

RentGrow Bulletin: Oakland, California

A Brief Review of Oakland's Fair Chance Housing Ordinance and its Impact on Tenant Screening

The City of Oakland, California recently passed a law that significantly limits the criminal history that housing providers may consider when screening potential applicants. The new law, known as the Oakland Fair Chance Housing Ordinance (the “Ordinance”), went into effect in February 2020.¹ This Bulletin briefly addresses the Ordinance’s impact on the tenant screening process in Oakland.

As with all applicable laws and regulations, housing providers must independently review the Ordinance and determine how best to comply. Because RentGrow cannot offer legal or compliance advice, it is always recommended that housing providers consult with an internal or independent legal or compliance expert when assessing obligations under any new rule or regulation.

Restrictions on the Use of Criminal History Information in Screening

The Ordinance prohibits most housing providers from using criminal history records to screen rental applicants from—directly or indirectly—asking about an applicant’s criminal history; requiring the applicant to disclose his or her criminal history; or basing any adverse action, in whole or in part, on an applicant’s criminal history.²

However, it is not a violation of the Ordinance for housing providers to comply with state or federal laws requiring them to exclude applicants based on certain types of criminal history (e.g., applicants for public housing that are registered lifetime sex offenders or that were convicted of manufacturing methamphetamine on public housing premises). If that requirement applies, the housing provider must: (1) inform applicants in advance that it will check for certain types of criminal history; and (2) either request the applicant’s written consent or allow the applicant to withdraw the application.

Additionally, the Ordinance provides that in compliance with state law, in order to protect persons at risk pursuant to California Penal Code Section 290.46(j)(1), housing providers may review the California State registry of lifetime sex offenders if the housing provider: (1) includes that requirement in writing in the rental application; (2) pre-qualifies the applicant under all non-criminal criteria; (3) provides a written conditional rental agreement committing to providing housing to the applicant provided the applicant meets the housing provider’s criteria with respect to the lifetime sex offender registry; and (4) informs the applicant in advance or allows the applicant to withdraw the application if the applicant objects. Housing providers are not permitted to require reimbursement or payment from the applicant for providing any criminal history information.

¹ See <https://oakland.legistar.com/LegislationDetail.aspx?ID=4205413&GUID=772233A8-44FA-4BA1-938F-02D30D7D2905&Options=&Search=>. The Ordinance is codified at Oakland Municipal Code Chapter 8.25. There is a 180 day grace period after passage, unless the housing provider has already received a violation notice.

² The Ordinance contains exceptions for four types of housing: (1) single-family dwellings where the owner occupies the dwelling as their principal residence; (2) properties with a maximum of 3 units where the owner occupies a unit as their principal residence; (3) units where the owner previously occupied the unit as their principal residence and has the written right to recover possession as a principal residence; and (4) tenant-occupied units where an occupying tenant seeks to replace an existing co-tenant, add a co-tenant, or sublet the unit while remaining in occupancy.

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Written Notice Requirements

The Ordinance also sets forth the contents of a written notice that the housing provider must provide to the applicant if any adverse action is based in whole or in part on permitted criminal history. The notice must include, at a minimum, the following information:

- The reason(s) for the adverse action;
- Instructions on how to file a complaint on the adverse action with the City;
- A list of local legal services providers and their contact information;
- A copy of any criminal history background check report or other criminal history information that served as the basis for the adverse action; and
- An opportunity to respond with rebutting or mitigating information before denial of the application.

In sum, what should property owners and managers consider as they review their application and tenant screening processes in light of the changes to Oakland law?

- Are you able to customize your screening processes and limit the criminal history information you receive from your screening provider to ensure that you comply with the Ordinance?
- Are you confident that the applicant information you receive from your screening provider meets all applicable federal, state, and local laws and regulations, including the maximum possible accuracy standard under the Fair Credit Reporting Act (FCRA)?

Housing providers are encouraged to work closely with their legal advisors on how to best meet the Ordinance's requirements, and to review the screening products and services they use to ensure these products and services do not interfere with their obligations under the Ordinance.

This Brief Review was prepared for general information purposes only, does not constitute legal advice, must not be acted upon as such, and is subject to change without notice. Always consult a lawyer or qualified housing expert for legal or compliance advice.