



## Avoid Getting Sued: Check out Your Rental Application

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The recent New York City legislation requiring certain features to appear on rental applications led us to spot check our clients' rental applications.

We were shocked. Every rental application we checked included features that were an expensive lawsuit against the landlord waiting to happen. We have identified roughly twenty forbidden grounds for discrimination in rental housing in New York City.

Every rental application we examined revealed questions designed at eliciting information that would set up the landlord for a complaint about discrimination on at least one of these forbidden grounds.

The laws in question prohibit discrimination based on age; alienage or citizenship status; any lawful source of income; color; creed or religion; disability or handicap; familial status; gender; marital status; military status; national origin; occupation; partnership status; race; sexual orientation; status as a victim of domestic violence or status as a victim of sex offenses or stalking; or whether children are, may be or would be residing with a person.

While many of these grounds appear in several different laws simultaneously, the entire collection of grounds can be found spread out over the Federal Fair Housing Act § 3604, the N.Y. Executive Law §296, the N.Y.C. Administrative Code §8-107, the N.Y. Real Property Law §§ 237 and 237-a, and 24 CFR §100.202.

For many of these categories, it does not matter whether or not you have absolute knowledge that the person belongs to such category; the discrimination is prohibited even against those who are not actually in that category but whom you might think are in such category. These could include, for example, European

people with a tan so heavy you believe them to be from India or a so-called "metrosexual" whom you believe to be gay.

You should therefore avoid the practice of having the person who makes rental decisions having access to a photograph of the applicant. You should avoid any kind of chitchat with an applicant at all as such chatting can lead to questions or comments that could be perceived as stumbling into at least half a dozen of these categories.

Keep in mind that even if you accept this person as a renter, later conflicts with the person might find you defending a charge of unlawful discrimination. The prohibition is not merely against refusing to rent to the persons protected by these laws; it applies equally to refusing to continue to rent to such persons. You could find yourself bringing a proceeding against a tenant for having a portable dishwasher in the apartment and facing a defense that you are only going after the dishwasher because you do not want to rent to people with children!

Therefore, when it comes to these categories, odd as it seems, actually the less you know about your tenants, the better.

Attached to this article is a generic apartment rental application we have prepared for our client's readership, designed to give you as much information as you can legally request and designed to avoid getting you sued for asking too much.

The application also conforms with New York City's new Tenant Fair Chance Act, targeted at your disclosing to your prospective tenants just what your screening process entails. The Act also calls for your putting up posters in your rental offices, for which the Department of Consumer Affairs has released the specification that appear at the end of this article. The deadline for putting up these posters was Sept. 18, 2010, with specific sizes and colors. You will therefore want to get them designed and off to your printer as soon as possible. If you do not, the fines can be devastating.

As to the application form, you should notice that it has two critical features in order to comply with the new law: it must have two columns on the first page, with the first one in black and the second one, which contains the statutorily required language, in ink of some other color.

Therefore, when you have your tenant applicants fill it out, if you are not having the forms professionally printed in color, you absolutely *must* run off additional forms on a color copier. Once the tenant completes the form, we strongly recommend that you make color copies of the fully filled-out form and give one of

those color copies to the tenant. Less expensively, you can have the tenant fill out duplicate forms by using old-fashioned carbon paper.

*Do not use a black and white copier, black and white scanner, or fax machine under any circumstances in anything involving these forms. You are only asking for trouble.*

If you email copies of these forms, you must email them in color, preferably in the form of a pdf. Do not even circulate them in your own organization or to your attorneys in anything but color.

Finally, while you do not have to fill out the right hand column of the form in red ink, you must not use black ink or a pencil. While we recommend using red ink, almost any non-black color is acceptable, although we would strongly advise against dark blue that could be mistaken for black.

There was a time, a generation ago, when the prohibited grounds for discrimination were "race, color, or creed" and nearly every schoolchild would have that list memorized. Now, however, the list is so long and so complicated, we urge you to laminate a copy of this article and keep it handy in your rental office. It could save you tens of thousands of dollars in needless fines.

These are the rules for the rental office posters:

(1) The words "NOTICE ABOUT TENANT SCREENING REPORTS" shall be printed at the top of the sign in one and one half-inch high capital letters.

(2) If application information is or may be used to screen tenants through a report from a consumer reporting agency, the sign shall state in 24-point type as follows:

"Tenant screening reports from consumer reporting agencies are sometimes used to assist landlords in making rental decisions. In regard to such reports (Check the applicable box):

We do not use such reports.

We may use such reports by contacting the following:

(Insert name and address of each consumer reporting agency that may be contacted, and identify any that are a nationwide specialty consumer reporting agency).

(Use additional lines for each listed agency).

**"The law requires us to notify you if we do not lease or rent to you based on information in that report. You also have the right to dispute the accuracy of the information in the report directly with the reporting agency and to obtain a free report from such agency if we do not lease or rent to you based on such report.**

**"You also are entitled to receive one free report every 12 months from any nationwide specialty consumer reporting agency used by us, as well as a free credit report every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion. You can request this free credit report through the website [www.annualcreditreport.com](http://www.annualcreditreport.com). You may dispute the accuracy of any information about you that is contained in such report directly with the credit reporting agency."**

(3) The color of the text of the notice required in paragraph (1) of subdivision (a) shall contrast sharply with the color of the remaining text, and the colors of the printed text shall contrast sharply with the background color of the sign.

(4) All the required information shall be included on one sign that shall be posted at the location at a place where it is conspicuously visible to a consumer who is seated while the transaction is conducted at such location.