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New York State Source of Income Protection

As of April 12, 2019, it is illegal in New York State to discriminate against people in housing based on their lawful source of income. Previously, certain counties or municipalities, like Westchester County and New York City, had their own source of income laws. This new law applies uniformly across the entire state.

What's lawful source of income? Lawful source of income is defined broadly to mean any and all forms of lawful income, including without limitation ▶ employment income, ▶ child support, alimony, foster care subsidies, ▶ social security income, ▶ any form of federal, state, or local public assistance or housing assistance (including without limitation Section 8 housing choice vouchers), and ▶ any other form of housing assistance payment or credit, whether or not paid or attributed directly to a landlord.

What conduct constitutes housing discrimination? It is discriminatory for a housing provider to take any of the following actions based on someone's lawful source of income (or any other protected category):

- Refusing to sell, rent or lease or otherwise denying housing
- Providing different terms, conditions, or privileges, or denying the use of facilities or services, of any public or private housing
- Making any advertisement, publication, statement, inquiry, record, or using a form of application for public or private housing which expresses any intent to limit or discriminate
- If the housing provider is a real estate professional, refusing to negotiate for sale, lease, or rental

Note: Retaliation against an individual for filing a discrimination complaint is also unlawful.

Are there any exemptions to this law? There are no special exemptions to New York's source of income law. The only exceptions are those that apply to all protected categories under NY's fair housing law, in particular rentals in two-family homes occupied by the owner and rentals of rooms in houses occupied by the owner. With those limited exceptions, all housing providers and real estate professionals are required to accept housing vouchers and other lawful income for rental. These include co-op boards, condo associations, managing agents, owners/landlords, real estate brokers, and their employees and agents.

I've been discriminated against. What should I do? Each situation is different. You can always call us at WRO (914-428-4507) and we can help evaluate your situation and make recommendations about how to investigate further, or whether to file a formal complaint.

How do I make a formal complaint? If you feel as though you have been discriminated by a housing provider during a housing transaction in regards to your source of income, you can file a complaint with:

- The New York State Division of Human Rights. You can find their complaint form at <https://dhr.ny.gov/>, or by calling them at 1-888-392-3644.
- The Westchester County Human Rights Commission, if the discrimination occurred in Westchester County and falls within the requirements of Westchester's source of income law. They can be reached on the internet at <https://humanrights.westchestergov.com/> or by phone at 914-995-7710.
- New York State courts. We recommend that you talk to a lawyer before initiating a lawsuit in state court.



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Sounds pretty straightforward. Are there any grey areas? Yes, plenty, and we expect the regulations and caselaw to evolve as these issues are presented. Here are a few harder questions (and our preliminary opinions on each):

Can a landlord ask about the source and amount of my income?

Yes. Housing providers may make written or oral inquiries about sources and amount of income. They may also require documentation in order to determine a person's ability to pay for housing. However, they must accept all lawful sources of income equally.

Can a housing provider require that prospective tenants have a minimum credit score? Generally yes, as long as they apply that rule consistently to all applicants. But, applying a credit score requirement to a tenant whose rent will be paid all or mostly by a government agency, could be suspect under this new law, since it is not really the tenant's credit the landlord is relying on, but rather the government's. Still, the tenant's rental portion could be significant to the landlord, and can change over time, so a landlord could well argue the importance of the tenant's creditworthiness.

Can a landlord refuse to participate in a subsidy program like Section 8 that requires apartment inspections or other administrative hurdles or delays? No. The new law would be meaningless if a landlord could simply refuse to participate in a housing subsidy program, no matter how thoughtful the landlord's business rationale. For example, it would be inconsistent with the law for a landlord to refuse to rent to a Section 8 voucher holder because the landlord does not want to comply with Section 8's inspection and habitability requirements.

Can a landlord only rent to tenants with a job and "working" income?

No, that would violate the new law. A housing provider cannot discriminate on the basis of lawful source of income, so requiring that a tenant's income be employment-related income would contravene the law.

Can a landlord still require that prospective tenants have income that is a multiple of the rent?

Generally speaking, if a landlord adopts a rental policy that has the effect of substantially precluding voucher holders or recipients of other housing assistance from being accepted as renters, the legitimacy of that policy will be highly questionable. If a landlord requires a prospective tenant to have income of 3 times the rent, even if the landlord treats a housing voucher as income for that purpose, the voucher holder probably will not satisfy that requirement, even if their voucher amount exceeds the rent. To be fair to a tenant and consistent with the new law, any income multiple requirement should only be applied to the tenant's portion of the rent (typically set as roughly 1/3 of the tenant's income).

OK, but my landlord's income requirement is 40 times the monthly rent; is that OK?

Given the structure of most housing subsidy programs (where participants pay about 1/3 of their income toward rent), any multiplier in excess of 3 times annual rent (36 times the monthly rent), will exclude most voucher holders from the building. For that reason, it is highly likely that policy would be found to violate the new source of income law.

If you have other questions about the new source of income law, or about fair housing laws generally, please give us a call at 914-428-4507 and ask to speak to someone in the fair housing group, or send us an email at info@wroinc.org.