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New Source of Income Discrimination Law Passed

What a Landlord Should Know About the New Source of Income Discrimination Law

We recently released a newsletter discussing the possibility of a new law that would prevent landlords in Westchester County from refusing to rent an apartment or other residential accommodation on the grounds that the proposed tenant is receiving public assistance or housing assistance, including Section 8 vouchers. Since then, new legislation has passed that provides exactly those protections. In this article, our firm discusses the impact of this new legislation on Westchester landlords, and how they can comply with the new law to avoid potential liability.

What is "source-of-income" discrimination?

The new law places recipients of certain financial housing assistance into a new protected class, giving them the same rights as other protected classes, such as race, religion or disability.

In the new law, the Board of Legislators defines "source of income" as any lawful income derived from:

- Social Security or Disability Payments
- Federal, State, or Local Public Assistance in any form
- Grant or Loan programs, including Section 8 benefits
- Assistance, grants, or loans, from a private housing assistance organization

Examples of source-of-income discrimination may include refusing to rent or lease, or refusing to continue to rent or lease property based upon a tenant's involvement with these programs or assumptions about a tenant's character based upon their qualification for an assistance program. The new law specifically notes that it is not discriminatory to inquire into a tenant's level or source of income. However, when marketing a rental property, landlords should be careful what they say to a potential renter who may be receiving assistance.

Does the law apply to all landlords?

The law does not apply to landlords and owners of a property containing six or less units. The law also exempts condominiums and cooperative apartments. However, it does apply to any person who has an ownership interest in multiple buildings,

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e.g. three single-family houses, two duplexes, etc. Because the new legislation refers to "ownership interest" it applies even where each property is held by a separate corporation or LLC.
What can a landlord safely consider when choosing a new tenant?

Landlords who are prevented from considering the source of a potential tenant's income may still apply their "business judgment" when choosing whether or not to rent or lease to a particular tenant. They can consider a tenant's "level of income," meaning the total amount of income from all sources, and that individual's ability to pay his or her rent. This means that a landlord may look at the difference between Tenant 1 who receives \$20,000 from work salary and \$8,000 in public assistance (giving them an "income level" of \$28,000), and Tenant 2, who earns \$35,000 in work salary (an "income level" of \$35,000). According to the law, the \$7,000 difference between Tenant 1 and Tenant 2, is an objective difference in the two tenants' levels of income. The landlord can consider that difference in determining whether Tenant 2 can be reasonably expected to be able to pay their rent, and whether Tenant 1 will not.

In addition to their total level of income, a landlord can consider a tenant's credit history, criminal background, previous landlord references, and other relevant information.

The law does not apply to alimony, inheritances and gifts, or court ordered payments that are subject to change. A landlord may safely consider whether these sources of income make a potential tenant more or less reliable.

Remember, the law protects new and current tenants, so if an existing tenant begins receiving income from one of the protected sources, it would be unlawful to refuse their rent on that basis.

When does the new law become effective?

The Local Law became effective immediately when it was passed on July 2, 2013 for landlords who were found to have been discriminating against a current lessee. The law becomes effective as to all tenants, current or potential, 180 days later, or December 29, 2013. Unless reenacted, the law is set to expire December 29, 2018. However, the cautious landlord will consult their attorney to confirm whether the law was reenacted, or new legislation is set to replace it.

What sort of penalties could a landlord face?

This legislation provides for civil penalties of up to \$50,000.00 for discriminatory practices on the basis of source of income.

The new legislation includes a provision that requires the County to conduct educational programs to ensure that the public is informed regarding the prohibitions against this type of discrimination. Check back for updates as we learn more about how the law is being implemented and enforced.

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