

State Rules Register Alert

August 28, 2017

Seattle Tenant Screening

The City Counsel of Seattle recently passed and sent to the Mayor, a new ordinance that greatly restricts the use of criminal background information in tenant screening. It is fully anticipated that the Mayor will sign this ordinance and it will become effective 30 days after his signature.

So what will this ordinance prohibit?

1. Advertising that excludes people with criminal records from applying to rent a dwelling.
2. Requiring disclosure or obtaining criminal record information regarding any occupant of a dwelling. So a landlord may not ask an applicant about their criminal record or seek such information from a CRA or otherwise.
3. What about those on a sex offender list? Those who committed the offense that has placed them on the sex offender list, but was committed while they were juveniles (under 18) may not be considered, even though they are currently on the sex offender list. This is an issue where a CRA may be able to filter this sort of information out if the sex offender list would indicate the defendant's date of birth and date of conviction.
4. For a person on the sex offender list who was an adult at the time of the conviction, a landlord **may reject them but only if** there is a **"legitimate business reason"**, which is **necessary** to achieve a substantial, legitimate non-discriminatory interest. To establish a legitimate business interest, the landlord must: **demonstrate through reliable evidence** a nexus between the policy or practice and resident safety and/or protection of property. In the process of determining whether there is danger to person or property, the landlord must:
 - a) Not consider other non-sexual convictions regardless of the nature of the crime.
 - b) Consider the nature and severity of the sexual conviction.
 - c) Consider the number of such sexual convictions.
 - d) Consider the time lapse since the conviction(s). Note that prison confinement is not mentioned to extend the conviction date to the time of release. Whether it is intentional is not known.
5. The age of the person at the time of the conviction(s).
6. Consider any supplemental information supplied by the applicant. Supplement information consists of:
 - a) a statement by the prospective occupant;
 - b) a statement from a current or previous employer;
 - c) a statement from a current or previous landlord;
 - d) a statement from a judge, law enforcement, parole/probation officer, or others providing similar services;
 - e) a statement from clergy, counselors, therapists, social workers, community or volunteer organizations, or those who provide similar services;
 - f) a certificate of rehabilitation;
 - g) a certificate of completion or enrollment in educational/vocational training.
 - h) a certification of completing or enrolling in a drug/alcohol treatment program.

In the opinion of this writer, only the most sophisticated landlord/property manager will be able to navigate this evaluation process to legally exclude an applicant.

Special Adverse Action Notice. The landlord must specifically identify the sex offender registry entry that was the basis of the action. Landlord shall also provide the name and address of the CRA, along with the notice of the consumer's right to receive a free copy of the report.

There are limited exclusions to this ordinance:

1. HUD federally assisted housing – HUD requirements still apply;
2. Single family dwellings where landlord or subleasing tenant also lives [will this still be a single family dwelling at this point?];
3. A detached dwelling on the same lot where owner or person entitled to possession lives on a permanent basis.

Enforcement. The ordinance contains very detailed enforcement provisions. These are not necessary for a CRA's understanding of the law. There is, at this time, no private cause of action available, but the city can bring an enforcement action and assess substantial civil penalties, which are high:

- \$11,000 where there are no prior violations;
- \$27,500 where there is a prior violation within the past 5 years;
- \$55,000 where two or more prior violations within the past 7 years.

The ordinance is unclear whether this is a “per” violation assessment for each applicant or the total assessment for all violations in the particular enforcement proceeding.