

# BEST PRACTICES FOR HOUSING PROVIDERS TO AVOID SOURCE OF INCOME DISCRIMINATION

The NYC Human Rights Law (the “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, licensed salespeople, owners, and managing agents cannot treat current or prospective tenants less well or refuse to rent to them because they receive subsidies or vouchers. This FAQ will help you meet your obligations as an owner.

## Q1. How do I know if my property is subject to the NYC Human Rights Law prohibiting discrimination based on source of income?

**A1.** If you or any member of the corporate entity that owns your property has an interest in **any** property with six (6) or more housing units in New York City, all your properties in New York City are covered under the Law. Any portion of a property intended to be occupied or used as a residence, including illegal units, subdivisions, and/or single room units, are counted as “housing units” under the Law. Smaller owners may be prohibited from discriminating based on lawful source of income under New York State law.

## Q2. Can I keep a separate list (“waitlist”) of apartments for applicants with housing vouchers or open only certain buildings or units to voucher holders? May I prefer certain programs over others?

**A2.** No. Steering applicants to specific buildings or units is a violation of the Law. Accepting only some vouchers or programs also violates the Law. This is true even if certain programs require extra paperwork, pay the security deposit with a voucher in lieu of cash, pay brokers a lower fee, or involve longer processing times. You cannot discriminate between “working” and “non-working” applicants on Section 8 or other programs.

## Q3. May I rely solely on Tenant Screening Bureaus (“TSBs”) or “scores” generated by tenant screening software to select applicants? What about screening applicants for past landlord-tenant cases?

**A3.** Applicants must be considered on a case-by-case basis, as described in this FAQ. Use of data from TSBs may disproportionately exclude voucher holders or members of other protected classes on a discriminatory basis. Most TSBs also provide data about prior landlord-tenant actions. You could face exposure under the Law if you rely 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 from rejecting applicants for rental housing on the basis of pending or prior landlord-tenant actions.

## Q4. May I require all applicants to make a minimum income such as \$68,000 annually or 43x the monthly rent? May I require voucher holders to find a “guarantor” or co-signer?

**A4.** When a voucher program calculates the tenant(s)’ rent based on their income, the government has already determined that they can afford to pay their required portion. In some instances, tenants will pay no portion of the rent out of pocket. Where the tenants’ rental portion is calculated based on the tenants’ income, it is a violation of the Law to impose any additional income requirements on applicants for housing. You may not require guarantors or co-signers.

#### Q5. May I reject an applicant with a housing voucher based on credit history or score?

**A5.** If the voucher/subsidy covers 100% of the rent, you may not reject an applicant based on credit history or score. If the applicants pay a portion of the rent, you may make a credit inquiry. Requiring a specific credit score, however, is evidence of discrimination. 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 Law and comply with federal law when making a decision based on a credit report, provide the applicant a written explanation of your analysis.

#### Q6. May applicants be required to pay a large application fee or an upfront deposit to “hold” the apartment?

**A6.** 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 the subsidy or voucher and the owner is prepared to offer possession. Broker fees paid by HRA may be paid after move in. Unless exempt, owners must accept security deposit vouchers. This applies to all rental apartments, including cooperatives, condos, fair market and rent stabilized apartments. Any policy that makes it difficult for a person with a voucher to successfully apply for and/or secure an apartment may expose a housing provider to liability under the Law.

#### Q7. As an owner, am I responsible for the actions of employees, superintendents, independent contractors, brokers, and licensed salespersons working to rent my units?

**A7.** Yes. You are responsible for the actions of anyone who plays a role in processing applications for your rental units, even if that person is not your employee. If you have a number of agents showing your apartments, you should take measures to ensure no one advertises or screens applicants for your property in a discriminatory manner as described in the following answer (see Question 8 for tips).

#### Q8. What should I do if I discover that a broker or licensed salesperson has engaged in discriminatory rental practices without my consent?

**A8.** Once you discover discrimination, you should terminate your relationship with the agent and the related brokerage firm. The best way to protect yourself from liability is to report the violation to the NYC Commission on Human Rights (“Commission”) by calling **(212) 416-0197**. To avoid liability: **(1)** keep a log of any broker or agent who made an unlawful denial which includes all known details about the denial; **(2)** notify the Commission of potential violations; and **(3)** keep copies of all communications you have had with the offending agent or company. If you find out about the discriminatory denial while you still have vacancies, the best practice is to offer the otherwise-qualified applicant the apartment to mitigate any damages the applicant might have sustained.

#### Q9. What are my obligations to tenants in my buildings with rental subsidies?

**A9.** Unless exempt, you must accept vouchers of tenants already in possession by complying with program obligations, such as filling out all paperwork and ensuring the unit passes applicable housing quality inspections. Even if a tenant qualifies for a voucher or subsidy after obtaining possession of the apartment, owners may not refuse to accept payments from voucher or subsidy programs.

#### Q10. What are the potential consequences of violating the 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 and emotional suffering damages with **no cap**. If, for example, an applicant remains homeless after an unlawful denial, you can be held accountable for the emotional suffering associated with homelessness.
- You may be liable for the complainant’s attorney’s fees.
- The Commission may monitor owners for compliance 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](https://nyc.gov/HumanRights) or call **(212) 416-0197**.