



GUIDANCE ON PROTECTIONS FROM SOURCE OF INCOME DISCRIMINATION IN HOUSING UNDER THE NEW YORK STATE HUMAN RIGHTS LAW

On April 12, 2019, New York Governor Andrew Cuomo signed legislation making it an unlawful to discriminate in housing on the basis of “lawful source of income.”¹

It is now unlawful to discriminate in any of the following ways because of a person’s lawful source of income:

- Refusing to sell, rent or lease or otherwise deny public or private housing
- Providing different terms, conditions or privileges, or denying the use of housing-related facilities or services, of any public or private housing
- Making any advertisement, publication, statement, inquiry, record, or using an application for public or private housing which expresses any intent to limit or discriminate
- Refusing to negotiate for sale, rental or lease, by a real estate professional

Lawful sources of income include, but are not limited to:

- Federal, state, or local housing assistance, including **section 8 or any other type of voucher, or any other form of housing assistance, regardless of whether paid to the tenant or the landlord**
- Federal, state, or local public assistance
- Social security benefits
- Child support
- Alimony or spousal maintenance
- Foster care subsidies
- Any other form of lawful income

The provision applies to all landlords and rental property, regardless of the number of units, with very limited exceptions explained below. It applies broadly to:

- Owners, landlords
- Managing agents and management companies
- Coop boards and condominium associations
- Tenants seeking to sublet
- Real estate brokers and salespersons
- Any employee or agent of the above

¹ The amendment language is found in the Human Rights Law at N.Y. Exec. L. § 292.36 (definition), § 296.2-a (publicly-assisted housing) and § 296.5 (private housing).



The source of income provisions are to be liberally construed for the accomplishment of their remedial purposes

The New York State Human Rights Law is to be construed liberally for the accomplishment of the remedial purposes for which the statute was enacted. The Law is to be liberally construed without reference to any parallel federal law that may lead to a more narrow result. N.Y. Exec. L. § 300 The liberal construction clause now reads as follows:

The provisions of this article shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed.

Exceptions to and exemptions from the provisions of this article shall be construed narrowly in order to maximize deterrence of discriminatory conduct.

The meaning of “liberal construction” was recently addressed by the Appellate Division, Fourth Department:

“A liberal construction ... is one [that] is in the interest of those whose rights are to be protected, and if a case is within the beneficial intention of a remedial act it is deemed within the statute, though actually it is not within the letter of the law.”

People v. Ivybrooke Equity Enterprises, LLC, 175 A.D.3d 1000 (4th Dept. 2019), quoting *Dewine v. State of New York Bd. of Examiners of Sex Offenders*, 89 A.D.3d 88 (1st Dept. 2011), quoting McKinney’s Cons Laws of NY, Book 1, Statutes § 321, Comment at 491 [1971 ed]).

Housing providers’ actions, including the screening of applicants, must be conducted in a manner consistent with the above guidance on liberal construction.

Local Source of Income Laws

Some cities, towns and other local jurisdictions have their own source of income laws. These local laws continue to be in effect, while the Human Rights Law provides statewide source of income protection.



FREQUENTLY ASKED QUESTIONS

1. Are there any types of housing subsidies that are not covered by the lawful source of income provision?

No. All vouchers and subsidies are covered. This includes any federal, state, or local public or housing assistance or credit towards the payment of rent, such as Section 8, Supplemental Security Income (SSI), HIV/AIDS Services Administration (HASA), and the Veterans' GI Bill, Olmstead Housing Subsidy (OHS), Housing Opportunities for Persons With AIDS (HOPWA), among others. In addition, income from trusts, including special needs trusts, is covered.

2. Does the lawful source of income provision apply to an existing tenant who obtains a subsidy?

Yes. The housing provider must be willing to accept the voucher and must take steps to meet any program requirements in order to accept the voucher, such as allowing an inspection, and executing all required documents. Any repairs to the property required by the agency providing the subsidy must be made. *Tapia v. Successful Management Corp.*, 79 A.D.3d 422 (1st Dept. 2010) (landlord must accept a newly obtained voucher of an existing tenant).

3. What actions are unlawful as refusals to rent or otherwise deny housing?

A housing provider need not state directly that vouchers or other sources of income are not accepted in order to be in violation of the Law. Refusal to rent can consist of a housing provider offering fewer housing options, delaying review of applications, not responding at all to applicants with lawful sources of income or any other practices that create a barrier to housing for subsidized tenants.

4. What is covered by the requirement that equal "terms, conditions or privileges" not be denied on the basis of lawful source of income, such as the receipt of a housing subsidy?

Housing providers cannot refuse or delay making repairs because the rent is paid with a housing subsidy.

Housing providers cannot deny the use of any facilities open to non-subsidized tenants, such as roof gardens, pools, exercise facilities, etc.

Subsidized tenants must be given the same access to the building, parking, storage space, or other amenities accorded other tenants, on the same terms.



5. Can a person file a complaint if they see an advertisement indicating “no Section 8” or “no vouchers” or “no subsidy” or “no programs”?

Any advertisement, statement or response to an inquiry indicating that vouchers or subsidies are not accepted is in itself a violation of the Human Rights Law. N.Y. Exec. L. § 296.2-a(c-1) and § 296.5(a)(3). No additional investigation is required and the Division of Human Rights will issue a probable cause finding, sending the complaint to a hearing before an Administrative Law Judge.

It is also unlawful to make any statement indicating non-acceptance of any other source of income, such as child support, disability benefits, etc.

Individual complainants need to have standing to file. In order to state a valid claim under the Law, an individual must:

- be looking for housing
- have a voucher or other income source that qualifies them for the housing, meaning that the rent amount is at or below any applicable rent cap or payment standard or, if they do not have a voucher, their overall income from any lawful source indicates a reasonable ability to pay the rent
- identify an advertisement or statement indicating their source of income would not be accepted

(Filing by housing advocacy organizations is addressed below.)

6. Can a housing provider ask about income?

While housing providers may ask about income, including the source of income, and require documentation of income, they must accept all lawful sources of income equally. Housing providers may not use the information about income in a way that has either the intent or the effect of frustrating the purpose of the Law. N.Y. Exec. L. § 300.

Additionally, New York law provides that a publicly-assisted housing accommodation may include eligibility criteria in statements, advertisements, publications or applications, and may make inquiry or request information to the extent necessary to determine eligibility. Such eligibility criteria must be only those required by the applicable federal or state law or programs. N.Y. Exec. L. § 292.36.



7. Can a housing provider have any wealth or income requirements?

Any income or wealth requirements for vouchered tenants cannot be used as a subterfuge to avoid the law, or have the effect of frustrating the purpose of the Law. A housing provider cannot have a facially neutral income or wealth requirement that is equally applied but has the effect of excluding populations with rental subsidies.

Housing providers cannot set unreasonable income formulas or wealth requirements for subsidized tenants. Persons receive vouchers because they have low income and lack wealth. Unreasonable wealth requirements could exclude everyone with a voucher and negate the intended protections of the law. N.Y. Exec. L. § 300.

For example, a requirement of a certain level of income based on a formula tied to the rental cost, even though required of other tenants, would be unreasonable if applied to a tenant who has 70% to 100% of the rent paid by the vouchering agency. Likewise, a requirement of a certain amount of money in the bank, while reasonable for other tenants, may create a bar to a tenant who qualifies for a subsidy due lack of financial resources.

The housing provider must accept all lawful sources of income equally. For example, the housing provider cannot require only “attachable” income (e.g. wages, which can be garnished).

8. Can a housing provider make their own determination of the tenant’s or applicant’s ability to pay the rent?

With regard to vouchered or other subsidized tenants, a determination of ability to pay the tenant’s or applicant’s portion of the rent has already been made by the vouchering agency. If the housing provider found the person unqualified based on the same information obtained by the vouchering agency this would have the effect of negating the Law.

With regard to tenants who do not have a housing voucher or other housing subsidy, the analysis of ability to pay cannot be applied in a way that frustrates the purpose of the Law to treat all tenants and applicants equally regardless of their sources of income.

9. Can a housing provider deny housing based on the results of a credit history report?

Housing applicants must be individually considered on a case-by-case basis. A housing provider cannot have a facially neutral income or wealth requirement that is equally applied but has the effect of excluding populations with rental subsidies.

Credit scores or credit history reports may not be used in a way that frustrates the purpose of the Law. Credit scores and credit history reports may not be valid indicators of whether a person will pay the rent. For example, where the vouchering agency pays 100% of the rent, consideration of negative credit history would be unreasonable.



10. Can a housing provider refuse to accept one-time emergency grants or other types of assistance provided by housing assistance agencies?

No. Any type of monetary assistance intended to aid tenants and applicants who need assistance paying rent, security deposits, move-in fees, or broker fees are also protected by the lawful source of income provision. Such assistance can come from a charity, public entity or any other lawful source. Similarly, agreements with funding agencies, such as rental agreements from social service agencies designed to cover security deposits, are also forms of housing assistance covered by the Law.

11. Can a housing provider require an application fee or a deposit?

Any application or deposit requirement that creates a barrier to a vouchered applicant obtaining housing may expose a housing provider to liability under the Law. Application fees are limited by state law to \$20 or the actual cost of a credit or background check, whichever is less. Deposits cannot be required before the time for the tenant to move in. Security deposit vouchers or security deposit agreements from the vouchering agency must be accepted.

12. Can a housing provider claim that a housing subsidy creates an undue administrative burden?

No. Real estate professionals and landlords are not allowed to discriminate against persons with government rental subsidies based on the administrative burdens associated with those subsidies because that would effectively nullify the source-of-income provisions. *Short v. Manhattan Apartments, Inc.*, 916 F.Supp.2d 375 (S.D.N.Y. 2012). Administrative burdens include the need to wait for an inspection by the subsidizing agency, the need to correct deficiencies in the apartment based on the inspection, compliance with paperwork requirement from the agency, acceptance of contractual terms required by the agency and other such aspect of participation in the subsidized housing program.

Source of income provisions are not preempted by federal law under which participation in Section 8 is voluntary for landlords. *Tapia v. Successful Management Corp.*, 79 A.D.3d 422 (1st Dept. 2010). Similarly, deciding under a local town's fair housing code, the appellate court found that despite the voluntary nature of the Section 8 program at the federal level, state and local law may properly provide additional protections for recipients of Section 8 rent subsidies even if those protections could limit an owner's ability to refuse to participate in the otherwise voluntary program. *People v. Ivybrooke Equity Enterprises, LLC*, 175 A.D.3d 1000 (4th Dept. 2019), citing *Kosoglyadov v. 3130 Brighton Seventh, LLC*, 54 A.D.3d 822 (2d Dept. 2008).

Housing providers must comply with the administrative requirements of the subsidy program, must make any policy changes required by the program, and must make any repairs that may be required based on the inspection of the property conducted by the agency administering the subsidy.



13. What are the exceptions to coverage by the lawful source of income provisions of the New York State Human Rights Law?

Protections from housing discrimination, including source of income, provided by the Human Rights Law, do not apply to a rental unit in a two-family home occupied by the owner, or to rooming houses occupied by the owner.

Although the Human Rights Law provides protection from discrimination in connection with the sale, rental or lease of land or commercial space, the source of income provisions do not apply to land or commercial space.

Lawful source of income protection applies to the provision of public or private housing in all other respects.

14. Can housing advocacy organizations file complaints of source of income discrimination?²

Yes. Housing advocacy organizations can file a complaint about any discriminatory policy or practice of a housing provider, such as may be stated in an advertisement, or which is revealed by responses of a housing provider to inquiries by the agency or its testers, or by other investigative means.

Organizations can also file a complaint in a representative capacity on behalf of individual clients who have experienced discrimination. Those individuals must also file their own complaints in order to be able to receive individual relief such as money damages.

Organizations may seek injunctive relief, which is an order that policies or practices must be changed. Organizations may also seek money damages based on expenditure of staff time and other resources for investigating and responding to discriminatory policies or practices, which diverted those resources away from other fair housing activities, or otherwise resulted in frustration of the organization's mission.

² For further explanation of filings by organizations to further fair housing, see *Fair Housing Justice Center, Inc. v. Allure Rehabilitation Services LLC*, 2017 WL 4297237, 56 NDLR P 49 (E.D.N.Y.) (FHJC has organizational standing and may seek injunctive and monetary relief, and did not have to show actual harm had occurred to individuals, because they allege a discriminatory policy, based on advertisements and statements made to testers, which establishes an intent to discriminate in future); *Olsen v. Stark Homes, Inc.*, 759 F.3d 140 (2d Cir. 2014) (Long Island Housing Services, Inc., had organizational standing based on diversion of resources in assisting the individual named plaintiffs); *Sherwood Terrace Apartments v. N.Y. State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009) (Housing Opportunities Made Equal, Inc. (HOME) properly received money damages for resources expended by HOME in investigating the individual complainant's allegations against petitioners).



HOW TO FILE A COMPLAINT WITH THE NEW YORK STATE DIVISION OF HUMAN RIGHTS

If you believe that you have discriminated against by a housing provider with regard to your lawful source of income, you can file a complaint with the New York State Division of Human Rights. A complaint must be filed with the Division within one year of the alleged discriminatory act. For more information on filing a complaint visit the Division's website at <https://dhr.ny.gov>, or call the Division's toll-free HOTLINE at (844) 862-8703.

Your complaint will be investigated by the Division, and if the Division finds probable cause to believe discrimination has occurred, your case will be sent to a public hearing, or the case may proceed in state court. There is no fee charged to you for these services.

If the Commissioner of Human Rights finds in your favor following the hearing, the relief awarded to you may include such remedies as a cease and desist order, provision of housing that was denied, and monetary compensation for the harm you suffered.



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