

BEST PRACTICES FOR LICENSED SALESPERSONS AND BROKERS TO AVOID SOURCE OF INCOME DISCRIMINATION

The NYC Human Rights Law protects tenants from discrimination in New York City based on their “lawful source of income.” “Lawful source of income” refers to Section 8, portable housing vouchers, security deposit vouchers, and all forms of public assistance.

Brokers, real estate agents, and owners cannot treat current or prospective tenants differently or refuse to rent to them because they receive subsidies or vouchers. This FAQ will help you meet your obligations as a real estate agent.

Q1. As a licensed salesperson, broker and/or the owner of a brokerage firm, am I responsible for the actions of my agents, employees, independent contractors, and/or unlicensed workers?

A1. Yes. You are responsible for the actions of anyone who works under your broker's license or holds themselves out as an agent of your brokerage company.

Q2. What should I do if an owner refuses to accept housing vouchers/subsidies?

A2. You should not work with owners who discriminate based on a current or prospective tenant's source of income. Source of income discrimination must be treated just like any other kind of discrimination.

Q3. Can I keep a separate list (“waitlist”) of apartments for voucher holders?

A3. No. Maintaining separate lists of apartments for voucher/subsidy recipients is a discriminatory practice. Steering applicants to specific buildings not only constitutes discrimination, but may also be considered aiding and abetting the discrimination of owners.

Q4. How do I know if a rental property is subject to the NYC Human Rights Law prohibiting discrimination based on source of income?

A4. Most rentals in New York City are covered by the law, including illegal units, subdivisions, and/or single room units. There are only two exceptions. Landlords do not have to accept a voucher or other lawful source of income if they are renting a unit (which does not receive public assistance) in a building where they or a member of their family reside, the building has no more than 2 families living independently of each other, and the rental unit was not publicly advertised. The law also exempts the rental of a room in an unit in which the landlord or a member of the landlord's family resides and the unit does not receive public assistance.

Q5. What if the owner says they accept vouchers but requires that the applicants...

A5. Make a certain income (e.g. \$68,000 or 50x the rent):

- Voucher programs calculate the tenants' rent to ensure that tenants are able to pay their required portion. Requiring a specific income is therefore unnecessary and a discriminatory practice.

Have a guarantor:

- You may not require a guarantor when the program calculates the tenants' rental portion based on the tenants' income. These programs already calculate the tenants' portion to ensure affordability.

Have a high credit score (e.g. over 600, 650, or 700):

- If the voucher/subsidy covers 100% of the rent, you are prohibited from considering credit.
- If the tenant pays a portion of the rent, you may consider credit. Because voucher holders often have low or no credit, requiring a specific credit score may trigger an investigation by the

Commission. Each application should be considered on a case-by-case basis. Prior to rejecting an applicant based on credit, the applicant should be provided an opportunity to demonstrate ability to timely pay their portion of the rent. To protect yourself under the NYC Human Rights Law when making a decision based on a credit report, provide the applicant a written explanation of your analysis.

Q6. What should I do if an owner rejects an application based on an applicant's status as a voucher/subsidy recipient?

A6. The best way to protect yourself from liability is to report the violation by calling our Infoline at **(212) 416-0197**. To avoid liability: **(1)** keep a log of any owners who make unlawful denials; **(2)** notify the Commission of any potential violations; and **(3)** provide a written letter of denial to the applicant.

The log should contain: **(i)** the name of the owner; **(ii)** the address of the unit in question; **(iii)** the reason for the denial; **(iv)** notes and/or written correspondence with the owner regarding the denial; and **(v)** a copy of the application denied. If the applicants request a return of their application materials, you should keep a copy on file with sensitive information redacted.

The denial letter to the applicants should state: **(i)** what action or non-action is being taken; **(ii)** the address of the apartment; **(iii)** an explanation of the denial; and **(iv)** instructions to the applicants on how to submit a complaint to the Commission.

Q7. Can brokers charge fees to view apartments, large application fees, or deposits to "hold" apartments?

A7. No. State law caps application fees at \$20.00 or the actual cost of a background or credit check, whichever is less. You should not charge any additional fees, deposits, or rent until the applicant has been approved to move in by the agency administering their subsidy or voucher and the owner is prepared to offer possession. Broker fees paid by HRA may be paid after the tenant moves in. This applies to all rental apartments, including cooperatives, condos, fair market and rent stabilized apartments. Any policy that would make it difficult for a person with a voucher to successfully apply for and/or secure an apartment may expose you to liability under the NYC Human Rights Law.

Q8. May I work with owners who prefer specific vouchers or subsidy programs over others? May I, as an agent, have a preference for working with specific programs?

A8. No. Accepting only some vouchers or programs still violates the NYC Human Rights Law. This is true even if certain programs require extra paperwork, pay a lower fee to the broker, or involve longer processing times.

Q9. May I exclude all applicants who have been sued by a prior landlord?

A9. You could face exposure under the NYC Human Rights Law if you or the owner with whom you are working relies on a prior housing case that is not related to the applicant's ability to pay rent or suitability as a tenant. In addition, New York State law prohibits owners and their agents from rejecting applicants to rental housing on the basis of pending or prior landlord-tenant actions.

Q10. What are the potential consequences of violating the NYC Human Rights Law?

A10. Any or all of the following are potential consequences:

- Willful violations can carry a civil penalty of up to **\$250,000 per violation**.
- Tenants can seek compensatory damages with **no cap**. If, for example, applicants remain homeless after an unlawful denial, you may be held accountable for the emotional suffering associated with homelessness.
- The Commission may report a licensed agent who has violated the law to the Department of State's Division of Licensing Services. This may lead to a revocation of the broker's or salesperson's license.
- You may be liable for the tenants' attorney's fees.
- The Commission may monitor a broker's or agent's business for a period of months or years.

For more information and to find out about trainings on the NYC Human Rights Law, please visit our website at NYC.gov/HumanRights or call **(212) 416-0197**.