>45</sup>, provides many protections for tenants related to the COVID-19 pandemic. Under the

Act's protections, you cannot ever be evicted for unpaid rent owed between March 1, 2020 and August 31, 2020 if you give your landlord signed statements that you are unable to pay rent due to COVID-19 related financial hardship.<sup>46</sup> For unpaid rent owed between September 1, 2020 and June 30, 2021, you cannot be evicted before July 1, 2021 if you give your landlord signed statements that you are unable to pay rent due to COVID-19 related financial hardship.<sup>47</sup> From July 1, 2021 onward, you can avoid eviction for unpaid rent owed between September 1, 2020 and June 30, 2021 if you pay at least 25% of the rent that was due.<sup>48</sup> That means, if you could not pay your rent between September 1, 2020 and June 30, 2021 because you experienced COVID-19 related hardship and you provided timely signed statements to your landlord, you cannot be evicted as long as you pay 25% of the rent that was due during those months. Beginning August 1, 2021, landlords may seek repayment of unpaid rent in small claims court.<sup>49</sup>

Another new law gives many California tenants additional rights. If you **or** another roommate in your unit have been renting a covered unit for at least **24 months**, or if you **and** all of your other roommates have been renting a covered unit for at least **12 months**:

- Your landlord may not evict you without “just cause.”<sup>50</sup> “Just cause” means a permitted reason such as you failed to pay the rent, you broke important rules in the lease, or if a court or government agency orders that the unit is too dangerous for anyone to live there.<sup>51</sup>
- If the “just cause” is not your fault, you are entitled to one month’s rent as relocation assistance.<sup>52</sup>
- Your landlord may not increase the rent more than (A) 5% + the local cost of living increase or (B) 10%, whichever is lower.<sup>53</sup>

These protections are in place until at least January 1, 2030.

- Units that are not covered or are not fully covered by the new law include those built in the last 15 years, certain single-family homes and condominiums, two-unit owner-occupied properties, and categories of specialty housing such as dormitories, hotels, and care facilities.
- This law may not apply if you live somewhere with local tenant protection laws.<sup>54</sup> Check with your local housing authority or legal services provider (use <https://www.LawHelpCA.org> to locate) if you have questions about whether your unit is covered or what rights you may have in the event that your landlord seeks to evict you.

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<sup>1</sup> The Americans with Disabilities Act (ADA) also prohibits discrimination in public housing and in the public areas of private housing. 42 U.S.C. §§ 12132, 12182(a).

- <sup>2</sup> Cal. Gov. Code § 12955(a); 42 U.S.C. § 3604(f); *see also* Cal. Civ. Code § 51.5(a).
- <sup>3</sup> Cal Gov Code § 12955(c).
- <sup>4</sup> Cal. Gov. Code § 12955(b); 24 C.F.R. § 100.202(c).
- <sup>5</sup> Cal. Gov. Code § 12955(a); 42 U.S.C. § 3604(f); *see also* Cal. Civ. Code § 51.5(a).
- <sup>6</sup> Cal. Gov. Code § 12955.6; 42 U.S.C. § 3604(f); *see also* Cal. Civ. Code § 54.1(b)(3)(B).
- <sup>7</sup> Cal. Gov. Code § 12955.6; 42 U.S.C. § 3604(f); *see also* Cal. Civ. Code § 54.1(b)(1).
- <sup>8</sup> Cal. Gov. Code § 12955(a), (f).
- <sup>9</sup> Cal. Gov. Code § 12955(k), (l).
- <sup>10</sup> Cal. Gov. Code §§ 12926(j)(1), (m)(1), 12955.3.
- <sup>11</sup> Cal. Gov. Code § 12926(j)(1), (m)(1).
- <sup>12</sup> Cal. Gov. Code § 12926(j)(2), (3), (m)(2), (3).
- <sup>13</sup> Cal. Gov. Code § 12926(j)(4), (5), (m)(4), (5).
- <sup>14</sup> Cal Gov Code § 12955 (m).
- <sup>15</sup> 42 U.S.C. § 3602(h) (FHAA); *see also* 42 U.S.C. § 12102 (ADA).
- <sup>16</sup> Cal. Gov. Code § 12926(n) (incorporating ADA definitions as a floor).
- <sup>17</sup> 42 U.S.C. § 12102(3) (expanded regarded as prong).
- <sup>18</sup> Cal. Gov. Code § 12926.1(c); Cal. Gov. Code § 12926(n); 28 C.F.R. § 35.108(d)(2)(iii) (ADA “predictive assessments”); *Fraihat v. United States Immigration & Customs Enf’t*, No. EDCV 19-1546 JGB (SHKx), 2020 U.S. Dist. LEXIS 72015, at \*\*50-51 & n.21 (C.D. Cal. Apr. 20, 2020).
- <sup>19</sup> *See* CDC, People with Certain Medical Conditions (updated Oct. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>; *and compare* *Fraihat*, 2020 U.S. Dist. LEXIS 72015, at \*\*50-51 & n.21.
- <sup>20</sup> Pregnancies that are high-risk might be considered disabilities, and pregnancy-related conditions may also be considered disabilities. *See Sanchez v. Swissport, Inc.*, 213 Cal. App. 4th 1331, 1340-41 (2013).
- <sup>21</sup> Cal. Gov. Code §§ 12955, 12955.2; 42 U.S.C. § 3602(k).
- <sup>22</sup> *See* Cal Gov Code § 12955.8 (the prohibition against discrimination covers actions as well as inactions that institutionally or unintentionally discriminate on the basis of familial status). A failure to make needed accommodations can constitute discriminatory inaction. *Cf.* Cal Gov Code § 12955.1 (“For purposes of Section 12955, “discrimination” includes, but is not limited to, a failure to design and construct a covered multifamily dwelling in a manner that allows access to, and use by, disabled persons” by providing certain minimum features.)
- <sup>23</sup> Cal. Civ. Code §§ 51, 51.2(a).
- <sup>24</sup> *See Cornell v. Berkeley Tennis Club*, 18 Cal. App. 5th 908, 932, 227 Cal. Rptr. 3d 286, 305 (2017).
- <sup>25</sup> Cal. Gov. Code § 12926(m)(4), (5), (n); 42 U.S.C. § 12102(3) (“regarded as” coverage); *see also Equal Employment Opportunity Comm’n v. BNSF Ry. Co.*, 902 F.3d 916, 924 (9th Cir. 2018); *see Cornell v. Berkeley Tennis Club*, 18 Cal. App. 5th 908, 928-29, 227 Cal. Rptr. 3d 286, 301-02 (Cal. Ct. App. 2017) (the passage of the ADAAA and its implementing regulations are developments that affect the interpretation of the ADA “and by extension the FEHA”).
- <sup>26</sup> Cal. Gov. Code § 12926(m)(1); *accord* 28 C.F.R. § 35.108(b)(1).
- <sup>27</sup> According to the CDC, “[a]s the pandemic unfolds, we are learning that many organs besides the lungs are affected by COVID-19 and there are many ways the infection can affect someone’s health.” Centers for Disease Control, Long-Term Effects of COVID-19, available at



<https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last accessed October 16, 2020). Most people with COVID-19 will experience respiratory and gastrointestinal symptoms. Complications from severe cases can involve: “pneumonia, hypoxemic respiratory failure/ARDS, sepsis and septic shock, cardiomyopathy and arrhythmia, acute kidney injury, and complications from prolonged hospitalization.” Centers for Disease Control, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last accessed October 16, 2020). “[Cardiovascular] conditions associated with COVID-19 include inflammation and damage to the heart muscle itself, known as myocarditis, or inflammation of the covering of the heart, known as pericarditis. These conditions can occur by themselves or in combination. Heart damage may be an important part of severe disease and death from COVID-19, especially in older people with underlying illness. Heart damage like this might also explain some frequently reported long-term symptoms like shortness of breath, chest pain, and heart palpitations.” Centers for Disease Control, Long-Term Effects of COVID-19, available at <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last accessed October 16, 2020).

<sup>28</sup> Cal. Gov. Code § 12926(m)(1).

<sup>29</sup> The CDC has warned that for people with a confirmed or suspected case of COVID-19 “it is important to stay home and away from other people.” See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html>. It is more difficult to work or engage in social activities if you must remain physically isolated from other people. Of course, the symptoms of the disease itself and any related complications, such as pneumonia, and the need for hospitalization and treatment may also limit major life activities.

<sup>30</sup> See 42 U.S.C. § 12102(2)(B); Markus Hoffman et al., *SARS-CoV-2 Cell Entry Depends on ACE2 and TMPRSS2 and is Blocked by a Clinically Proven Protease Inhibitor*, 181 Cell 271, 277 (Apr. 16, 2020); Roujian Lu et al., *Genomic Characterisation and Epidemiology of 2019 Novel Coronavirus: Implications for Virus Origins and Receptor Binding*, 395 Lancet 565, 573 (Feb. 22, 2020); Robert J. Mason, *Pathogenesis of COVID-19 from a Cell Biology Perspective*, 55 Eur. Respiratory J. 1, 1-2 (Mar. 16, 2020).

<sup>31</sup> Cal. Gov. Code § 12926(m)(3).

<sup>32</sup> *Rodriguez v. Amazon.com Servs.*, No. 5:19-cv-01984-SVW-SHK, 2019 U.S. Dist. LEXIS 231097, at \*6 (C.D. Cal. Dec. 17, 2019) (pneumonia); *Cenis v. Winco Holdings, Inc.*, No. 1:17-cv-00863-DAD-JLT, 2018 U.S. Dist. LEXIS 89301, at \*15 (E.D. Cal. May 25, 2018) (food poisoning); see also 29 C.F.R. § 1630.2(d)(1)(9) (transitory impairment lasting less than six months can still be substantially limiting); 29 C.F.R. Part 1630 App., § 1630.2(j)(1)(ix) (“[T]he duration of an impairment is one factor that is relevant in determining whether the impairment substantially limits a major life activity.”) (internal quotes and brackets omitted).

<sup>33</sup> Clear face masks are different from face shields. According to the CDC, “[c]lear masks or cloth masks with a clear plastic panel are an alternative type of mask” that facilitates interactions that would otherwise be impeded by a cloth mask. The CDC currently “does not recommend using face shields or goggles as a substitute for masks.” US Centers for Disease Control, Considerations for Wearing Masks, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html> (last accessed November 26, 2020).

<sup>34</sup> *Howard v. HMK Holdings, LLC*, 988 F.3d 1185, 1192 (9th Cir. 2021).

<sup>35</sup> See *id.*

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<sup>36</sup> U.S. Department of Justice Civil Rights Division and U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity, Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Modifications Under the Fair Housing Act (March 5, 2008), at 4, available at [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/reasonable\\_modifications\\_mar08.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/reasonable_modifications_mar08.pdf).

<sup>37</sup> *Id.* at 5.

<sup>38</sup> Cal Gov Code §§ 12955 (m); 12926(o).

<sup>39</sup> Cal. Gov. Code § 12980(a). A complaint can be filed at <https://www.dfeh.ca.gov/complaintprocess/#fileComplaintBody>.

<sup>40</sup> 42 U.S.C. § 3610(a). A complaint can be filed at [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint).

<sup>41</sup> A complaint can be filed at <https://civilrights.justice.gov>. Complaints about discrimination that violates the ADA can also be made to the DOJ.

<sup>42</sup> Cal. Gov. Code § 12980(b); 42 U.S.C. § 3610(a).

<sup>43</sup> Cal. Gov. Code § 12989.1; 42 U.S.C. 3613(a).

<sup>44</sup> *Id.*

<sup>45</sup> Office of Governor Newsom, Governor Newsom Signs Legislation to Extend Eviction Moratorium and Assist Tenants and Small Property Owners Impacted by COVID-19 (January 29, 2021), available at <https://www.gov.ca.gov/2021/01/29/governor-newsom-signs-legislation-to-extend-eviction-moratorium-and-assist-tenants-and-small-property-owners-impacted-by-covid-19/>.

<sup>46</sup> Cal. Code Civ. Proc. § 1179.03(g)(1).

<sup>47</sup> Cal. Code Civ. Proc. § 1179.03(g)(2)(A).

<sup>48</sup> Cal. Code Civ. Proc. § 1179.03(g)(2)(B).

<sup>49</sup> Cal. Code Civ. Proc. § 116.223.

<sup>50</sup> Cal. Civ. Code § 1946.2(a).

<sup>51</sup> Cal. Civ. Code § 1946.2(b).

<sup>52</sup> Cal. Civ. Code § 1946.2(d).

<sup>53</sup> Cal. Civ. Code § 1947.12(a).

<sup>54</sup> Cal. Civ. Code § 1946.2(g)