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What a Landlord Should Know About Source of Income Discrimination

Landlords in Westchester County may soon lose the ability to choose not to rent an apartment or other residential accommodation on the grounds that the proposed tenant is receiving public assistance or housing assistance including Section 8 vouchers. A recent Second U.S. Circuit Court of Appeals decision requires the county's executive to promote legislation that would prohibit "source-of-income" discrimination. While a final version of the legislation has not yet been passed, in this article our firm will provide an outline of what landlords in Westchester County can reasonably expect from such legislation and what they can do to avoid potential liability.

What is "source-of-income" discrimination?

Any Source of Income legislation would seek to give those who receive assistance from social security or any form of federal, state or local public assistance or housing assistance such as Section 8 the same protections against discrimination that other protected classes such as those based on race, religion or disability would receive. Examples of source-of-income discrimination would include refusing to rent or lease property because the landlord does not wish to accept rent based upon a tenant's involvement with these programs and the restrictions they place upon the landlord. Such discrimination would also include making statements and advertising rental property that expresses a limitation as to the source of income of potential tenants. Additionally, any such legislation would prevent landlords from refusing to accept rental payments in the form of public assistance from pre-existing tenants who were not previously involved in such a program. To do so could open the landlord up to liability.

Will there be any limitations on the new law?

It is likely that the new law will only pertain to certain owners based upon the size or class of the property being rented. This will be familiar to any landlord who owns property within New York City as the city has had similar legislation in place since March 2008, which applies only to owners of buildings containing a minimum of six units. This law also applies to buildings with fewer units if the units are rent controlled or if the owner owns multiple buildings that contain six or more units in total. Therefore it is likely that the new legislation once passed will contain exceptions based upon the number of units within a building as well as other similar considerations.

Earlier versions of the proposed legislation have included limitations on how the law will be applied. For instance, one previous version of the proposed legislation allowed landlords to consider the level of income of the tenant and contained exceptions for cooperative apartments and condominiums. The definition of the source of income was also limited to exclude alimony or court ordered payments which could be subject to change as well as inheritances and gifts. The earlier version also included a defense for landlords who exercise their reasonable business judgment when rejecting a tenant who receives assistance. For example, if a landlord were in a situation where they had to choose between renting to a section 8 tenant and a non-section 8 tenant and the non-section 8 tenant was ready, willing and able to move in, the landlord would not be forced to wait for a section 8 voucher holder to obtain an inspection of the apartment before renting to the non-section 8 tenant.

What sort of penalties could a landlord face?

Housing discrimination laws generally require that a grievance first be filed with a federal or state administrative agency such as the Department of Housing and Urban Development (HUD). However, there are instances where claims are not handled through administrative proceedings but rather are filed as a private lawsuit in federal or state court. The penalties a landlord could face may include actual damages, pain and suffering, punitive damages, injunctive or equitable relief, civil penalties, and reasonable attorney's fees and costs just as when defending against other claims of discrimination.

As this legislation is not yet in effect, landlords should be cautious in their interaction with tenants who are receiving assistance. Additionally, landlords should be cognizant of the fact that the restrictions outlined in this article may not reflect the final version of the law once in effect and should be mindful of the current state of the law in Westchester County.

James G. Dibbini & Associates, P.C. is well versed in the area of landlord and tenant law and has a proven track record of helping landlords with a wide variety of issues. If you have any questions about what your rights are as a landlord, please contact our office to discuss your situation and schedule a meeting.

Our office also provides legal services in the area of: Commercial & Residential Real Estate Closings; Civil Litigation; Landlord & Tenant Law; General Business Law; DHCR Representation; Zoning Law and Violations; and Wills & Estates.

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