

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3077 SSA HB 1 (FILE 2) 8672

STATE FAIR HOUSING LAWS: TYPES OF DISCRIMINATION PROHIBITED

	RACE	RELIGION	COLOR	NATIONAL ORIGIN	ANCESTRY	CREED	SEX	MARITAL STATUS	PREGNANCY	PHYSICAL DISABILITY	AGE	PERSONAL APPEARANCE	SEXUAL ORIENTATION	FAMILY RESPONSIBILITY	MATRICATION	POLITICAL AFFILIATION	SOURCE OF INCOME	PLACE OF RESIDENCE	PLACE OF BUSINESS	BLINDNESS	MENTAL DISABILITY	
ALASKA	x	x	x	x			x	x	x													
CALIFORNIA	x	x	x	x			x	x	x	x												
COLORADO	x	x	x	x			x	x	x	x												
CONNECTICUT	x	x	x	x	x	x	x	x	x	x												
DELAWARE	x	x	x	x	x	x	x	x	x	x												
DIST. OF COL.	x	x	x	x	x	x	x	x	x	x				x	x	x	x	x	x	x	x	
GEORGIA																						
HAWAII																						
IDAHO	x	x	x	x	x		x	x	x	x												
ILLINOIS	x	x	x	x	x	x	x	x	x	x												x
IOWA	x	x	x	x	x	x	x	x	x	x												
KANSAS	x	x	x	x	x	x	x	x	x	x												
KENTUCKY	x	x	x	x	x	x	x	x	x	x												
MAINE	x	x	x	x	x	x	x	x	x	x												
MARYLAND	x	x	x	x	x	x	x	x	x	x												
MASSACHUSETTS	x	x	x	x	x	x	x	x	x	x										x		
MICHIGAN	x	x	x	x	x	x	x	x	x	x	x											
MINNESOTA	x	x	x	x	x	x	x	x	x	x							x					
MONTANA	x	x	x	x	x	x	x	x	x	x												
NEBRASKA	x	x	x	x	x	x	x	x	x	x												
NEVADA	x	x	x	x	x	x	x	x	x	x												
NEW HAMPSHIRE	x	x	x	x	x	x	x	x	x	x												
NEW JERSEY	x	x	x	x	x	x	x	x	x	x												
NEW MEXICO	x	x	x	x	x	x	x	x	x	x												
NEW YORK	x	x	x	x	x	x	x	x	x	x												
OHIO	x	x	x	x	x	x	x	x	x	x												
OREGON	x	x	x	x	x	x	x	x	x	x												
PENNSYLVANIA	x	x	x	x	x	x	x	x	x	x												
RHODE ISLAND	x	x	x	x	x	x	x	x	x	x												
SOUTH DAKOTA	x	x	x	x	x	x	x	x	x	x												
VERMONT	x	x	x	x	x	x	x	x	x	x												
VIRGINIA	x	x	x	x	x	x	x	x	x	x												
WASHINGTON	x	x	x	x	x	x	x	x	x	x												
WEST VIRGINIA	x	x	x	x	x	x	x	x	x	x												
WISCONSIN	x	x	x	x	x	x	x	x	x	x												

*The State Constitutions forbid discrimination in the sale or rental of property on the basis of race, color, creed, national ancestry and sex, in Indiana.

COMPILED BY: THE NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING (NCDIH), 6/3/76
 (Source: Prentice-Hall, Equal Opportunity in Housing Series, Section on State Laws)

x Indiana - race, rel., color, sex, handicap, natl. org. ancestry.

STATE CITATIONS

Alaska Statutes 1962, as amended. Title 18, Ch. 80, Articles 1-5.
California Fair Housing Act, Calif. Health and Safety Code, Sec. 35700 et seq.
Colorado 1963 Revised Statutes, Fair Housing Act of 1959, Ch. 69, Art. 7.
Connecticut General Statutes, Title 53, Ch. 939. Offenses Against the Person
Delaware Code Annotated, Ch. 46, Title 6, Equal Rights to Housing
D.C. Rules and Regulations, Title 34, Human Rights Law, Part I- Unlawful
Discriminatory Practices, Reg.(873-22)
Ga. L. 1975, Ch. 750, Rights of Blind and Visually Handicapped.
Hawaii Revised Statutes, Ch. 515, Discrimination in Real Property Transactions.
Idaho Code, Sec. 67-5901, Ch. 59, Commission on Human Rights.
Illinois State Constitution, Art. 1. Bill of Rights
Indiana Civil Rights Law, Ind. Code 22-9-1
Iowa Code, Ch. 601A. Civil Rights Act.
Kansas Statutes Annotated. Kansas Act Against Discrimination, Supp. Act of 1970,
Sec. 44.
Kentucky Revised Statutes (1968 Supp.) Ch. 344, Civil Rights
Maine revised Statutes, Title 5, Part 10, C. 317, Human Rights Act.
Maryland Annotated Code, Art. 49B. Commission on Human Relations
Mass. Annotated Laws. Laws Against Discrimination, Ch. 151 B.
Michigan Fair Housing Act of 1968, Ch. 2
Minn. State Act Against Discrimination, Minn. Statutes, 1968, Ch. 363, Dept.
of Human Rights
Missouri Fair Housing Law. L. 1972. S.B. 674.
Montana Freedom From Discrimination, Title 64 R.C.M. Ch. 3.
Nebraska Civil Rights Act of 1969, Open Housing, L.B. 718, 1969.
Nevada Revised Statutes, Nev. Fair Housing Law, Ch. 136.
New Hampshire Revised Statutes Annotated. Ch. 354A State Comm. on Human Rights
New Jersey Statutes Annotated. Law Against Discrimination Sec.10.
New Mexico Statutes Annotated. Sec. 4-33-1 et seq. Art. 33 Human Rights
New York Executive Law, Art. 15, Human Rights Law.
Ohio Revised Code Annotated, Title 41, Sec. 4112, et seq. Civil Rights Comm.
Oregon Revised Statutes, Enforcement of Civil Rights Sec. 659.
Penna. Statutes Annotated, Pa. Human Relations Act. Title 43, Ch. 17.
Rhode Island General Laws, R.I. Fair Housing Practices Act, Sec. 34
South Dakota Compiled Laws, Ch. 20-13.
Vermont Statutes Annotated. Title 13. Human Rights Law, Ch. 29. Discrimination.
Virginia Code, Va. Fair Housing Law. L. 1972, c. 591.
Washington Revised Code Sec. 49.60.010 et seq., Ch. 49.60 Law Against Discrimination.
West Virginia Code 1971, Ch. 5, Art. 11 Human Rights Commission
Wisconsin Statutes Annotated, Open Housing Law, Equal Rights Sec. 101.

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Cover by Vanann Allen
Maps by Maurice Herman

Cover: Ads are shaded to indicate those which state in print they will not accept children--full shading means no children of any age, diagonal shading indicates a portion of the complex excludes children, "X" indicate age restrictions such as "infants only." Section was taken from a 1978 Los Angeles newspaper survey. Follow-up phone calls to the remaining ads (unshaded) revealed an additional 50% would not accept children.



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The Extent and Effects of

Discrimination against Children in Rental Housing

A Study of Five California Cities

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The Fair Housing Project

December 1979

PREFACE

In 1977, the following "action item" appeared in the California Statewide Housing Plan, a publication of the California Department of Housing and Community Development:

The Fair Housing Act and the Unruh Civil Rights Act should be amended so that they contain identical lists of the factors upon which discrimination is prohibited, and to add to those lists at least "families with children."

Statewide attention was turning to the plight of renters who are denied housing solely because they have children.

This interest prompted a state senator from Hollywood, David A. Roberti, to introduce three consecutive pieces of legislation designed to extend fair housing protections to renters with children.¹ Several local governments also passed ordinances to protect renters with children from discrimination.² However, during extensive public hearings on these laws it became apparent that there was little statewide or multi-city data available on the extent and effects of anti-child rental policies.

This report attempts to supply some of that information. We hope it will encourage others to examine the housing problems of families with children and to re-evaluate public and private policies that exclude children from shelter.

¹ SB-440, the last of these bills, was narrowly defeated in January 1980 in the California State Senate. On March 19, 1980, Sen. Roberti introduced SB-2024 which prohibits all arbitrary housing discrimination based on age. In addition to families with children, SB-2024 also protects other tenants from age discrimination, e.g., single young adults in their twenties, who may be stereotyped as "swinging singles."

² Ordinances have been adopted in San Francisco (1975), Berkeley (1975), Davis (1979), Santa Monica (1979), Los Angeles (1980), and the County of Santa Clara (1979).

7. Even when income is held constant, families with children are more often inadequately housed than childless renters. Among moderate and upper income renters, the rate of inadequate housing is twice as great for families with children as for those without children.

8. In all cities studied and for the state as a whole, approximately half of all renter families with children are inadequately housed. Between 81 and 98 percent (varies by city) of very low income renters with children are inadequately housed.

9. Holding number of persons per household constant, families with children are inadequately housed more often than other renters. In all cities studied and for the state as a whole, among two-person renter households, families with children are inadequately housed nearly twice as often as families without children.

10. When family size and income are simultaneously held constant for the state as a whole, two-person middle and upper income renter households with children are inadequately housed 10 times more often than their childless counterparts.

11. In all 5 cities, minority and especially female-headed families with children are renters significantly more often than non-minority or male-headed families with children, and thus are affected more severely by all renter housing problems. (It should be noted that although minorities are disproportionately affected by rental housing problems, the majority of inadequately housed renters with children are "white."¹)

12. Exclusion of renters with children from a major portion of the rental market is, in effect, excluding most minorities and women.

13. While minority renter households with children are inadequately housed to a significantly greater degree, minority renters without children do not face housing problems any more often than "white" renters of comparable income.

Similarly, female-headed renter households with children tend to

¹"White" as used here means other than Black or Hispanic. It may include other minority groups which represent smaller portions of the population.

SUMMARY

The findings of this study are as follows:

1. The percent of families with children who are renters ranged from 28 percent in San Jose, to 55 percent in San Francisco, in every case a significant percentage of all families. For the state as a whole, 30 percent of families with children are renters.

2. A sample survey of newspaper advertisements for available apartments in Los Angeles found that only 14 percent surveyed allowed children with no age restrictions, and 15 percent allowed only certain ages. Thus, 71 percent of the apartment units surveyed allowed no children of any age.

Surveys in Fresno, San Diego, and San Jose found that 53 percent, 65 percent, and 70 percent, respectively, of units surveyed would not allow children of any age.

In contrast, the same type of survey in San Francisco, which has an ordinance prohibiting "no-kids" rentals, found that only 12 percent of units surveyed banned all children.

3. In all cities except San Francisco, the child-exclusion rate was significant even among larger units. In the 4 cities where child discrimination is legal, only 17 to 32 percent of two-bedroom units, and between 24 and 45 percent of three-bedroom units accept children.

4. Exclusion of families with children is being perpetuated in newly constructed rentals. Seventy-four percent of new rental units surveyed in Los Angeles exclude children. By comparison, only 10 percent of new units surveyed in San Francisco exclude children.

5. In every city studied except San Francisco, median rents are higher for equivalent sized units that allow children as compared to those which exclude children.

6. Renter families with children are inadequately housed significantly more often than renters without children. This tendency is true in all of the cities studied as well as for the state as a whole (45 percent of renters with children are inadequately housed, compared to 32 percent of renters without children).

7. Even when income is held constant, families with children are more often inadequately housed than childless renters. Among moderate and upper income renters, the rate of inadequate housing is twice as great for families with children as for those without children.

8. In all cities studied and for the state as a whole, approximately half of all renter families with children are inadequately housed. Between 81 and 98 percent (varies by city) of very low income renters with children are inadequately housed.

9. Holding number of persons per household constant, families with children are inadequately housed more often than other renters. In all cities studied and for the state as a whole, among two-person renter households, families with children are inadequately housed nearly twice as often as families without children.

10. When family size and income are simultaneously held constant for the state as a whole, two-person middle and upper income renter households with children are inadequately housed 10 times more often than their childless counterparts.

11. In all 5 cities, minority and especially female-headed families with children are renters significantly more often than non-minority or male-headed families with children, and thus are affected more severely by all renter housing problems. (It should be noted that although minorities are disproportionately affected by rental housing problems, the majority of inadequately housed renters with children are "white."¹)

12. Exclusion of renters with children from a major portion of the rental market is, in effect, excluding most minorities and women.

13. While minority renter households with children are inadequately housed to a significantly greater degree, minority renters without children do not face housing problems any more often than "white" renters of comparable income.

Similarly, female-headed renter households with children tend to

¹"White" as used here means other than Black or Hispanic. It may include other minority groups which represent smaller portions of the population.

be ill-housed to a greater extent than all other renters with children, while female-headed renter households without children have a level of housing problems identical to other childless renters.

14. Renters with children are concentrated in a number of neighborhoods in each city. These concentrations correlate with concentrations of minorities and women, demonstrating that "no-children" housing tends to reinforce, if not create, segregated living patterns by age, race, and sex.

15. Since families with children make up less than a third of the renter household population, a non-discriminatory housing market would mean that in a representative building, childless renters would outnumber renters with children by at least 2 to 1, thus eliminating the undesirably high concentrations of children revealed by this study.

16. With respect to landlord concerns about decreased property values, the presence or absence of children is not a factor in determining a building's market value.

17. No empirical evidence was found to show that operating and maintenance costs are higher for buildings that allow children.

18. The presence of children in rental buildings does not affect liability or property insurance rates.

19. Building code and safety standards are identical for apartment buildings with and without children. Swimming pool fencing ordinances apply to all buildings whether or not children are in residence.

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* Source:

1970 U. S. Census of Housing and Population
Bureau of the Census/HUD Annual Housing Surveys (1975, 1977, 1978)
1979 Housing Assistance Plans for the Cities of Fresno, Los Angeles,
San Diego, San Francisco, and San Jose
1979 California Statewide Housing Plan

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"Children's issues are not 'kiddie' issues--they are issues of social justice and the wider social welfare of the nation."

--Kenneth Keniston

INTRODUCTION

This report presents the results of a 1979 study on the extent and effects of discrimination against families with children in rental housing in California. Five cities were selected for study: Fresno, Los Angeles, San Diego, San Francisco and San Jose.¹ These cities represent all areas of the state and together comprise more than 30 percent of the state's population. In addition, data for the state as a whole were extensively analyzed.

The data presented are based on analysis of U.S. census materials, local "mid-decade" censuses, local housing surveys and plans, and original survey research.

¹ At the time of the study, San Francisco was the only city of these 5 that prohibited housing discrimination against families with children. Los Angeles passed a similar fair housing law in 1980.

Originally this project covered 6 cities, but Redding was dropped because census and housing survey information necessary to develop the tabulations shown in the report are not available for cities of that size outside Standard Metropolitan Statistical Areas (SMSA's).

THE HOUSING SHORTAGE FOR RENTERS WITH CHILDREN

Several factors have contributed to the housing crisis facing California renters with children. Among these are: 1) low vacancy rates; 2) high cost of home ownership; 3) exclusion of families from existing rentals; and 4) exclusion of families from newly-constructed rentals.

Low Vacancy Rates

A healthy rental vacancy rate is considered to be between 5 and 6 percent. Such a rate is high enough to allow people opportunities to move and to allow for the absorption of population growth and new household formation, but is low enough to allow owners of rental property to meet their costs.

Table 1 shows vacancy rates for the State of California and the 5 target cities. The state overall has an extremely low vacancy rate, less than half the "healthy" 5 percent. The low vacancy situation in rentals has been exacerbated by the low level of new construction of rental units and by condominium conversions, which reduce the available rental stock.

In such low vacancy situations renters must compete for available units, with the result that "less desirable" tenants, such as families with children, are excluded from major portions of the market. This exclusion cuts the true vacancy rate for the excluded class to a fraction of the overall vacancy rate. In Los Angeles, for example, where the overall renter vacancy rate is 2.6%, the effective vacancy rate for families with children is less than eight-tenths of one percent.

In San Jose, where the renter vacancy rate is at a healthy level (5.4%), the effective vacancy rate for families with children is only 1.6%.

High Cost of Homeownership

An ever-increasing percentage of families with children in California are renters. To a large degree this shift toward renting is a result of the high cost of homeownership.

Table 1

VACANCY RATES

	<u>Overall</u>	<u>Owner</u>	<u>Renter</u>
State of California	3.2%	N.A.	N.A.
City of Fresno	1.6%	1.3%	2.0%
City of Los Angeles	2.5%	2.3%	2.6%
City of San Diego	3.9%	4.1%	3.7%
City of San Francisco	2.4%	0.4%	3.4%
City of San Jose	3.5%	2.6%	5.4%

Source: 1979 Housing Assistance Plans for the five cities
1979 California Statewide Housing Plan

According to the California Department of Housing and Community Development, in 1979 the median sales price of a single-family home in California was between \$90,000 and \$100,000. Few families can afford the traditional option of buying a home in which to raise a family because although the median value of a home rose by 220 percent in the past 9 years, the median income of a household rose by only 98 percent during the same period.

In another example, the SCAG¹ Regional Housing Element found that while a middle-income family (\$10,000/year) in 1970 could afford to buy about half the homes in the state, in 1977 the equivalent-income family (\$15,000/year) could afford less than 15 percent of those homes.

Exclusion of Families with Children from Existing Rental Units

Data Sources and Methods - To document the problem of exclusion of families with children, a survey of 5 California cities was used. The survey was conducted on two dates, approximately one month apart, in each city. Using rental listings in the major newspapers in each city, surveyors called the available rentals as if they were seeking to rent the units and asked whether children were allowed. The results were tallied by rent levels, by number of bedrooms, by whether the apartment was furnished or unfurnished, and by number of units in the building. A copy of the survey instruments are included in Appendix A. The results were used to determine child-exclusion rates and types of age restrictions.

In addition to this survey, an earlier survey of 10,000 Los Angeles rentals was used to compare rents on apartments which allow children to those which prohibit children.

Newspaper surveys have been used by a variety of agencies to determine rental rates, costs and availability. The Southern California Association of Governments, U.S. Department of Housing and Urban Development, public housing agencies and city planning departments are among the groups who have found newspaper rental listings to be an excellent source of housing market data. Furthermore, not only are newspaper advertisements

¹ Southern California Association of Governments

the most frequently used information source for active searchers, they also prove to be the most effective means for most who obtain housing.¹

Findings - The survey conducted for this study found that children are excluded from the majority of rental units in every city studied, except San Francisco where "adults only" rentals are prohibited by local ordinance:

	<u>Accept Children</u>	<u>No Children</u>	<u>Age Restrictions</u>
Fresno	24%	53%	23%
Los Angeles	14%	71%	15%
San Diego	23%	65%	13%
San Francisco	86%	12%	2%
San Jose	22%	70%	8%

Thus, in all of the cities where exclusion of children is allowed, less than one-fourth of all rentals allow children of any age. Even including buildings with age restrictions, less than one-half of the units surveyed allow children.

The problem is most severe in San Jose, San Diego, and Los Angeles, where 70, 65, and 71 percent, respectively, of rentals allow no children of any age.

In contrast, the same type of survey in San Francisco, where local ordinance prohibits "no-kids" rentals, found that only about 12 percent of rentals surveyed banned all children, and only 2 percent placed age restrictions on tenant children.

The San Diego survey results are matched almost perfectly by a study performed by the San Diego Apartment Owners Association which found that only 34 percent of San Diego City rentals allow children.

¹ Kevin F. McCarthy, Housing Search and Mobility, The Rand Corporation, R-2451-HUD, September 1979. (Note: The Rand study suggests that illegal racial discrimination may cause some low-income searchers in racially mixed areas to depend more on friends and relatives as information sources rather than on newspapers. That theory, if true, would only apply to one survey--San Francisco's--because discrimination against children is neither illegal nor covert in the other 4 cities studied.)

Table 2 shows the same survey results tabulated by number of bedrooms in the unit. The exclusion rate remains high even in the units which by any standard should be large enough to accommodate families with children. The vast majority (about 75%) of renter families with children have only one or two children, and would therefore need a two-bedroom or smaller unit. Yet only about one-fourth of the two-bedroom units surveyed accept children without restrictions. In San Jose and Los Angeles over 70 percent of the two-bedroom rentals prohibit children of any age.

Even among three or more bedroom units, which should accommodate families, the majority of available rentals in every city studied, except San Francisco, either accepted no children or imposed age restrictions. In San Jose, Fresno, and Los Angeles, only 38, 35, and 24 percent, respectively, of three-bedroom rentals allow children.

The argument is often made that many buildings must exclude children because the available units are not appropriate for family use. The results of the survey indicate that, while the larger rentals do allow children somewhat more often than the smaller units, the exclusion rate is high even among rentals which would be considered "appropriate" for family tenancy. In this regard it is also interesting to note that in 3 of the 5 cities surveyed efficiency (or zero-bedroom) units are more likely to be available to families with children than are one-bedroom units, a situation which clearly does not support the "appropriateness" argument.

Exclusion of Families from Newly-Constructed Rentals

The argument is often made that the housing problems of families with children could be solved by simply building more rental units. While more rental construction is clearly a partial solution in that it eases pressure on the rental market, it does not appear to be the answer, or even a major component of the answer to the problem.

A survey was conducted of newly completed rentals in Los Angeles City, using building permits issued in 1977 to insure that the units involved had been completed and were occupied at the time of the survey in September 1979.

Table 2

ACCEPTANCE OF CHILDREN BY NUMBER OF BEDROOMS

<u>No. of Bedrooms</u>	<u>Accept Children</u>		<u>No Children</u>		<u>Age Restricted</u>		<u>Total</u>	
	#	%	#	%	#	%	#	%
<u>Fresno</u>								
0	1	7.7%	12	92.3%	0	0	13	100.0%
1	18	9.9%	133	73.5%	30	16.6%	181	100.0%
2	99	32.4%	125	40.8%	82	26.8%	305	100.0%
3+	6	35.3%	6	35.3%	5	29.4%	17	100.0%
Total	<u>124</u>	<u>24.0%</u>	<u>276</u>	<u>53.3%</u>	<u>117</u>	<u>22.6%</u>	<u>517</u>	<u>100.0%</u>
<u>Los Angeles</u>								
0	6	12.2%	38	77.6%	5	10.2%	49	100.0%
1	34	9.0%	283	74.7%	62	16.4%	379	100.0%
2	64	17.4%	264	71.9%	39	10.6%	367	100.0%
3+	26	24.3%	54	50.5%	27	25.2%	107	100.0%
Total	<u>130</u>	<u>14.4%</u>	<u>639</u>	<u>70.8%</u>	<u>133</u>	<u>14.7%</u>	<u>902</u>	<u>100.0%</u>
<u>San Diego</u>								
0	18	20.5%	63	71.6%	7	8.0%	88	100.0%
1	76	17.0%	306	68.6%	64	14.3%	446	100.0%
2	90	27.9%	198	61.3%	35	10.8%	323	100.0%
3+	19	45.2%	17	40.5%	6	14.3%	42	100.0%
Total	<u>203</u>	<u>22.6%</u>	<u>584</u>	<u>65.0%</u>	<u>112</u>	<u>12.5%</u>	<u>899</u>	<u>100.0%</u>
<u>San Francisco</u>								
0	72	90.0%	8	10.0%	0	0	80	100.0%
1	145	78.8%	33	17.9%	6	3.3%	184	100.0%
2	110	92.4%	9	7.6%	0	0	119	100.0%
3+	41	35.3%	0	0	2	4.7%	43	100.0%
Total	<u>368</u>	<u>86.4%</u>	<u>50</u>	<u>11.7%</u>	<u>8</u>	<u>1.9%</u>	<u>426</u>	<u>100.0%</u>
<u>San Jose</u>								
0	5	9.4%	47	88.7%	1	1.9%	53	100.0%
1	17	18.1%	72	76.6%	5	5.3%	94	100.0%
2	37	25.2%	103	70.1%	7	4.8%	147	100.0%
3+	12	37.5%	6	18.8%	14	43.8%	32	100.0%
Total	<u>71</u>	<u>21.8%</u>	<u>228</u>	<u>69.9%</u>	<u>27</u>	<u>8.3%</u>	<u>326</u>	<u>100.0%</u>

Source: Fair Housing Project Survey, 1979

A total of 3,148 units were surveyed, representing a sample of one-third of the rental building permits issued by Los Angeles in 1977. They include permits issued from all district offices. The findings are as follows:

Total Units Surveyed	3,148
Number converted to condominium	354
Condominiums allowing children	79 (22%)
Adults-only condominiums	275 (78%)
Number available for rent	2,794
Rentals allowing children	728 (26%)
Adults-only rentals	2,066 (74%)

Thus only about one-fourth of the new rental units in Los Angeles are available to families with children. The exclusion of families with children in the rental market is being perpetuated in new construction. New units are therefore not alleviating the problems faced by renters with children in Los Angeles.

By contrast, in San Francisco a study of 493 units revealed that only 10 percent of new units prohibited children. Also, none of the condominium conversions in San Francisco excluded children, as compared to 78 percent in Los Angeles. The findings were:

Total Units Surveyed	493
Number converted to condominiums	147
Condominiums allowing children	147 (100%)
Adults-only condominiums	0
Number available for rent	346
Rentals allowing children	311 (90%)
Adults-only rentals	35 (10%)

Clearly, San Francisco's ban on rental discrimination against children has had a positive effect on the availability of new rental units to families. A secondary effect appears to be the carry-over of nondiscriminatory policies from apartments to condominiums.

ECONOMIC IMPACT OF DISCRIMINATION
AGAINST RENTERS WITH CHILDREN

Renters with children, as a class, are in the curious position of paying the price of their own exclusion. As explained by economist Claude Elias, "...the fact that families with children are arbitrarily excluded from certain units represents a limitation to their choice of units, and so to that extent, they pay the cost of that arbitrary restriction."¹

Higher Rents

The same survey discussed earlier found that rentals which allow children tend to command a higher rent than those which exclude children.

Table 3 shows the survey results by rent category. With the exception of San Francisco where an ordinance prohibits discrimination against families with children in rental housing, the most expensive units (rents of \$450 per month and over) are most likely to rent to families with children.

Table 4 shows the median rent by bedroom size for rentals which allow, exclude, or restrict children. No clear pattern is evident for units that restrict children. However, comparing units which accept children to those which absolutely exclude children, in every case except San Francisco, median rents are higher for equivalent sized units that allow children. Rents are generally between \$20 and \$30 more per month higher for equivalent units that allow children, with the smaller difference being in one-bedroom rentals in Fresno, where buildings which allow children had the same median rents as "no-children" buildings. The biggest difference is in three-or-more bedroom units in Los Angeles where rentals that allow children have median rents \$97 higher than similar sized units which exclude children.

¹ Testimony of Dr. Claude Elias, Jr., President, Real Estate Research Council of Southern California, in the case of Marina Pt. Ltd. vs. Wolfson, Culver City Municipal Court, June 16, 1979.

Table 3
ACCEPTANCE OF CHILDREN BY RENT CATEGORY

Rent Category	Accept Children		No Children		Age Restricted		Total	
	#	%	#	%	#	%	#	%
Fresno								
0 - 149	5	12.8%	33	84.6%	1	2.6%	39	100%
150 - 249	96	25.7%	191	51.2%	86	23.0%	373	100%
250 - 349	17	20.5%	44	53.0%	22	26.5%	83	100%
350 - 449	6	27.2%	8	36.4%	8	36.4%	22	100%
450+	0	-	0	-	0	-	0	-
Total	124	24.0%	276	53.3%	117	22.6%	517	100%
Los Angeles								
0 - 149	3	60.0%	2	40.0%	0	-	5	100%
150 - 249	16	13.2%	87	71.9%	18	14.3%	121	100%
250 - 349	32	10.2%	246	78.1%	37	11.7%	315	100%
350 - 449	42	14.6%	192	66.9%	53	18.5%	287	100%
450+	37	21.3%	112	64.4%	25	14.4%	174	100%
Total	130	14.4%	639	70.8%	133	14.7%	902	100%
San Diego								
0 - 149	1	9.1%	10	90.9%	0	-	11	100%
150 - 249	122	23.0%	318	59.9%	91	17.1%	531	100%
250 - 349	64	21.3%	217	72.1%	20	6.6%	301	100%
350 - 449	12	27.9%	30	69.8%	1	2.3%	43	100%
450+	4	30.8%	9	69.2%	0	-	13	100%
Total	203	22.6%	584	65.0%	112	12.5%	899	100%
San Francisco								
0 - 149	10	100.0%	0	-	0	-	10	100%
150 - 249	52	83.9%	8	12.9%	2	3.2%	62	100%
250 - 349	96	94.1%	6	5.9%	0	-	102	100%
350 - 449	81	91.0%	8	9.0%	0	-	89	100%
450+	129	79.1%	28	17.2%	6	3.7%	163	100%
Total	368	86.4%	50	11.7%	8	1.9%	426	100%
San Jose								
0 - 149	0	-	1	100.0%	0	-	1	100%
150 - 249	19	19.4%	74	75.5%	5	5.1%	98	100%
250 - 349	40	23.8%	120	71.4%	8	4.8%	168	100%
350 - 449	9	17.3%	30	57.7%	13	25.0%	52	100%
450+	3	42.9%	3	42.9%	1	14.3%	7	100%
Total	71	21.8%	228	69.9%	27	8.3%	326	100%

Source: Fair Housing Project Survey, 1979

Table 4

MEDIAN RENTS BY NUMBER OF BEDROOMS*

<u>No. of Bedrooms</u>	<u>Accept Children</u>	<u>No Children</u>	<u>Age Restricted</u>
Fresno			
0	N.A.	\$125	N.A.
1	\$185	\$185	\$187
2	\$218	\$226	\$207
3+	\$337	\$275	\$200
Overall Median	\$214	\$209	\$207
Los Angeles			
0	N.A.	\$404	\$313
1	\$338	\$328	\$297
2	\$366	\$347	\$411
3+	\$515	\$418	\$438
Overall Median	\$380	\$348	\$371
San Diego			
0	\$232	\$183	\$217
1	\$233	\$222	\$221
2	\$273	\$248	\$239
3+	\$325	\$316	\$316
Overall Median	\$246	\$239	\$228
San Francisco			
0	\$218	\$263	N.A.
1	\$339	\$463	N.A.
2	\$455	\$525	N.A.
3+	\$514	N.A.	N.A.
Overall Median	\$381	\$460	N.A.
San Jose			
0	\$204	\$225	N.A.
1	\$267	\$246	\$238
2	\$309	\$293	\$292
3+	\$375	\$366	\$382
Overall Median	\$296	\$276	\$352

*unfurnished units

Source: Fair Housing Project Survey, 1979

It is noteworthy that in San Francisco, where over 85 percent of all units surveyed allow children, rents tended to be higher for buildings that prohibit children, placing the cost of illegal discrimination on those practicing discrimination rather than on the excluded class.

The findings of this survey are further supported by earlier surveys of more than 10,000 units in Los Angeles. Table 5 compares average rents for restricted vs. not-restricted buildings from that survey. Again, particularly among the larger bedroom sites, rentals which allowed children were significantly more expensive than those which did not.

Inadequate Housing Conditions

Having established that there is widespread discrimination against families with children in rental housing and that the restricted market is forcing families to pay higher rents, the study sought to examine additional effects of this discrimination. For example, if families with children could afford to pay more for housing or if the available stock, although limited, was sufficient to accommodate the need for family rental housing, then the discrimination problem could be said to have insignificant economic impacts. Consequently, the study compared inadequate housing conditions for renter families with children to those without children using federal and California state definitions of inadequate housing:

- overpaying: paying more than 25% of gross income for rent
- overcrowding: more than 1.01 persons per room
- substandard: living in a unit which lacks one or more essential systems (plumbing, heating, etc.) or has a major defect or combination of defects which make the unit unsafe or unsanitary

The study found consistently that renters with children are inadequately housed more often than those without children.

Data Sources & Methods - The study of the effects of discrimination is based on analysis using the following data sources:

- U.S. Census of Housing and Population, special cross-tabulations
- local "mid-decade" censuses and housing surveys to update census materials in each of the 5 cities

Table 5

**"HOMES UNLIMITED" SURVEY
(LOS ANGELES)**

	1976 1746 Listings			1977 2689 Listings			1978 6059 Listings			Total 10,494 Listings		
	No.	%	Avg. Rent	No.	%	Avg. Rent	No.	%	Avg. Rent	No.	%	Avg. Rent
"ACCEPT CHILDREN"	440	25.2%	\$390	985	36.6%	\$468	1817	29.9%	\$471	3242	30.9%	\$460
Single	7		204	25		181	59		201	91		196
1 Bedroom	73		223	93		257	182		292	348		268
2 "	223		355	52		463	960		454	1703		445
3 "	119		500			561	560		559	1006		553
4 "	13		690			635	53		753	86		716
5+ "	5		775			-	3		875	8		813
"NO CHILDREN"	678	38.8%	\$252*	1077	40.0%	\$321	2529	41.7%	\$331	4224	40.8%	\$316
Single*	170		157	234		193	520		205	924		193
1 Bedroom	242		206	439		282	1077		301	1758		283
2 "	245		350	372		431	864		434	1481		419
3 "	18		406	31		561	66		472	115		486
4 "	3		423	-		-	2		380	5		405
5+ "	-		-	-		-	-		-	-		-
"WILL CONSIDER"***	409	23.4%	\$375	495	18.4%	\$395	1271	20.9%	\$425	2175	20.7%	\$418
Single	5		177	17		182	51		200	73		194
1 Bedroom	90		229	68		288	263		300	421		283
2 "	212		371	295		433	695		435	1202		423
3 "	100		524	108		562	251		560	459		552
4 "	2		425	7		639	11		758	20		683
5+ "	-		-	-		-	-		-	-		-

* The average rents shown on the Table includes all sizes of apartments; but because some "singles" are not suitable for families, rents have been refigured for averages without singles: 1976 - \$284; 1977 - \$357; 1978 - \$363; Total - \$349. Even not counting singles, average rents for apartments refusing children are significantly lower than those accepting.

** A small number of listings (5 - 7%) indicate that they will accept or will consider children on an age-restricted basis, usually infants or older teenagers.

SOURCE: Brief of Amicus Curiae Fair Housing for Children Coalition, Wolfson v. Marina Point, Ltd., Los Angeles County Superior Court, September 18, 1978.

- The Census/HUD Annual Housing Survey for San Francisco, San Diego, and Los Angeles
- The California Statewide Housing Plan and other materials supplied by the California Department of Housing and Community Development (HCD)

Findings - For the State of California as a whole, 45% of renters with children are inadequately housed, as compared to 32% of renters without children.¹

A similar comparison held true for each of the five cities studied. To summarize:

<u>City</u>	<u>Percent of Renters Inadequately Housed</u>	
	<u>With Children</u>	<u>Without Children</u>
State of California	45%	32%
Fresno	46%	35%
Los Angeles	49%	35%
San Diego	48%	42%
San Francisco ²	50%	38%
San Jose	51%	41%

Holding income constant, the results are even more striking. Table 6 compares inadequate housing by income group. Low income is here defined as income below \$15,000 per year (or about 80% of the statewide median); moderate income is \$15,000 - \$22,499 (or 80 - 120% of the statewide median); and upper income is defined as \$22,500 and up. These are standard State of California definitions.

¹ Note that in this comparison and all subsequent comparisons of inadequate conditions the data presented are for households with two or more persons. Since single-person households do not have children, they do not provide a valid comparison to households with children, and therefore were excluded from the analysis.

² Please note that statistics on inadequate housing for San Francisco are not current enough to reflect any changes caused by the local anti-discrimination ordinance, and in any case the ordinance has not been in effect long enough to affect the overall living patterns in that city as reflected in this analysis.

Table 6

PERCENT OF INADEQUATELY-HOUSED RENTERS BY INCOME LEVEL
(RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

	<u>Low Income</u>	<u>Moderate Income</u>	<u>Upper Income</u>
<u>State of California</u>			
With Children	63%	13%	12%
Without Children	53%	6%	5%
<u>City of Fresno</u>			
With Children	56%	12%	6%
Without Children	47%	3%	*
<u>City of Los Angeles</u>			
With Children	65%	22%	14%
Without Children	56%	7%	4%
<u>City of San Diego</u>			
With Children	62%	16%	8%
Without Children	49%	5%	2%
<u>City of San Francisco</u>			
With Children	68%	21%	13%
Without Children	64%	11%	5%
<u>City of San Jose</u>			
With Children	71%	20%	12%
Without Children	65%	6%	2%

* Less than 1%.

As Table 6 shows, the majority of low income renters in California face some housing inadequacies. However, it is consistently found that all income renters with children are more often inadequately housed than those without children.

Among moderate and upper income renters who should be able to function adequately in the housing market, a substantial percentage of families with children continue to be inadequately housed, while less than half as great a percentage of renters without children face these problems. In three of the 5 cities, Los Angeles, San Jose and San Francisco, more than 20 percent of moderate income renters with children are inadequately housed. Even for upper incomes, for the state as a whole and for three of the 5 cities surveyed, more than 12 percent are inadequately housed. This compares to between 2 and 5 percent of renters without children.

It is evident, therefore, that insufficient rentals are available to families with children at all incomes, and that even those families who, by virtue of their income, could be expected to be able to obtain decent housing at affordable rents, are forced to overpay or overcrowd in order to be housed.

Table 7 details the findings by income group. It shows that holding income constant, families with children are consistently more often inadequately housed than renters without children.

Inadequate housing conditions were also compared holding family size constant in order to investigate whether renters with children were overpaying and overcrowding more often than childless renters because of the greater number of people in the household. Table 8, therefore, shows inadequate housing conditions by number of persons per household. Consistently, renters with children are less well-housed than other renters. For the state as a whole, among two-person households, renter families with children are inadequately housed nearly twice as often as those without children, as shown by Table 8a:

Table 7

INADEQUATE HOUSING CONDITIONS FOR TWO OR MORE PERSON HOUSEHOLDS BY INCOME
(RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

	Renters With Children			Renters Without Children		
	Total (In Thousands)	Inadequately Housed (In Thousands)	Percent Inadequately Housed	Total (In Thousands)	Inadequately Housed (In Thousands)	Percent Inadequately Housed
<u>State of California</u>						
Income						
\$0-\$ 7,499	292.4	284.0	97%	282.8	232.6	82%
\$ 7,500-\$14,999	431.8	173.4	40%	394.0	127.8	32%
\$ 15,000-\$22,499	270.7	35.9	13%	300.5	16.6	6%
\$ 22,500-\$34,999	98.6	12.3	12%	158.1	9.2	6%
\$ 35,000 and up	29.1	2.9	10%	63.6	2.6	4%
Total	1122.0	508.5	45%	1199.0	388.8	32%
<u>City of Fresno</u>						
Income						
\$0-\$ 7,499	5.7	4.6	81%	4.9	3.8	78%
\$ 7,500-\$14,999	6.0	2.0	33%	5.8	1.2	21%
\$ 15,000-\$22,499	2.5	0.3	12%	2.6	0.1	3%
\$ 22,500-\$34,999	0.8	*	5%	0.8	*	1%
\$ 35,000 and up	0.4	*	7%	0.5	0.0	0%
Total	15.4	7.0	46%	14.6	5.1	35%
<u>City of Los Angeles</u>						
Income						
\$0-\$ 7,499	50.5	46.6	92%	47.4	41.2	87%
\$ 7,500-\$14,999	72.3	33.8	47%	65.1	21.4	33%
\$15,000-\$22,499	42.6	9.5	22%	46.0	3.4	7%
\$22,500-\$34,999	17.1	2.5	14%	18.9	0.8	4%
\$35,000 and up	10.2	1.2	12%	13.7	0.4	3%
Total	192.7	93.6	49%	191.1	67.2	35%
<u>City of San Diego</u>						
Income						
\$0-\$ 7,499	12.7	12.3	97%	13.2	12.4	94%
\$ 7,500-\$14,999	19.4	8.3	43%	25.0	10.0	40%
\$ 15,000-\$22,499	9.7	1.6	16%	11.0	0.6	5%
\$22,500-\$34,999	3.3	0.2	7%	3.8	0.1	3%
\$35,000 and up	1.8	0.1	7%	2.2	0.1	5%
Total	46.8	22.5	48%	55.2	23.2	42%
<u>City of San Francisco</u>						
Income						
\$0-\$ 7,499	10.8	10.5	96%	15.1	13.6	90%
\$ 7,500-\$14,999	16.1	9.3	57%	23.1	10.8	47%
\$15,000-\$22,499	12.2	2.7	22%	18.0	2.0	11%
\$22,500-\$34,999	5.6	0.9	15%	9.4	0.6	6%
\$35,000 and up	3.6	0.4	11%	6.0	0.1	2%
Total	48.3	23.9	50%	71.6	27.0	38%
<u>City of San Jose</u>						
Income						
\$0-\$ 7,499	6.5	6.4	98%	5.5	5.3	96%
\$ 7,500-\$14,999	11.4	6.7	59%	8.9	4.0	45%
\$15,000-\$22,499	8.0	1.6	20%	5.8	0.3	6%
\$22,500-\$34,999	2.7	0.4	14%	2.1	*	2%
\$35,000 and up	1.4	0.1	6%	1.0	*	2%
Total	29.9	15.2	51%	23.4	9.6	41%

* less than 0.1%

Table 8
 PERCENT OF INADEQUATELY HOUSED RENTERS BY NUMBER OF PERSONS PER HOUSEHOLD
 (RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

Household Size	Renters With Children			Renters Without Children		
	Total Households (In 1000's)	Inadequately Housed (In 1000's)	Percent	Total Households (In 1000's)	Inadequately Housed (In 1000's)	Percent
<u>State of California</u>						
2 persons	88.5	57.1	65%	1009.1	338.8	34%
3-4 persons	664.2	248.7	37%	175.5	42.3	24%
5 or more persons	369.3	202.7	55%	14.4	7.7	54%
Total	<u>1122.0</u>	<u>508.5</u>	45%	<u>1199.0</u>	<u>388.8</u>	32%
<u>City of Fresno</u>						
2 persons	1.1	0.8	74%	11.7	4.5	39%
3-4 persons	7.9	3.1	39%	2.7	0.5	20%
5 or more persons	6.4	3.1	48%	0.2	0.1	46%
Total	<u>15.4</u>	<u>7.0</u>	46%	<u>14.6</u>	<u>5.1</u>	35%
<u>City of Los Angeles</u>						
2 persons	19.0	12.4	65%	165.2	57.3	35%
3-4 persons	114.7	45.4	40%	24.5	9.2	38%
5 or more persons	59.0	35.8	61%	1.4	0.7	51%
Total	<u>192.7</u>	<u>93.6</u>	49%	<u>191.1</u>	<u>67.2</u>	35%
<u>City of San Diego</u>						
2 persons	2.8	2.0	71%	32.5	13.2	41%
3-4 persons	20.8	9.1	44%	6.0	2.7	44%
5 or more persons	9.8	5.0	51%	0.9	0.5	50%
Total	<u>33.4</u>	<u>16.1</u>	48%	<u>39.4</u>	<u>16.4</u>	42%
<u>City of San Francisco</u>						
2 persons	4.2	3.2	77%	59.0	22.4	38%
3-4 persons	27.8	12.3	44%	11.7	4.1	35%
5 or more persons	16.3	8.5	53%	0.9	0.5	50%
Total	<u>48.3</u>	<u>23.9</u>	50%	<u>71.6</u>	<u>27.0</u>	38%
<u>City of San Jose</u>						
2 persons	1.7	1.3	73%	18.5	7.2	39%
3-4 persons	17.7	7.7	43%	4.3	2.1	48%
5 or more persons	10.5	6.3	60%	0.6	0.3	50%
Total	<u>29.9</u>	<u>15.2</u>	51%	<u>23.4</u>	<u>9.6</u>	41%

Note: Totals and percents may not compute exactly as shown due to rounding.

Table 8a
SUMMARY OF STATE PERCENTAGES FROM TABLE 8

<u>Persons per Household</u>	<u>Percent Inadequately Housed Renters</u>	
	<u>With Children</u>	<u>Without Children</u>
2	65	34
3-4	37	24
5+	<u>55</u>	<u>54</u>
Total	45	32

These results are consistent among the 5 cities studied. Clearly, therefore, the greater problem faced by families with children does not result from their larger size. In this regard it is also noteworthy that two-person renter families with children are ill-housed (65% statewide) more often than large (5+ person) families with children (55% inadequately housed statewide).

Finally, Table 9 holds both income and family size constant for renters with and without children. At every income and for all areas studied, renters with children are more often inadequately housed. Again, the most striking comparison is among middle and upper income households. For the state as a whole, Table 10 shows that of two-person households with incomes above \$15,000 per year, families who should, by income and family size standards, have available to them the majority of rental units, experience inadequate housing 10 times as often as the percentage of renters with no children.

With all other factors held constant, the renter with a child is, therefore, much more likely to overpay, overcrowd, or live in substandard conditions than the all-adult household.

Table 9

PERCENT OF INADEQUATELY HOUSED TWO-PERSON HOUSEHOLDS BY INCOME
(RENTERS WITH CHILDREN COMPARED TO RENTERS WITHOUT CHILDREN)

	\$0 to <u>\$7,499</u>	\$7,500 to <u>\$14,999</u>	\$15,000 to <u>\$22,499</u>	\$22,500 to <u>\$34,999</u>	\$35,000 or more	<u>Total</u>
<u>State of California</u>						
Two-Person Renters						
With Children	95%	44%	33%	30%	17%	64%
Without Children	87%	36%	4%	3%	1%	34%
<u>City of Fresno</u>						
Two-Person Renters						
With Children	83%	34%	8%	0%	0%	65%
Without Children	78%	22%	1%	1%	0%	39%
<u>City of Los Angeles</u>						
Two-Person Renters						
With Children	89%	62%	18%	12%	2%	65%
Without Children	85%	30%	6%	3%	1%	35%
<u>City of San Diego</u>						
Two-Person Renters						
With Children	89%	50%	40%	13%	0%	71%
Without Children	86%	25%	2%	6%	2%	40%
<u>City of San Francisco</u>						
Two-Person Renters						
With Children	100%	50%	40%	12%	2%	77%
Without Children	90%	45%	9%	5%	0%	38%
<u>City of San Jose</u>						
Two-Person Renters						
With Children	100%	60%	8%	0%	0%	73%
Without Children	84%	46%	3%	*	0%	39%

*less than 1%

SOCIAL AND PSYCHOLOGICAL IMPACT

In addition to economic burdens, there are other negative effects associated with housing discrimination against children. Among these are psychological damage to children, de facto discrimination against a large percentage of women and minorities,¹ and segregation by age, race, and sex.

Effect on Children

"Since every human being depends upon his cumulative experiences with others for cues as to how he should view and value himself, children who are consistently rejected understandably begin to question and doubt whether they, their family, and their group really deserve no more respect from the larger society than they receive."

--Kenneth B. Clark, Dark Ghetto:
Dilemmas of Social Power, 1965

"The problems children face as public liabilities are related directly to the way our larger economic and political system operates. It is a system that is making life harder in our schools, our communities, and our families. It threatens not only our children's humanity, but the possibilities of their being able to live as citizens in a political democracy."

--Will Riggan, "Children as Social
Liabilities: Working Paper #9,"
Childhood and Government Project,
UC Berkeley, 1976

¹ California's Unruh Civil Rights Act and Rumford Fair Housing Act collectively protect renters from discrimination based on race, religion, national origin, ancestry, sex, marital status, and physical disability. The courts have extended these protections to unmarried couples, homosexuals, men with long hair, and persons of "unusual" political views. However, as now interpreted, it is perfectly legal under state law to refuse to rent to any person who has a child. This legal loophole is being challenged by a couple who were evicted for having a baby in an adults-only complex. Their case, *Wolfson v. Marina Point, Ltd.*, is on appeal before the California Supreme Court.

According to sociology researcher Dr. Susan Robbins, "It is clear from these and other psychological and sociological studies that discrimination against children can result in grave damage to the essential social structures upon which society depends--the family, the socialization of the young, and the integrated social structure as a whole."

Impact on Minority and Female-Headed Households

Black, Hispanic and female-headed families with children are renters more often than "white"¹ or male-headed families with children. Consequently, they are more deeply affected by any problems related to rental housing. Charts 1-3 show that, statewide, a major percentage of minority renters (41% for Blacks, 54% for Hispanics) and female-headed renter families (62%) have children.²

Table 10 compares minority and female-headed households to total and "white" households with children as to the percent who are renters. So, for example, in Fresno where 36% of all families with children are renters and only 30% of "white" families with children are renters, as many as 57% of Black, 47% of Hispanic, and 72% of female-headed families with children are renters. Thus, in Fresno, Blacks with children rent nearly twice as often as "whites," and female-headed households are renters twice as often as families with children overall.

In all 5 cities, a far greater percentage of minority and female-headed families with children are renters than is true of non-minority or male-headed families.

From this data alone it is apparent that exclusion of families with children also tends to exclude minorities and female-headed families.

¹ "White" as used here means other than Black or Hispanic. It may include other minority groups which represent smaller portions of the population.

² Although each chart includes all households which fit the category description, some households fall into more than one category, e.g., some Black renter households are also female-headed. Therefore, the categories cannot be added together to obtain a grand total.

CALIFORNIA RENTERS

FEMALE
TOTAL

FEMALE
WITH
CHILDREN



616,200



384,800

CALIFORNIA RENTERS



CALIFORNIA RENTERS

BLACK
TOTAL

BLACK
WITH
CHILDREN

399,000

41%

165,000

Table 10

RENTERS WITH CHILDREN AS A PERCENT OF TOTAL HOUSEHOLDS WITH CHILDREN
BY RACIAL, ETHNIC AND FEMALE-HEADED HOUSEHOLDS

<u>City</u>	<u>Total Households With Children</u>	<u>Black Households With Children</u>	<u>Spanish Surname Households With Children</u>	<u>"White" Households With Children</u>	<u>Female-Headed Households With Children</u>
Fresno	36%	57%	47%	30%	72%
Los Angeles	49%	62%	69%	38%	73%
San Diego	41%	57%	50%	37%	65%
San Francisco	55%	65%	66%	46%	75%
San Jose	28%	17%	42%	24%	60%

Table 11 summarizes an analysis of inadequate housing conditions for minority and female-headed as compared to "white" families with children. The table shows that among all groups studied, renter families with children have worse housing than renters without children.

In addition, minority and female-headed households are consistently inadequately housed more often than "white" households with children, even holding income constant.

More importantly, while minority and female-headed renter families with children are inadequately housed to a significantly greater degree, minority renters without children do not appear to face housing problems any more often than "white" renters of similar income.

Thus, to the extent that discrimination against minorities and women exists in the California housing market, it appears to be directed at families with children. When racial and sex discrimination lead to inadequate living conditions, it appears that they are confined to families with children.

These findings further suggest that exclusion of renters with children from a major portion of the rental market is in effect excluding minorities and women. They certainly show a disproportionately large impact on minority and female-headed households even when income is taken into consideration.

Clustering/Segregation

To quote economist Claude Elias, "...the results of arbitrary exclusion will be (the) clustering (of) families with children and that would impose certain social problems, such as the need for additional schooling facilities, transportation patterns, differential traffic controls, more police protection, more recreational facilities--and these costs are borne by the general taxpayer, by society as a whole."¹ Dr. Elias concludes that clustering does not strike housing economists as an economic method for solving the housing allocation problem.

Renters with children do tend to become clustered as a result of their exclusion from the majority of the housing market. In California, families

¹ Elias, Ibid., June 20, 1979.

Table 11

PERCENT INADEQUATELY HOUSED MINORITY AND FEMALE-HEADED RENTERS
 COMPARED TO TOTAL "WHITE" RENTERS WITH AND WITHOUT CHILDREN BY INCOME

	<u>"White"* Renters</u>		<u>Black Renters</u>		<u>Hispanic Renters</u>		<u>Female-Headed Renters</u>	
	<u>Low Income</u>	<u>Middle + Income</u>	<u>Low Income</u>	<u>Middle + Income</u>	<u>Low Income</u>	<u>Middle + Income</u>	<u>Low Income</u>	<u>Middle + Income</u>
<u>State of California</u>								
With Children	77%	17%	99%	29%	95%	30%	98%	31%
Without Children	72%	9%	89%	17%	94%	16%	95%	15%
<u>City of Fresno</u>								
With Children	69%	11%	73%	33%	75%	33%	97%	38%
Without Children	67%	4%	69%	4%	61%	4%	61%	5%
<u>City of Los Angeles</u>								
With Children	68%	20%	76%	25%	74%	32%	95%	38%
Without Children	61%	10%	66%	5%	61%	13%	93%	20%
<u>City of San Diego</u>								
With Children	76%	15%	72%	21%	74%	31%	97%	51%
Without Children	74%	7%	73%	4%	70%	10%	96%	26%
<u>City of San Francisco</u>								
With Children	86%	20%	75%	26%	83%	29%	97%	63%
Without Children	79%	14%	74%	11%	80%	12%	97%	6%
<u>City of San Jose</u>								
With Children	88%	20%	89%	35%	83%	34%	98%	59%
Without Children	82%	9%	82%	13%	75%	10%	97%	7%

* "White" as used here means other than Black or Hispanic. It may include other minority groups which represent smaller portions of the population.

with children comprise just over 30 percent of all renters. The availability surveys of rental ads done in 1979 by the Fair Housing Project indicate that between 26 and 35 percent of all rental buildings allow children. Consequently, virtually all renters with children must be concentrated in those buildings to the exclusion of families without children. Such buildings then become "children's ghettos."

Further, by mapping renter families with children by census tract, it was found that they are concentrated in certain areas of each of the cities studied. Maps 1-5 show these clusters. (See Appendix B)

The study also found a correlation between "children clustering" and "racial clustering." Each of the census tracts identified as having a concentration of renters with children was examined for racial composition and proportion of female-headed households. It was found that in the majority of census tracts with high concentrations of renters with children, there were also more minority families and more female-headed households than the citywide norm.

Table 12 summarizes these results. In every city studied there was a correlation between renters with children and minority households. In all but Fresno there was a correlation with female-headed households. The correlation between the isolation of children and minorities was strongest in Los Angeles (78%). The correlation between the isolation of children and female-headed households was strongest in San Jose (93%) with a very strong correlation (83%) also appearing in San Diego.

These correlations occur partly because minority and female-headed households with children tend to be renters more often than "white" male-headed families with children. However, the clustering does demonstrate that "no-children" housing tends to reinforce, if not create, segregated living patterns by age, race and sex.

Not surprisingly, a recent study found that discrimination against children intensifies racial imbalances in schools. "Both the exclusion of middle class white renters from the city and the exclusion of poor minority renters from the suburban housing markets intensify the problem of school segregation."¹ "Jurisdictions which permit discrimination

¹ Dr. Gary Orfield, "Desegregation Principles for Los Angeles: A Report to the Superior Court of the State of California for the County of Los Angeles," November 1, 1978, p. 79.

Table 12

CONCENTRATIONS OF RENTERS WITH CHILDREN CORRELATED WITH
CONCENTRATIONS OF MINORITIES AND FEMALE-HEADED HOUSEHOLDS

Census Tracts With Concentrations of Renters With Children

<u>City</u>	<u>Total Number</u>	<u>Tracts with Greater than Citywide Percentage of Black/Hispanic Households</u>		<u>Tracts with Greater than Citywide Percentage of Female-Headed Households</u>	
		<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Fresno	5	3	60%	2	40%
Los Angeles	69	54	78%	52	75%
San Diego	18	11	61%	15	83%
San Francisco	8	5	63%	6	75%
San Jose	15	9	60%	14	93%

against children in the rental or sale of housing should be asked to examine its impact on school segregation and the future enrollment in their local public schools. This discrimination almost certainly produces 'white flight' of families with school children from the city and some suburbs."¹

Finally, the adverse effects of age segregation are not limited to children and their families. A recent study of housing preferences of the elderly strongly recommended that "...alternatives should be provided that allow older persons to live in age-integrated environments if they so desire. The vast majority of the community elderly stated a preference for age-integrated surroundings, if given a choice."² A related manual on house-sharing explained the benefits of age-integration: "It appears that intergenerational contact, providing it is under favorable conditions, can promote more positive attitudes toward the young and greater willingness to share with them."³

¹ Orfield, p. 81.

² Fernando Torres-Gil, et al., Housing: The Diverse Aged, Project MASP, Andrus Gerontology Center, University of Southern California.

³ "Intergenerational House-Sharing: A Feasibility Study and Resource Manual," Project MASP, Andrus Gerontology Center, University of Southern California.

LANDLORD CONCERNS

Concern is often expressed that the presence of children in apartment buildings may lower property values, increase operating costs, and require owners to make substantial "safety" improvements.

Research under this project found no empirical data to support these claims. In any case, the results of the survey of available rentals (see Tables 3-5) show that even if it is true that it is more expensive to rent to families with children, it is also true that rentals which allow children command higher rents.

Property Values

According to the California State Savings and Loan Commissioner and two major savings and loan institutions,¹ there is no known policy in the industry that would result in underappraisal of property because of the presence of children. In fact, the Society of Real Estate Appraisers (SREA) indicates that member appraisers do not even record whether or not buildings accept children when determining the value of a building--it simply is not an important factor.

Maintenance Costs

The following agencies were contacted in an effort to determine whether or not maintenance costs were higher in buildings which accept children as compared to those that were adults-only: Real Estate Research Council of Southern California, U.S. Department of Housing & Urban Development/Los Angeles Area Office, and the Society of Real Estate Appraisers. None of these sources was able to provide us with data on maintenance cost comparisons of buildings with and without children, nor could they refer us to any agency which had this information.

In addition to the above inquiries, questionnaires were sent to the following associations requesting information on any such studies they

¹ Home Federal Savings and Great Western Savings & Loan Association

might have done: 1) Apartment Association/Los Angeles-Western Cities; 2) Apartment House Association Consolidated, San Francisco; 3) Fresno Apartment Association; 4) Tri-County Apartment Association; 5) California Apartment Association; 6) San Diego Apartment & Rental Owners Association; 7) San Fernando Valley Apartment Association; 8) Foothills/Pasadena Apartment Association; 9) Affiliated Cities Apartment Association; and 10) California/Southern Cities Apartment Association. The first five associations responded, but other than a suggestion to contact individual apartment owners, none was able to supply the information requested.

A request for maintenance data was also made of a witness in a child- eviction case who testified that, "Basically, the presence of children in an apartment project tends to cause the operating cost of that project to be greater than they would otherwise be and also tend to cause the ability of the project to command premium rent from other tenants to be less than what might otherwise be."¹ No supporting data for this statement was introduced as evidence during the trial, and subsequent inquiries have also failed to produce back-up data.

Finally, a review of the available published literature regarding discrimination against children revealed only one reference to higher maintenance costs in buildings which accept children. However, that claim was based on an interview with one apartment owner and, again, no supporting data was cited.²

It appears that there is no empirical data which compares maintenance costs in buildings which do and do not allow children. Should this type of study be made, care should be taken to hold constant such factors as building age, location, amenities, and so forth, as these will clearly affect maintenance costs. Also, the percentage of renters with children in the sample should not exceed their percentage in the general renter population in order to avoid any distortion caused by "ghettoization."

¹ Stephen Roulac, Questor Associates, in the case of Marina Point, Ltd., v. Wolfson, Culver City Municipal Court, October 6, 1977.

² Dennis Shaw, Journal of Family Law, V. 16, 1977-78.

Finally, in assessing the importance of maintenance cost studies as a rationale for child-discrimination, it should be determined whether or not comparisons of this sort could be used to discriminate against other classes of renters if it were found that buildings occupied solely by these other classes had higher maintenance costs. In both cases, it can reasonably be argued that other factors are involved.

Insurance Rates

According to the California State Department of Insurance, "It has been this Department's experience...that an apartment's liability and property rates are not affected by whether or not children are residing in the apartment building. Also, we have never received a rating complaint regarding the residence of children in an apartment building."¹

Additional information was received from the Transamerica Insurance Group, stating that although "some apartment building features do influence premiums," that was due to "the inherent hazard of such features, not the presence of children."² The fact that children do not raise insurance rates for apartment buildings was also confirmed by representatives for the Kemper Insurance Company and Farmer's Insurance Company, both in Los Angeles.

The findings of this study are that the insurance industry, with its enormous amounts of data on claims, does not consider the presence of children a significant factor in setting rates for apartment buildings.

Building Modifications/Safety Standards

Information was obtained from building departments in the 5 cities studied. In all cases, owners of dwellings are subject to either state or local housing codes, building codes--and their amendments--and various

¹ Letter from Janet S. Galiley, Insurance Rate Analyst, California Department of Insurance, to Eden Council for Housing Opportunities, April 24, 1978.

² Letter from E. J. Cogan, Transamerica Insurance Group, December 14, 1979, to Fair Housing Project.

swimming pool codes, irrespective of whether or not children are in residence. According to a representative of the Los Angeles Building Department, if an adults-only building were inspected and found to be safe and up to code, and a child subsequently moved in, no modifications would be required.¹ One of the California legislative proposals emphasized this point by declaring that protecting families from rental discrimination shall not "be construed to require a landlord to make an improvement to a housing accommodation beyond the minimum standards established by building codes and regulations approved by a state or local agency which has the responsibility to approve building plans and designs."²

None of this has been interpreted as disregard for the safety of children, but rather an acknowledgement of the fact that living in an apartment instead of a house presents no special high-risk situations for children. Sadly, Los Angeles County statistics confirm this observation. In 1979, of the 35 children under 12 years of age who drowned in swimming pools, 32 (or 91%) were found in private home pools. One child was found in an apartment house pool. In other types of drownings, three children under the age of 10 died in bathtubs, one in a river, and one in a lake.³

It is clear that a variety of situations, including taking a bath, can be dangerous to young, unsupervised children and that parents have the ultimate responsibility for their children's safety -- whether inside or outside of a dwelling unit.

In denying a family shelter for "safety reasons" (e.g., pools, stairways, balconies, parking lots), it may be that the real safety issue is missed. As documented elsewhere in this report, many families are living in dilapidated, substandard, and overcrowded housing. These are dangerous conditions over which their parents have little control because they are deprived of choice in the housing market.

¹Interview with John Feliciello, Assistant Superintendent of Building and Safety, City of Los Angeles, August 21, 1979.

²Senate Bill 440 (Roberti, et al.), February 22, 1979, amended April 25, 1979.

³Letter from Los Angeles County Department of Chief Medical Examiner-Coroner to Fair Housing Project, April 22, 1980.

"A decent home and a suitable living environment for every American family."

--a national goal since 1949

--a state goal since 1970

CONCLUSIONS AND RECOMMENDATIONS

It is apparent from this study that the basic human need for adequate shelter is not being met for a large percentage of California's renters with children. Part of the problem is caused by an insufficient supply of units, but a significant part is caused by the arbitrary exclusion of families with children from those units which do meet their needs.

In order to lessen the burden of this housing shortage-within-a-shortage for families with children, and to encourage intergenerational housing patterns in the future, serious consideration should be given to the following actions:

1. Enactment of a statewide law, similar to those in effect in 7 other states, prohibiting housing discrimination against renters based exclusively on age, parenthood, pregnancy, or the potential or actual tenancy of a minor child.¹

2. Adoption of local ordinances in the absence of statewide protection for renter families with children.

3. An increase in public incentives to private industry to meet the housing needs of families--especially those with 3 or more children--i.e., expansion of all federal rental programs and increases in rent limits to realistic levels.

4. Enforcement of existing regulations which prohibit discrimination against families with children in publicly financed or publicly insured housing projects.

5. Adoption of local regulations and plans that give incentives for construction of developments which offer a mix of 2 or more bedroom

¹Although such protections normally cover only rentals, their expansion to owner-occupied units may be necessary to deal with the growing child-exclusion problem in the sale of condominiums, cooperatives, mobile homes, and "planned communities."

units with 0-1 bedroom units and which include amenities for all age groups.

Note: These actions deal mainly with the unavailability of housing for families with children. For a broader look at the housing problem, please see the California Statewide Housing Plan, 1979 Update, especially Section II, "Policies and Action Items," and Section III, "Farmworker Housing Plan Update." Available from the Department of Housing and Community Development, 921 Tenth Street, Sacramento, CA 95814.

6. At the federal level, serious consideration should be given to amending civil rights legislation so that it will protect families with children from housing discrimination.

A P P E N D I X

"A"

Survey Forms

Compiled by: _____

Apartment Survey

City: _____

Newspaper/Date: _____

"AGE RESTRICTIONS"

Rent per Month	\$0-99	\$100-149	\$150-199	\$200-249	\$250-299	\$300-349	\$350-399	\$400-449	\$450-499	\$500 up
UNFURNISHED UNITS										
No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										
FURNISHED UNITS										
No. of Bedrooms										
0										
1										
2										
3										
4+										
(office use)										

-45-

TOTAL NO. OF UNITS IN EACH BUILDING CONTACTED

(office use)

RESTRICTIONS: (e.g., teens only, infants only, etc.) _____

(cont. on back)

A P P E N D I X

"B"

Age Clustering Maps

FRESNO - CLOVIS METROPOLITAN AREA

1970 Census Tracts

CITY OF FRESNO

Families with Children as a
Percent of Total Households*

Under 15.0%

15.0%-29.9%

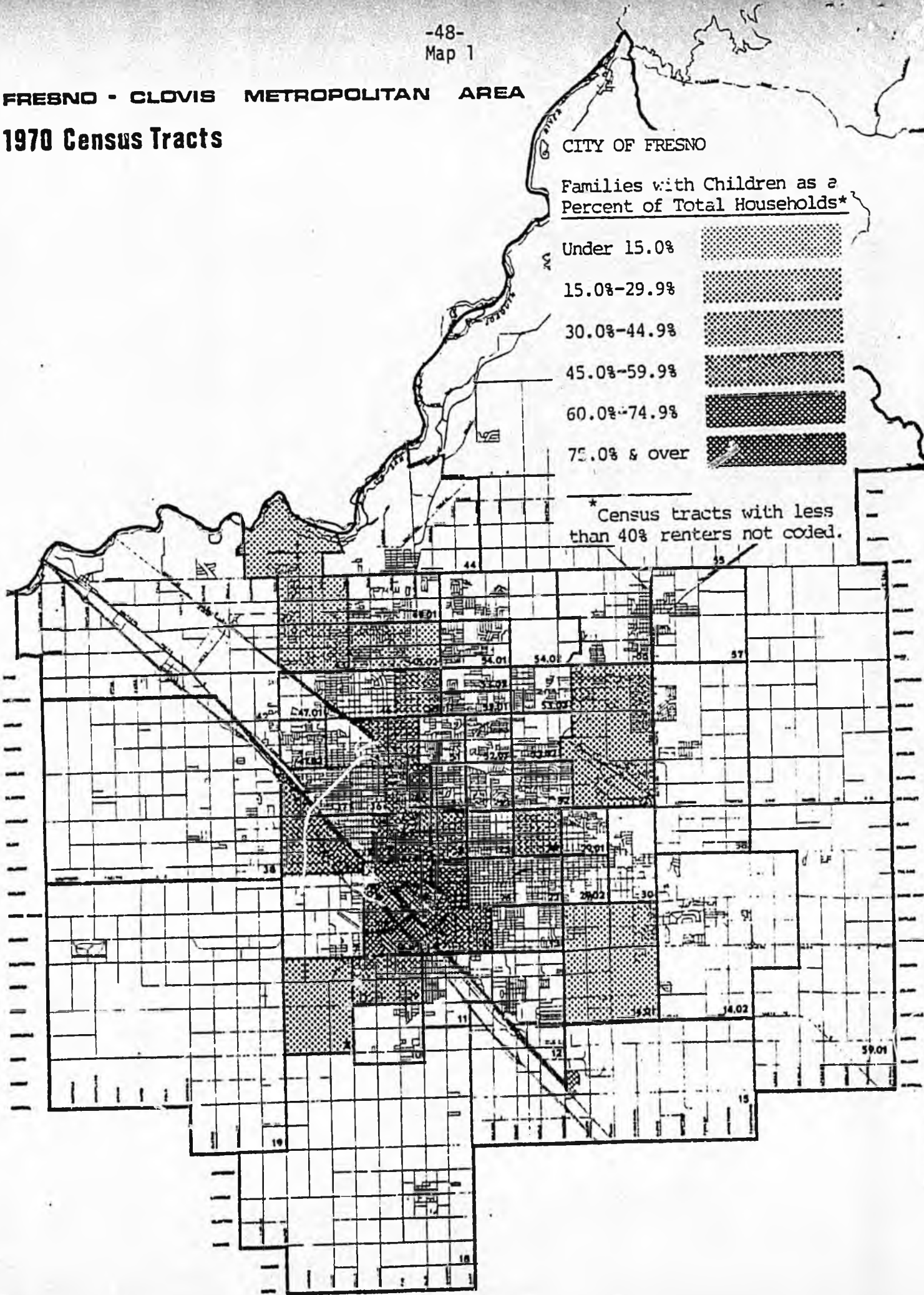
30.0%-44.9%

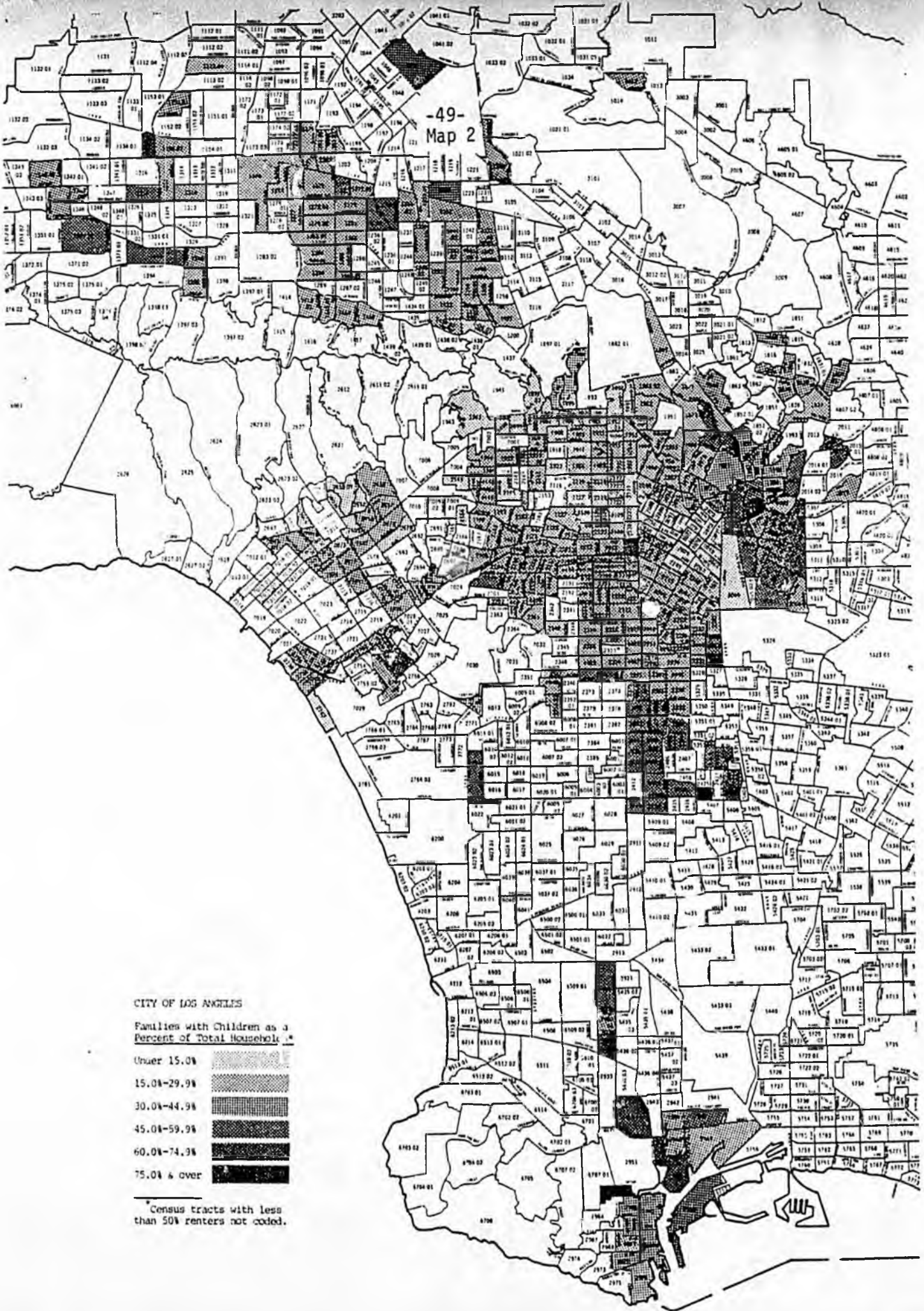
45.0%-59.9%

60.0%-74.9%

75.0% & over

* Census tracts with less
than 40% renters not coded.





CITY OF LOS ANGELES

Families with Children as a
Percent of Total Household *

- Under 15.0% [light stippling pattern]
- 15.0%-29.9% [medium stippling pattern]
- 30.0%-44.9% [cross-hatch pattern]
- 45.0%-59.9% [dark cross-hatch pattern]
- 60.0%-74.9% [solid dark grey pattern]
- 75.0% & over [solid black pattern]

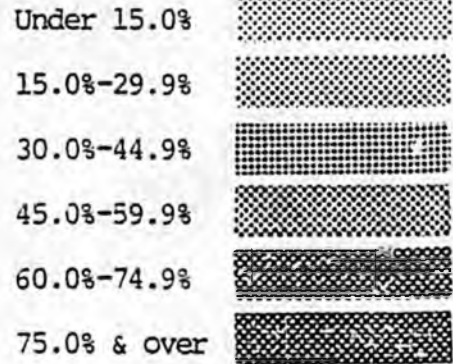
* Census tracts with less than 50% renters not coded.

83.09

MIRA MESA

CITY OF SAN DIEGO

Families with Children as a
Percent of Total Households*



* Census tracts with less than 40% renters not coded.

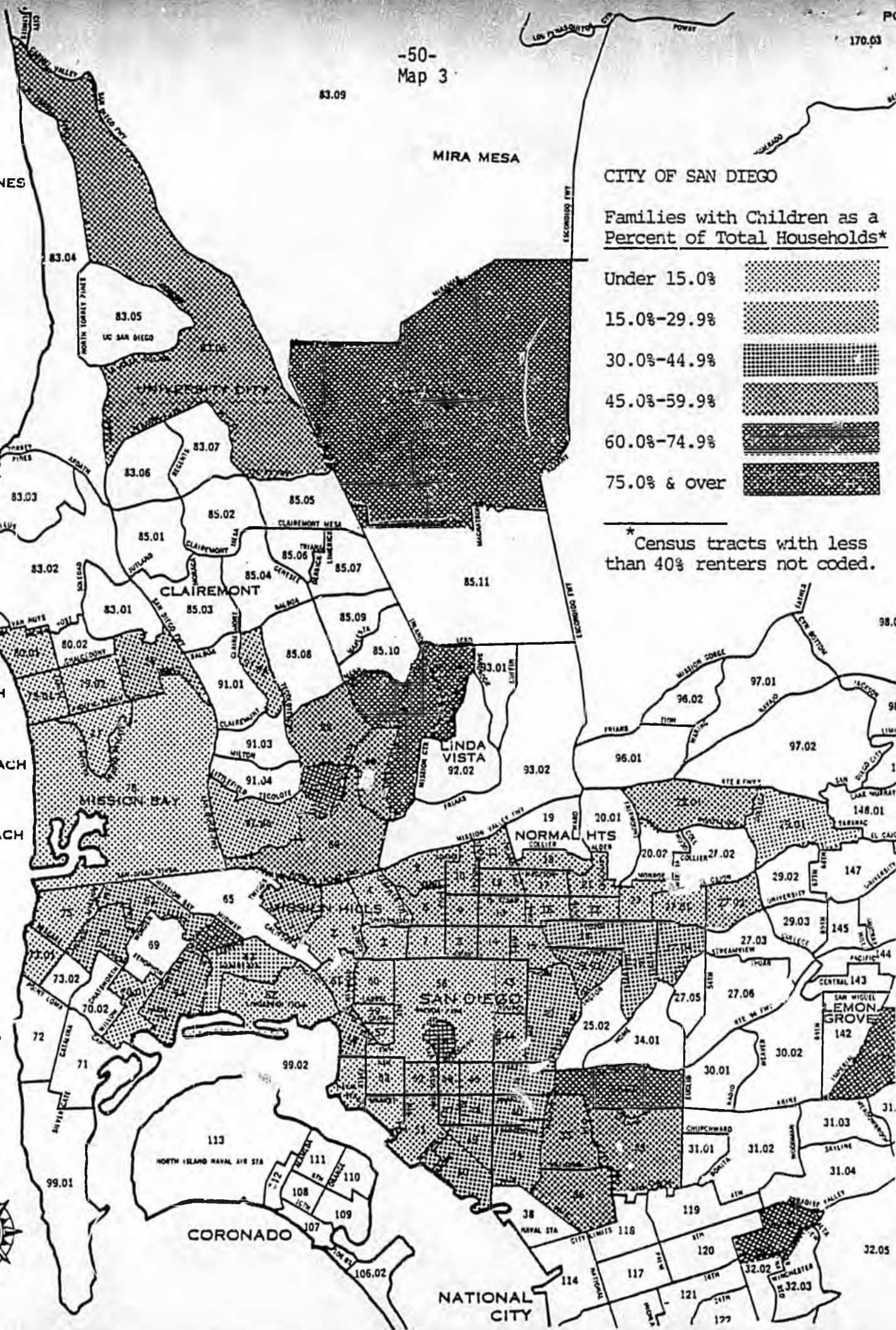
TORREY PINES

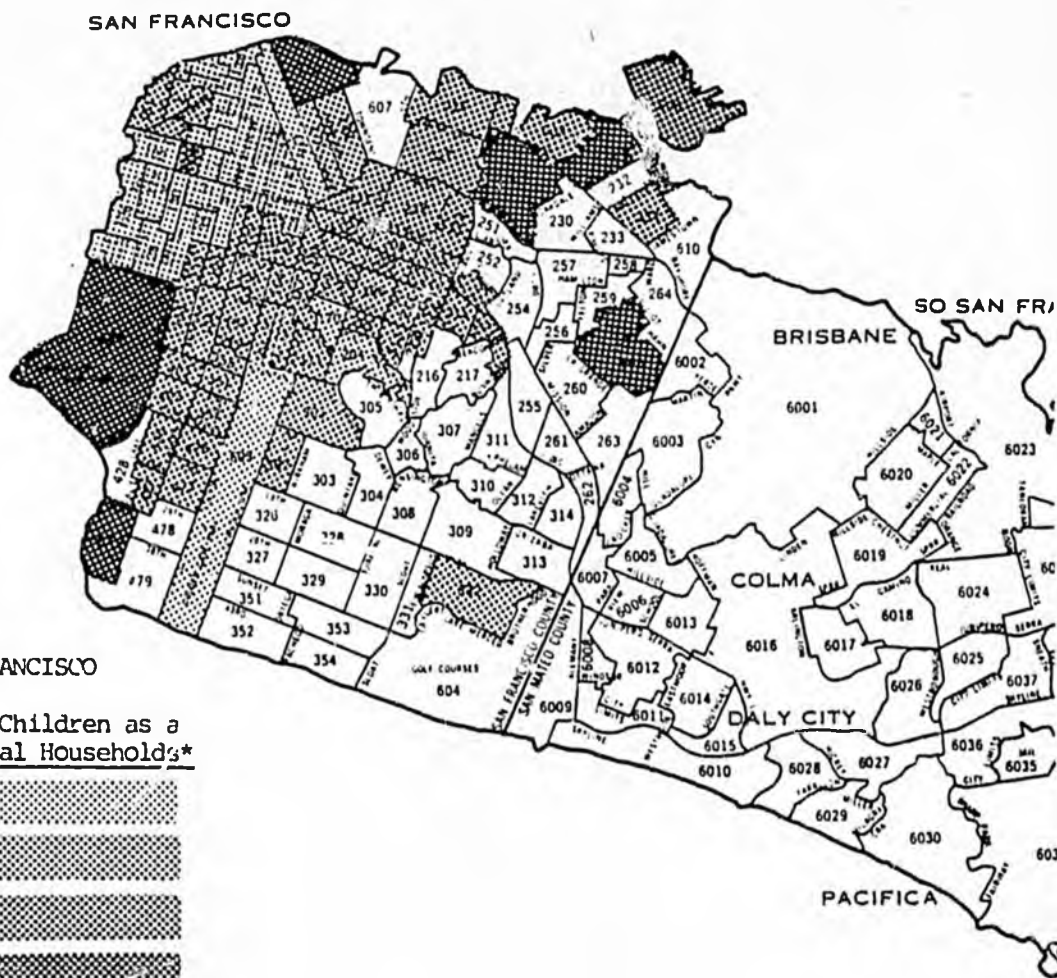
PACIFIC BEACH

MISSION BEACH

OCEAN BEACH

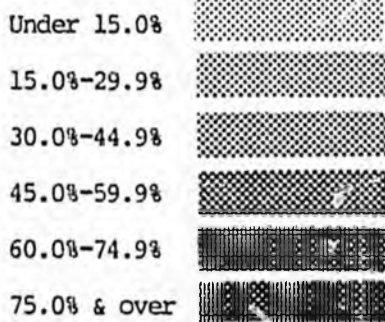
SAN JUAN LOMA



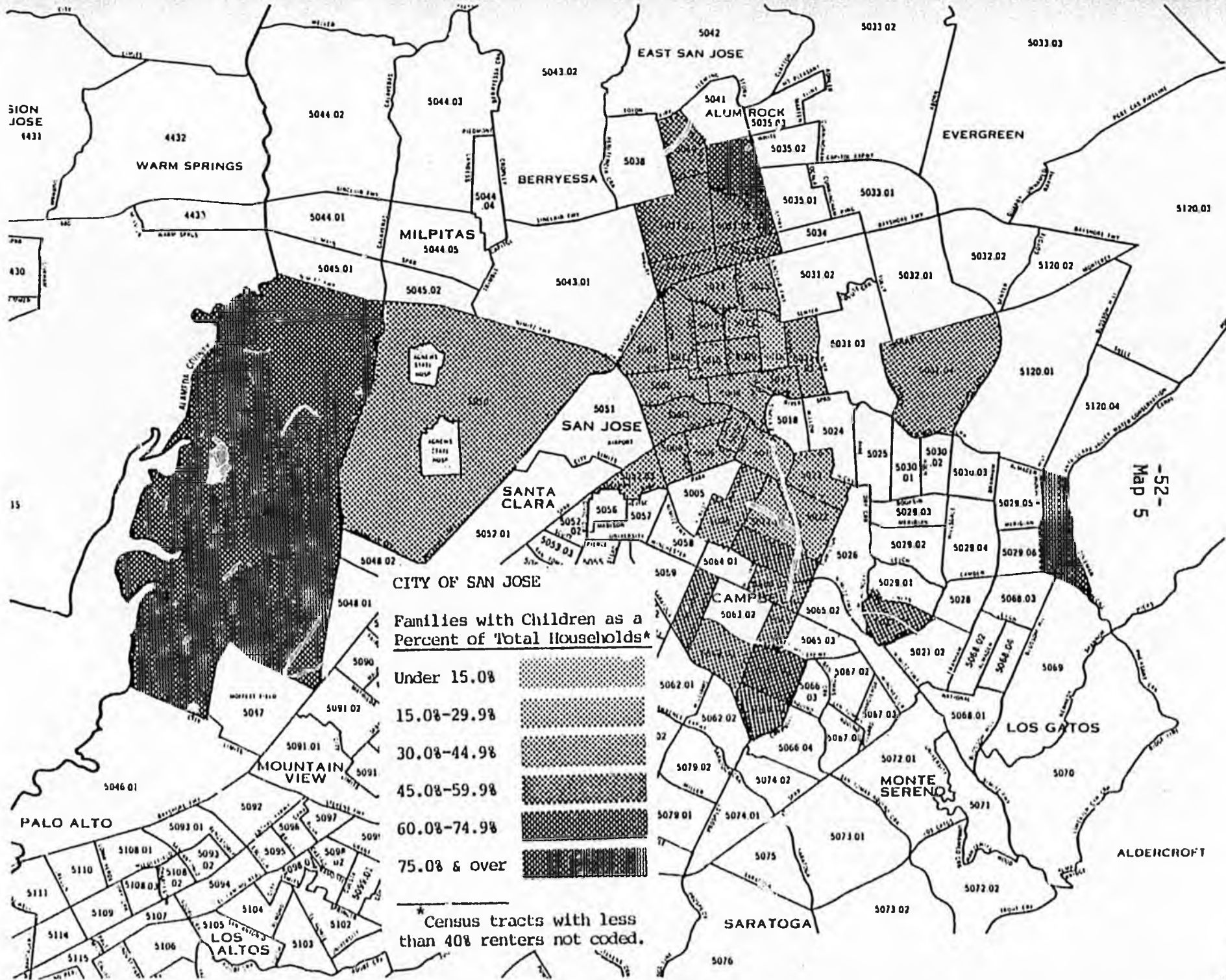


CITY OF SAN FRANCISCO

Families with Children as a
Percent of Total Households*



* Census tracts with less than 50% renters not coded.



CITY OF SAN JOSE

Families with Children as a Percent of Total Households*

- Under 15.0%
- 15.0%-29.9%
- 30.0%-44.9%
- 45.0%-59.9%
- 60.0%-74.9%
- 75.0% & over

* Census tracts with less than 40% renters not coded.

ANALYSIS OF 1976 HUD ACTS (cont'd.)

funding with existing counselling agencies should be brought to the attention of the House Committee on Appropriations.⁴⁸ In addition, the Authorization Act directed the Secretary of HUD to conduct demonstrations and to study the extent of need for and cost of a home counselling program for its insured unsubsidized programs. Within a year HUD shall report to Congress the progress of such studies and demonstrations.

FARMERS HOME ADMINISTRATION

The Authorization Act clarifies a number of provisions with regard to Farmers Home Administration (FmHA) housing. These changes in some cases are designed to overcome unnecessarily restrictive interpretations imposed by FmHA. The minimum interest rate for rural housing loans is now to be set by the Secretary of Treasury upon the request of the Secretary of Agriculture (USDA) rather than annually. An area outside of a Standard Metropolitan Statistical Area (SMSA) with a population between 10 and 20 thousand may now be declared a rural area for purposes of Title V⁴⁹ if the Secretaries of both USDA and HUD find a serious lack of credit for low and moderate income families. Formerly, the standard for finding that an area was rural included a provision that there be a serious lack of mortgage credit for all families. In addition, if an area is redesignated from rural to non-rural, the Secretary of USDA is authorized to continue processing FmHA loan applications and to take all other actions necessary relating to requests for assistance received or assistance granted.

CONCLUSION

The thrust of the 1977 housing legislation contains no new directions for low income housing. Nevertheless, Congress is clearly displeased with the slow progress of

⁴⁸H.R. 94-1220, p. 9.

⁴⁹42 U.S.C. §1741, et seq.

implementing its directives and the blatant failure to follow congressional command. Impoundments and the rescission of housing programs are scorned. Conventional public housing is reinstated as a viable expanding program. The traditional HUD subsidized programs, Sections 236, 235; the direct loan program for the elderly Section 202; and Section 312 the homeowner rehabilitation program have all been extended some with additional funds. Congress has not given up on Section 8, but it wants action now. Pressure is increasing for FmHA to step up its activity and produce housing for the rural poor. In sum, all the 1977 amendments were intended to fine tune existing programs. Their effect, however, is dependent upon whether HUD and FmHA change their general policy of resistance, follow the congressional initiative and move ahead swiftly to increase the maximum number of safe, sanitary and decent housing units for the lower and moderate income families.

CALIFORNIA SUPREME COURT EXPANDS RETALIATORY EVICTION DEFENSE

The California Supreme Court has ruled that in an unlawful detainer proceeding, a farmworker-tenant may raise the affirmative defense of retaliation for the farmworkers' filing suit in federal court pursuant to the federal Farm Labor Contractor Registration Act. S.P. Growers Association v. Rodriguez, 131 Cal. Rptr. 761 (August 10, 1976). The Court, in a broad opinion by Justice Mosk, reversed the decision of the Appellate Division of the Ventura County Superior Court which had upheld the Municipal Court's denial of the defense. The decision was grounded on public policy-- that the purposes of the Registration Act, which relies primarily on individual initiative for enforcement, would be frustrated by denying tenants the defense. This interest in protecting the public policy behind the Act was held to outweigh the traditional interest in preserving the summary nature of the eviction proceeding. Mosk's broad pronouncements on retaliatory defenses give reason to believe that the California judiciary may further expand the defense in the future.

RETALIATORY EVICTION DEFENSE (cont'd.)

The defendant tenants were farmworker-employees who resided in housing provided by the plaintiff through affiliated companies. The tenants, who were members of an unaffiliated citrus-pickers' association, subsequently went on strike and three weeks later filed suit against the plaintiff-contractor alleging violation of the Registration Act. Immediately thereafter, the tenants were served with eviction notices, and when they failed to vacate, the plaintiff filed unlawful detainer actions. At trial the tenants attempted to raise the affirmative defense of retaliation for (1) their strike and (2) their filing suit in federal court.

The Supreme Court quickly rejected the tenants' contention on appeal that retaliation for their strike was unlawful, stating that the contractor is free to hire scabs and provide company housing for those actually working.

The Court, however, engaged in a more detailed analysis regarding the defendants' contention that eviction for their filing suit constituted retaliation. Starting with the general rule that because an action in unlawful detainer is a summary proceeding, affirmative defenses, counterclaims and cross-complaints are inadmissible (Union Oil Co. v. Chandler, 4 Cal. App.3d 716, 721, 84 Cal.Rptr. 756 (1970)), Justice Mosk continued with a brief discussion of those situations where the general rule has been excepted. Most notably, he cited breach of the landlord's implied warranty of habitability, Green v. Superior Court, 10 Cal.3d, 616, 111 Cal. Rptr. 704, 517 P.2d 1168 (1974). Retaliatory evictions, where the landlord has no legal right to possession because of the invalid motive, also fall into this class of exceptions to the general rule. Schweiger v. Superior Court, 3 Cal. 3d 507, 90 Cal. Rptr. 729, 476 P.2d 97 (1970); Abstract Investment Co. v. Hutchinson, 204 Cal. App.2d 242, 22 Cal. Rptr. 309 (1962); and Cal. Civil Code §1942.5.

To successfully assert the defense of retaliation, the defendant must convince the court that the lawful activity engaged in is or should be protected. To determine the

validity of the asserted defense in a specific situation, the court will engage in a "balancing process," weighing the public policies furthered by protecting defendants against the interest in preserving the summary nature of the proceeding. Union Oil, *supra*, 4 Cal. App.3d at p. 726. In S.P. Growers, where the defendants argued that to permit eviction in retaliation for filing suits under the Registration Act would frustrate the purposes of the Act, the Court agreed. Because the original Act had not successfully achieved its objective of minimizing the exploitation of migrant labor by mandating only a \$500 penalty for violation, the Act was amended in 1974 to include a private civil remedy (7 U.S.C. §2050a) and a prohibition on discrimination against a worker filing suit (7 U.S.C. §2050b). The Court, reasoning that the Act depended upon individual initiative for its effectiveness, found retaliatory protection for farmworker tenants essential to give teeth to enforcement:

Migrant workers, who often must rely on their employers for housing, will be understandably reluctant to risk losing possession of their homes by taking their landlords to court, regardless of how egregious the latter's violation of the federal law may be. (At 764.)

The situation was analogized to those present in other leading cases, all favorably cited: Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968) (reporting of housing code violations); Robinson v. Diamond Housing Corporation, 463 F.2d 853 (1972) (exercise of rent abatement under the warranty of habitability); and Sweiger, *supra* (exercise of statutory right to repair and deduct). Rejecting plaintiff's attempts to distinguish the situation from the Edwards-Schweiger line of cases, the Court stated that state courts may exercise concurrent jurisdiction over the Act and provide their own sanctions for violation. Moreover, according to the opinion, the Act was designed to protect farmworkers as employees and as tenants due to the uniqueness of the farmworker situation.

RETALIATORY EVICTION DEFENSE (cont'd.)

Most importantly, the Court did not stop its analysis here. Rather, it chose to continue with a discussion of retaliatory eviction in broad terms which raises some interesting questions about the broad, common law conception of the retaliatory defense vis-a-vis the restrictive California statute, Cal. Civ. Code §1942.5. Mosk's opinion here has opened further the door cracked by Schweiger, and California tenants now have more reason to hope for expanded retaliatory protections.

S.P. Growers, citing Abstract Investment, *supra*, says that "the holding of Schweiger cannot be limited to the narrow proposition that tenants are protected from retaliation only when they take action concerning the conditions of their tenancy" (at 766). The Court may protect tenants to further any (articulated) public policy.

At a minimum, Schweiger stands for the proposition that "the right not to be deprived in court of home and shelter because of the exercise of statutory rights is a 'broad equitable principle' as deserving of protection as the right to equal protection under the law." (Schweiger at p. 515.) Statutory public policy must be protected, whether that policy is enunciated by the legislature or by Congress. In a retaliatory eviction proceeding, the crucial question is not whether the statute is designed to aid tenants, but whether it depends for its effectiveness on private initiative and would thus be emasculated by allowing primitive eviction. (At p. 766.)

Justice Mosk continues his discussion with an emphasis upon the distinction between commercial and residential leases, quoting Justice Douglas' characterization of shelter as a fundamental right from his dissent in Lindsey v. Normet, 405 U.S. 56, 90, 92 S. Ct. 862, 31 L. Ed.2d 36:

The home, even though it be in the slums, is where man's roots are. To put him into the street

. . . deprives the tenant of a fundamental right without any opportunity to defend. Then he loses the essence of the controversy, being given only empty promises that somehow, somewhere, someone may allow him to litigate the basic questions in the case.

Recognizing that consideration of the retaliation defense will detract from the summary nature of evictions, the Court favorably quotes from the U.S. Supreme Court's opinion in Pernell v. Southall Realty, 416 U.S. 363, 385, 94 S. Ct. 1723, 40 L. Ed.2d 198 (1974):

Some delay, of course, is inherent in any fairminded system of justice Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.

One may legitimately wonder about the implications of S.P. Growers, for it is decidedly ambiguous. On the one hand, the second half of the opinion contains these broad dicta quoting favorably from the leading cases in other jurisdictions involving the defense. In these jurisdictions, the protection is considerably greater than that afforded by the California statute, which protects tenants against retaliation for exercising repair and deduct or complaining about conditions to a governmental authority only for a period of sixty days and only once a year. On the other hand, Mosk was careful to refrain from commenting directly on whether case law can expand the limited protection provided by §1942.5 (see p. 767, n. 4), because that statute was not involved in this case where defendants were relying upon the policies underlying a federal statute. Thus, it is unclear how California courts will deal with retaliation for tenant conduct not specified in the statute or retaliation that occurs after the sixtieth day of coverage or more than one time a year. These cases are certain to arise in the near future, and it will be most interesting to see how the court will deal with the retaliatory eviction of a tenant

RETALIATORY EVICTION DEFENSE (cont'd.)

sixty-one days after the reporting of a code violation to a governmental agency. Certainly the retaliatory eviction of such a tenant before or after the expiration of the arbitrary, statutory sixty-day period frustrates with equal effectiveness the public policy underlying housing codes and code reporting. The language and spirit of S.P. Growers give California courts the judicial basis to remedy the inadequacies of the present statutory protection against retaliation.

NEW DEVELOPMENTS

This section of the Bulletin is intended to provide nonexhaustive information to our readers about new developments of interest in housing law. For further information about cases or legislation described herein, please contact Richard E. Blumberg, Senior Staff Attorney at the Project.

NEW YORK HDA ORDERED TO RUN ABANDONED HOUSING

The New York civil court has recently ordered the New York City Housing and Development Administration (HDA) to assume the administrative responsibility for a building in serious violation of codes and abandoned by its judgment-proof absentee owner. Housing and Development Administration of the City of New York v. Fuel Realty Co., N.Y.L.J. (Civ. Ct. July 14, 1976).

HDA had sought a contempt action against the judgment-proof corporate landlord and its absentee stockholders for their failure to comply with the court's earlier order to correct 34 substantial building code violations. Rather than exercise existing statutory remedies such as receivership, HDA sought the contempt action, which the court granted. However, the court recognized that the contempt citation would not effectuate repair of the premises and likely would not even be enforceable. The

court therefore ordered HDA to administer the property pursuant to statute. The court noted that the proceeding "illustrates the total breakdown of municipal enforcement of decent housing maintenance and the tragic absence of any affirmative strategy by the city to meet the city's . . . housing chaos." The court charged that maintenance of decent housing was the responsibility of HDA, not the court, and that this responsibility should not be evaded by total reliance on the illusory remedy provided by the court's exercise of its contempt powers.

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RIGHT TO JURY TRIAL IN SUMMARY EVICTION PROCEEDINGS UPHELD IN MISSOURI

The Circuit Court of the city of St. Louis, Missouri, has upheld a tenant's state constitutional right to trial by jury in a summary eviction proceeding where either money damages (for rent or habitability) or possession is at issue. Rice v. Lucas, Cause No. 57190-F (Cir. Ct., Div.#3, October 18, 1976). In an extremely well-reasoned and socially aware opinion, Judge Gaetner relied on the U.S. Supreme Court's guidelines for analyzing state common law vis-a-vis the state Constitution set out in Pernell v. Southall Realty, 416 U.S. 363 (1974), to determine the right to jury trial. The court also relied on King v. Moorhead, 495 S.W.2d 65 (Mo. App. 1973), Missouri's implied warranty of habitability case. After the now-traditional discussion of state common law, the court reached a rather unique yet well-founded conclusion:

The Court has indulged in this historical review in order to show that even if the right to a trial by jury had not been granted at common law to a tenant facing eviction and who claims to have a legal defense, the time has come to grant him the full panoply of judicial process. (Rice supra, slip opinion at p. 5.)



JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH

CARL D. FRANTZ

March 9, 1982

FROM: Eileen Stern, Research Fellow
Office of Legislative Research

RE: Just Cause Eviction

You have asked about the effect of just cause eviction laws on the real estate industry, particularly in New Jersey and Washington, D.C.

SUMMARY

It appears to be difficult to assess the impact of just cause eviction on the real estate industry. While some industry representatives characterized the impact as slight or even non-existent, other portrayed it as significant in itself or as part of a trend of industry intervention. The relationships of just cause eviction to the tax codes, rent control, and rehabilitation were often mentioned in interviews and in available literature.

CURRENT SITUATION

Just cause eviction laws already cover a significant segment of the tenant population of the United States. Coverage arises from specific eviction laws (New Jersey, Washington, D.C., Seattle, Washington, and several California municipalities), from condominium conversion laws (Connecticut and New Jersey), and from regulations governing most forms of federal housing. In Connecticut, the impact of just cause eviction arises primarily from subsidized housing situations.

Despite the widespread applicability of just cause eviction protection, there is apparently no hard data nor any study measuring the effects of this area of landlord-tenant legislation. Representatives of the various interests involved in rental housing and its regulation indicate that just cause eviction laws are just one factor, perhaps a very small factor, in the complex rental industry. In order to measure the impact of just cause eviction, one would have to isolate its effects from the effects of the general financial climate, the prevailing interest rates, applicable tax codes, land use restrictions, other legislative mandates or prohibitions, and the general social climate. While some industry representatives

dismissed the impact of just cause eviction legislation within this complex environment, others portrayed it as a final "unbearable insult" or "burden" to the real estate investor or as a psychologically potent issue in real estate investment. Currently the rental market and the general real estate market appears to be very poor everywhere. None of the market participants attributed the condition of the market to just cause eviction alone. Participants in the condominium conversion process expressed greater concern about just cause eviction than others interviewed.

New Jersey Experience

New Jersey statute has been in effect since 1974. Steve Brush of the Connecticut Regional Housing Council has encountered conflicting reports of its impact, a situation borne out by telephone calls made in preparing this memo.

New Jersey Department of Community Affairs Attorney Mike Ziskin reports that he is not aware of any bad effects of the basic just cause eviction law. However, he did state that the 1981 amendment protecting senior citizens, their spouses, and the disabled from eviction for a 40 year period has already been challenged in court.

Attorney Larry Freundlich finds the effect of the New Jersey statute not insubstantial to the real estate market. He indicates that the law slows down transactions and has its greatest impact in the realm of condominium conversions. He does, however, see other factors effecting rental construction more directly, especially local option rent control. Attorney Freundlich attributes the refusal of loans for apartment construction by national insurers to New Jersey's local rent control option.

D.C. Experience

The D.C. Rental Accommodations Commissioner, Marie Nihikian, reports that the just eviction law in the District has been effective as a response to a real estate trend to stop serving one segment of the population. The major related problem is a backlog in the court system, and particularly of the required service of eviction by U.S. Marshals. Several lawyers contacted through the D.C. Bar were not aware of significant impact on the real estate industry from the just cause statute.

The remainder of this memo will be devoted to viewpoints and concerns expressed by attorneys, realtors, interest group spokesmen, and government employees involved in the real estate industry. Copies of appropriate statutes are attached.

GOOD CAUSE EVICTIONS

The prevailing common law rule (judge made) in Connecticut and every other jurisdiction is that a landlord may evict a tenant when the tenant's lease has expired by simply alleging and proving that the term of the lease is over. The landlord does not have to

allege and prove any misconduct on the part of the tenant such as nonpayment of rent, destruction of property, excessive noise, etc. As noted before, New Jersey, Washington, D.C. and, for certain protected tenants, Connecticut, have modified this common law rule by enacting good cause eviction laws. Both the D.C. Code and the New Jersey statute specify that a tenant may not be evicted solely because his lease has expired (Section 45-1653 (b) D.C. Code; 2A:18-61.3 N.J.S.).

Members of the private bar indicated that their concern was not the eviction of tenants during the term of their lease. Rather it is the statutory requirement that a tenancy be continued indefinitely unless or until the tenant terminates the tenancy or the landlord can successfully bring an eviction action based upon cause. If a tenancy may not be terminated upon expiration without resort to documentation and involved legal procedure, then according to Attorney Allen Thomas, the landlord is at a distinct disadvantage. Philosophically, Thomas wonders at what point people are no longer able to dispose of their property, raising questions of restraint on alienation (restriction on power to transfer property) and constitutionality. More concretely, he suggests other tenants may suffer if the landlord cannot utilize non-renewal as a means of dealing with nuisance tenants. In part, this last point is related to the costs to the landlord of eviction proceedings.

COST OF JUDICIAL RECOURSE

Attorney Ralph Alexander suggests that just cause evictions is potentially costly to the landlord. Against a background in which he finds the small landlord (less than 20 units) at a disadvantage because spiraling legal costs make it difficult to seek legal recourse, particularly in situations when the other party is represented by a legal aid attorney, Attorney Alexander is concerned that the small landlord may be "wiped out by just cause". The larger landlord will feel the financial pressure also, because rentals are a marginal business investment. Attorney Alexander's experience with Section 8 housing just cause regulations have led him to a conclusion similar to Attorney Thomas': if cost and other difficulties in proving the validity of a tenant non-renewal impede the landlord in correcting a nuisance, the other tenants suffer.

PSYCHOLOGICAL IMPACTS

D.C. Rental Accommodations Commissioner Marie Nihikian describes a psychological issue in just cause eviction: people do not want to invest in rental housing because they are concerned about the impact of just cause laws. Ms. Nihikian suggests that this psychological impact is the only impact to be found resulting from just cause legislation. It would appear that some of the concerns stated throughout this memo are examples of this psychological impact.

The Connecticut condominium conversion law just cause protection of the elderly and handicapped raises a different psychological issue. Several speakers at the Judiciary Committee Hearing of March 2, 1982 referred to the trauma of displacement, particularly repeated displacement. Attorney Don Buck, President of the Community Association Institute, found evidence of the psychological impact in his experience during conversion of the Linden building. Elderly tenants resisted moving, despite what Attorney Buck characterized as substandard and potentially hazardous conditions.

SUBSTANTIAL RENOVATION

Attorney Buck's primary concern with the effect of just cause eviction stems from its impact on substantial renovation. Deteriorated or deteriorating buildings are extremely costly to renovate. The code requires that if the rehabilitation cost equals or exceeds 50% of the building's appraised value--which is often the case in renovations--tenants must vacate the premises during renovation (there are some exceptions, such as townhouses). According to Attorney Buck:

- Just cause eviction is a disaster for substantial renovation.
- Two or three historically significant buildings have not been rehabilitated recently because just cause eviction laws and large numbers of elderly and handicapped tenants combined to discourage potential development.
- Good cause laws may force piecemeal renovation which in the long run is more expensive and will lead to higher rents.
- Deterioration is the end result of inadequate substantial rehabilitation.
- There have not been many problems with just cause eviction in Connecticut, because the conversion and rental markets have been dead over the last two years.

JUST CAUSE EVICTION AND RENT CONTROL

Some amount of defacto rent control seems to be necessary to the success of just cause eviction protection; a tenant that is forced out by burgeoning rents has not benefitted from the law. The New Jersey condominium conversion-protection of the elderly and handicapped addendum to the just cause statute addresses this issue with specific provisions for towns with and without rent control commissions. Increased costs that are due to conversion as opposed to increase of services or amenities are not permitted (2A:18-61.1 NJSA). In addition to inclusion of increased rents in the definition of retaliatory action (Sec. 45-1654 D.C. Code), D.C. approaches this problem through its package of industry intervention, which combines eviction laws with rent control.

A summary of the status of just cause eviction compiled by the

National Housing Law Project reports that the majority of "second generation" rent controls in the United States contain just cause protections. D.C. is one of the examples given. D.C. Rental Accommodations Commissioner Marie Nihikian describes eviction control as the most important part of the industry intervention package. If forced to choose between just cause protection and rent control, she would choose the former.

Attorney Don Buck suggests that rent control would have greatest impact on "in-place rehabilitation" (rehabilitation performed while tenants remain in the building). He anticipates that "fair rent" would inhibit in-place renovation and destroy that market in the same way that just cause would, in his view, destroy the substantial rehabilitation market.

TAX CODES

Although not a part of just cause eviction legislation per se, the impact of the tax codes was mentioned by virtually every person contacted. The impact of the IRS code was described as so pervasive that it must be considered in any inquiry into effects of any other issue in the real estate industry. Traditionally, tax regulations were shaped to subsidize rental housing. In the marginal rental industry, tax shelters and equity accumulation were the basic stimuli to investment. A series of changes in the IRS code culminating in the Kennedy Reform Act made it less lucrative to invest in the rental market. The Economic Recovery Act of 1981 contains some provisions that may be beneficial to real estate investors, particularly those involved in rehabilitation. One provision is an accelerated depreciation allowance schedule. Hugh McGuire of our office will be studying the effect of this act in greater depth and we will forward pertinent information.

In part due to the tax codes, D.C. Rental Accommodations Commissioner Nihikian finds investors less willing to invest in rentals with their long-term gains than in projects with short-term profits. This would appear to be part of the Connecticut environment, since, according to Attorney Buck, the landlord in a conversion always sells to a professional converter.

ES:fs

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September 30, 1983

Senator Vic Fischer
Chairman, Senate Committee on State Affairs
1024 West Sixth Avenue, Suite 204C
Anchorage, Alaska 99501

Re: Rental housing needs

Dear Senator Fischer:

Recently I returned from an extended vacation to find your July 19th request for information concerning Alaska's rental situation and specifically HB 1. Thank you for the opportunity to comment on both.

Taking HB 1 first, I have the following section by section observations:

Section 1

The proposed AS 09.45.085 would permit landlords to try to forcibly evict tenants after they have obtained a judgment for possession without seeking the assistance of the police. It is a terrible idea.

Under present law, landlords must not only obtain a court order, but also obtain a writ of assistance to be served by the Alaska State Troopers if the tenant does not peaceably vacate as the court has directed. This means that in those situations where physical confrontation is most likely, an Alaska State Trooper is already on the scene. The proposed delegation of authority to landlords creates a situation similar to a forcible entry, which is a crime in many states. A forcible entry occurs where the landlord, without resort to legal process, attempts to remove the tenant from possession. The necessity of first obtaining a court order under the proposed amendment addresses some of the policy considerations against permitting forcible entries, but not the concern with public safety at the root of the concept that the state, not private citizens, should evict people.

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Delegating responsibility for enforcement of court orders to private citizens raises several interesting questions. By doing so, does the legislature intend to grant landlords the privilege of using reasonable force in executing eviction orders? How much force is reasonable? If the landlord uses excessive force, is the privilege of using reasonable force lost? If excessive force is used, is the tenant privileged to respond with force reasonable in the situation as a matter of self defense? What are the rights and potential liabilities of third parties who witness an altercation and intervene on one side or the other? What if the landlord jumps the gun, and tries to oust the tenant after obtaining an order but before the deadline for vacating expires?

Private enforcement of eviction orders is a bad idea. It implies that the legislature approves of the use of intimidation or force on the part of one private citizen against another. The proposed amendment contains no requirement that attempts at private enforcement occur at a reasonable time. The question of a landlord's liability for the property of a tenant removed from the premises is not addressed. The question of whether unannounced lock-outs are a permissible means of enforcement is not addressed, nor is the issue of whether locking a tenants property into the apartment constitutes an illegal distraint for rent under AS 34.03.250.

Not only would the proposed legislation encourage abuses against tenants, it may also make it more difficult for landlords to obtain police assistance with evictions, since present procedures concerning writs of assistance may be abolished. Finally, adoption of the proposed amendment would only encourage litigation to determine the scope of the landlord's privilege and remedy abuses. For reasons of public safety, personal dignity and administrative convenience the proposed amendment should be rejected.

Section 2

This section seems to be intended for purposes of clarification. It makes no substantive change in the law, since landlords may already bring a forcible entry and detainer action upon the expiration of a periodic tenancy. I am not sure what is meant by the last three words "determining the tenancy". Perhaps "determining" is meant to be "terminating".

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Section 3

This section imposes punitive damages on the tenant for wilfully or in bad faith failing to give timely notice to the landlord of his or her intention to terminate the tenancy. It also establishes a presumption that failure to give such notice is wilful and not in good faith.

Creation of a presumption that failure to give timely notice is wilful and in bad faith is simply not warranted. Most people tend to regard housing as a personal necessity rather than a business matter, and landlords and tenants alike are frequently ignorant of specific legal requirements, particularly when notices must be given to be effective. Creation of such presumption could put tenants in the position of having punitive damages awarded against them without the issue of wilfulness or bad faith ever explicitly having been raised. Landlords would neither have to plead or prove either issue, but tenants could suffer punitive damages simply by neglecting through ignorance to raise the issue.

As to the imposition of punitive damages itself, no corresponding penalties are imposed upon a landlord for giving untimely notice or for trying to enforce an untimely notice. Imposing such a penalty on tenants thus seems a bit one-sided. A better idea would be to follow the example of AS 34.03.300 (regarding abuse of access) and impose the same liability on landlords and tenants for similar violations.

Imposing punitive damages for failing to give timely notice upon either landlords or tenants make little sense. Present law already imposes liability for compensatory damages. The drafters of the Uniform Residential Landlord and Tenant Act (1972) from which Alaska's URLTA was adopted, saw no need for punitive damages in this situation, and the need probably does not exist.

Section 4

I am opposed to adoption of this section because it would be a significant change in the amount of time necessary to terminate a tenancy without cause. Under present law, the landlord must give the tenant one full rental period's notice be-

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fore terminating the tenancy or raising the rent. As most Anchorage rental agreements are month to month tenancies, as a practical matter this generally means thirty (30) days notice for the tenant. The significance of the proposed change is that it would permit material changes in the rental agreement, such as termination or a rent increase, to take place in the middle of the rental period.

At common law, when a lease is entered into the tenant obtains a right to possession upon performance of certain conditions for the duration of the leasehold interest. In the absence of breach by the tenant, neither the terms of the lease agreement nor the duration of the possessory interest may be altered, unless the parties have made some agreement to the contrary. Section 4 would change that relationship by permitting material changes during a time for which the tenant had already paid for possession.

Changing that relationship would raise some interesting questions not addressed by the bill. If the landlord increases the rent during the middle of a rental period, when is the increased rent due? If the tenant decides to leave rather than pay the increase, can he or she remain until the date the increase becomes effective? Should tenants pay only a prorated portion of the prior rent to cover the period they intend to stay, and would doing so violate the terms of their lease and give cause for a termination for breach? If the tenant pays the full month's rent and elects to leave, what are the landlord's responsibilities with regard to returning the unused portion of the rent? If cleaning or damage charges are claimed, may the landlord deduct such charges from the unused portion of the rent as well as any damage deposit held? If so, do the provisions of AS 34.03.070 control the itemization of such deductions and the time in which notice must be given? If the landlord gives notice which would terminate the lease in the middle of a rental period, how much money should the tenant pay at the beginning of the month? Again, if the tenant pays the full rental amount, how much time does the landlord have to return the unused portion?

The proposed Section 4 would give legislative approval to what are considered under present law to be breaches of con-

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tract, that is, material changes in the rules of the game during a time for which the tenant has already paid for possession. It is not unreasonable to demand of landlords a full rental period's notice before such changes are made. Under present law, there is at least some uniformity in when apartments change hands. With the proposed change, apartment turnover could take place on any day of the month, and tenants could face increased difficulty in finding a new apartment which would be available without interruption. Since the only interest to be protected by the proposed section is a landlord's desire to end a tenancy without cause, the burden such a change would impose on tenants should outweigh the minimal convenience to be gained by landlords. The proposed amendment should be rejected.

Section 5

This section amends present language to permit the landlord to bring an action for recovery of actual damages as well as possession, and lowers the standard for recovering punitive damages. As to the former change, landlords already have the right to sue for actual damages, so such an amendment seems pointless. However, if inclusion of the additional language is intended to permit the landlord to recover damages in a summary forcible entry and detainer proceeding, serious due process problems would arise.

An FED takes place on only two (2) to four (4) days notice. The sole issue to be tried is that of possession. Damages are put off for decision in the course of a normal civil lawsuit. It is difficult enough to prepare for an FED hearing in the limited time available without the necessity of investigating damages claims as well. Frequently, discovery is necessary to ascertain the legitimacy of the amount claimed, and time is needed to evaluate and gather evidence concerning available defenses. Combining the damages and possession issues into one summary proceeding would raise significant questions as to whether the hearing afforded a tenant under such circumstances could be called meaningful.

The second change, reducing the standard for recovery of punitive damages from a "wilful and not in good faith" to a

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"wilful or not in good faith" standard is in line with the proposed standard for punitive damages contained in Section 3 of the bill. It is subject to the same arguments. A high standard of proof should be required before punitive damages are imposed. Lowering the standard in this instance to not require bad faith would expose tenants to punitive damages in all instances where they elected to fight an eviction in court, no matter what the merits of their position. By electing to stay, tenants could be said to have "wilfully" held over beyond the termination of the tenancy, and if they lost in court, landlords could request the punitive damages permitted by the proposed amendment. Such a risk may well have a chilling effect upon tenants' willingness to challenge unlawful terminations, even in cases where the eviction is clearly retaliatory. Furthermore, this chilling effect may have a disparate impact upon low income tenants.

A standard which would expose tenants to punitive damages for insisting upon their day in court should not be adopted.

Section 6

This and Section 7 seem to be only tenant oriented provisions in the entire bill. The changes contained in the proposed Section 6 are mainly cosmetic, except for explicitly including termination of the rental agreement or providing notice of termination to the list of retaliatory conduct. Specific inclusion of both is a good idea.

Section 7

The sixty (60) day presumption created by this section would avoid some of the proof problems inherent in raising a claim of retaliatory eviction. Considering that the presumption would only arise in the four (4) situations enumerated in AS 34.03.310(a), the potential for abuse seems minimal. Also, it is reasonable to attach a retaliatory motive to evictions occurring within sixty (60) days of a tenant's engaging in one of the four (4) categories of protected activity, something which cannot be said of the presumption proposed in Section 2 of the bill.

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This section is a good idea, but it does not go far enough, particularly considering the punitive damages against tenants recommended in Sections 3 and 5 of the bill. For the sake of consistency and fairness, if landlords are to be awarded punitive damages when the tenant breaches, so should tenants be awarded punitive damages in the event of a landlord's retaliation. Since if the tenant wins a retaliation claim there are likely to be no actual damages beyond attorney's fees, an appropriate statutory amount would be one and one-half (1 1/2) times the monthly rent. Adding teeth to the retaliation statute would also serve the salutary purpose of actively discouraging interference with the exercise of protected rights as opposed to merely preventing such interference when it is brought to the attention of the court.

Other Matters

That concludes my comments regarding HB 1. As far as Alaska's rental situation in general, what I have to say falls more under the heading of ideas than suggestions.

Tenants in Alaska have little security when it comes to rental increases. Rents can usually be raised on only one (1) month's notice, and there is no limit on the amount of the increase. This factor combined with the current shortage of housing in the Anchorage area makes for a very strong sellers market, and this is hurting low income people quite a bit. I would like to see some limits on the use of month to month rental agreements, some restrictions on the availability of evictions without cause in the absence of sale or changes in the use of the property, and some limits on how often and by how much rent can be increased.

I note that AS 34.06.010 - .060, which expired July 1, 1977, used to authorize the governor to declare a state of housing emergency if conditions warrant it. Upon such a declaration, residential rents came under regulatory control. One possibility would be reactivating Title 34 Chapter 6, to make rent control available in housing emergencies. The problem with this or any other course of action raising the specter of rent control is that as soon as the issue arises, rents go

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up. I don't know how to get around this problem, but I suspect that one way would be a gradual increase in the rights of tenants, and in particular getting rid of no-cause evictions.

Thank you again for the opportunity to comment. Please do not hesitate to ask again in the future.

Sincerely,

ALASKA LEGAL SERVICES CORPORATION

Joseph D. O'Connell /gh
Joseph D. O'Connell
Attorney at Law

JDO/gh

cc: John

Alaska State Legislature

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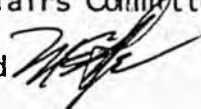
CHAIRMAN
STATE AFFAIRS

MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Senator V'c Fischer
Chairman, Senate State Affairs Committee

FROM: Representative Mitch Abood 

RE: Committee Substitute for Sponsor Substitute for House Bill
No. 1 (House Judiciary)
"AN ACT RELATING TO LANDLORDS AND TENANTS"

DATE: Synopsis as of April 30, 1983

The Alaska Statutes governing Landlords and tenants is not entirely clear in defining certain areas of concern to both the landlord and the tenant. Both the landlord and the tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the population in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. I introduced House Bill No. 1 to answer some of these needs. I feel that it is fair and equitable to both parties.

Section 1: This provision authorizes enforcement of a judgment for the restitution of real property obtained in an action for forcible entry or detention. No other order to enforce the judgment may be required. (This simply means that the landlord does not have to go through an additional step to rightfully acquire his property.)

Referring to Section 2. of CSSHB 1, the landlord's rights are more clearly defined in relation to termination of a "periodic tenancy" held by a tenant. As the law stands now, it refers only to a lease or agreement, (a predetermined period of time) or an "estate at will", (for which the tenant is at the mercy of the landlord, and has no say in how long the tenancy will last). A "periodic tenancy" refers to a month to month period of time. Unlike a lease or agreement, it can be indefinite, and a good majority of rental arrangements today are based on a periodic tenancy. By inserting this new paragraph, it assists the landlord in enforcing his rights, should any conflicts arise due to termination.

Section 3 of CSSSHB 1 was added by the Labor and Commerce Committee to further clarify AS 34.03.290 (c) relating to the 30 day notice. If the tenant fails to give notice of termination, then the landlord is entitled to an amount not to exceed one and one-half times the actual damages.

Section 4 provides for a 30 day notice. I feel that this is an equitable time frame to both tenants and landlords. Due to the tight rental market in Alaska at the present time, it is quite difficult to find adequate housing, especially for those families with children or pets, not to mention the elderly and minorities. "Rental due date" refers to the date on the same day each month that rent is to be paid. The landlord may wish to give notice of termination to the tenant before the "rental due date", and replacing "rental due date" with the word "termination" date provides for either time frame. It does not restrict either party to the exact date the rent is due when giving a termination notice. The question arises, "What if the tenant gives notice on, say May 17th?" This means that the termination date would be June 16th, (or 30 days). The landlord would not lose any rental income even though the termination date falls after the "rental due date".

Section 5 provides for recovery of "actual damages", as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect, is incentive to the tenant to vacate the premises.

An improper hold-over by a tenant has caused landlords financial difficulties. If a tenant continues to occupy a dwelling after his tenancy expires, he is causing the landlord loss of potential income needed to make mortgage payments, as well as the loss of time to make necessary repairs before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

Section 6 adds terminating a rental agreement or providing notice of termination to the list of the actions that a landlord may not take when a tenant attempts to enforce his rights.

Section 7 was included in this bill to protect the tenant from landlords who abuse the right to access or evict the tenant for retaliatory reasons. The tenant has a right to his/her privacy, and the landlord must give "reasonable" notice to the tenant before entering the property. This new subsection also provides that the tenant may not be evicted because they have made a complaint, (for just causes), against the landlord, as long as they abide by the laws governing landlords and tenants. Sixty days is a sufficient amount of time to correct a problem or answer a complaint.

This bill is intended to update the present laws governing both the landlord and tenant. I feel that it provides both parties with fair and equal provisions to answer some of the overwhelming problems that have arisen over the past several years, due to the increase of the Alaskan population.

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(It should be noted here that an increase in rents well as substantial or material changes in the existing rental agreement may also constitute a form of termination. This is, in effect, terminating the rental agreement then in existence and offering a new rental agreement at different terms. If the tenant does not accept the "new terms", then he must vacate 30 days after the receipt of notice of changes in the existing rental agreement. If the tenant does not respond to the landlord's notice of changes, then at the end of the 30 day period, the new rental agreement takes effect.)

Original sponsor: Abood

1 IN THE HOUSE

~~BY THE JUDICIARY COMMITTEE~~

2 *SENATE CS #* CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to landlords and tenants."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 09.45 is amended by adding a new paragraph to read:

9 Sec. 09.45.085. ENFORCEMENT. A judgment for the restitution of
10 real property rendered in an action for forcible entry or detention
11 may be enforced by the plaintiff without further judicial action and
12 the plaintiff may not be required to obtain a writ of assistance or
13 other order to enforce the judgment.

(after line 13, insert)

* Sec. 2. AS 34.03 is amended by adding a new section to read:

Sec. 34.03.015. PROHIBITED PRACTICES. A landlord or other person having the right to lease or rent real property may not refuse to execute a rental agreement or may not terminate a rental agreement to lease or rent the real property to a person solely because of sex, marital status, changes in marital status, pregnancy, parent^hood, race, religion, color or national origin.

20 (b) If the rental agreement is terminated by the tenant, the
21 tenant fails to provide the notice required under AS 34.03.290(a) or
22 (b), and the failure to provide the notice is wilful or not in good
23 faith the landlord may recover an amount not to exceed one and one-
24 half times the actual damages. Failure by the tenant to provide the
25 notice required under AS 34.03.290(a) or (b) is presumed to be wilful
26 and not in good faith.

27 * Sec. 4. AS 34.03.290(b) is amended to read:

28 (b) The landlord or the tenant may terminate a month to month
29 tenancy by a written notice given to the other at least 30 days before