The Impact of the Legislative Landscape on Screening Practices

Nicole Upano, Director of Public Policy, National Apartment Association

2019 Property Management Summit
Today’s agenda:

• Intro
  – Housing affordability challenges
  – Influence of advocacy orgs
  – Progressive surge
• Local Activity
  – Seattle
  – Detroit
  – Portland
  – Cook County
  – Minneapolis

  – Boise

• What’s going on in the states?
  – Pennsylvania
  – Colorado
  – New York
  – Oregon
  – New Jersey

• What else is on the horizon?
  – Federal legislative and regulatory
• Resources
The Housing Affordability Crisis

- 38.1 million “cost burdened” households
- Renters share doubled in the last 50 years
- Median rent rose 61% from 1960 to 2016
- Median renter income grew 5% in same period

Joint Center for Housing Studies of Harvard University, The State of the Nation’s Housing
Concentration of Advocacy Organizations

Presence of Housing Advocates

- **High**
- **Moderate**
- **Weak**
- **Low**

= NSI outlined states identified in NAA’s Legislation Tracker for rent control, eviction reform, or income discrimination
Municipalities “Managing Up”

- Housing is 6th most important issue to municipal leaders.
- What doesn’t pass the states is attempted in localities.
- Top 100 cities dominated by Democrats
  - 61 Democrats
  - 30 Republicans
  - 4 Independent and 4 Non-Partisan
- Result – Progressive cities pushing and challenging states on various policies, including housing.
Local Activity
SEATTLE’S FAIR CHANCE HOUSING ORDINANCE

Yim et al. v. City of Seattle
NAA’s amicus brief:

• It is not in the business interests of rental housing providers to reject potential residents without good cause.

• Recognize the importance of tenant screening in the context of rental housing.
Fair Chance Housing in 2019

• Detroit, Michigan
• Portland, Oregon
• Cook Co., Illinois
BROAD-BASED PROTECTIONS - MINNEAPOLIS

• Individualized assessment OR
• Prohibits denial of tenancy based on:
  – Misdemeanors > than 3 years old
  – Felonies > than 7 years old
  – Arson, assault, robbery > 10 years old
  – Vacated or expunged convictions,
  – Insufficient credit history or rental history.
  – Eviction filings or judgments > than 3 years before application submission

• City Council Vote Expected on Sept 13
• Would become effective June 1, 2020
ADVOCACY IN ACTION

SAFE & AFFORDABLE NEIGHBORHOODS

MINNEAPOLIS

WWW.SAFEAFFORDABLEMPLS.ORG

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• $30 cap on rental application fees
• Prohibited from charging fees if resident moves from one unit to another
• Penalties
  – $100 fine
  – 1st offense infraction
  – 2nd+ misdemeanor
What's going on in the states?
States Move to Automatically Seal Records
Promoted by the Center for American Progress
Automatic sealing provision went into effect on June 28, 2019

“…9 out of 10 employers, 4 out of 5 landlords and a majority of colleges screening applicants with background checks, even a minor offense can be ‘a life sentence to poverty.’”
Colorado’s Rental Application Fairness Act

• **Effective August 2, 2019**
  • Prohibits charging a rental application fee in a different amount than the fee charged for rent at the same dwelling unit
    • OR if the housing provider offers more than 1 dwelling unit for rent at the same time, any other dwelling unit.
  • At the time when the fee is paid:
    o Disclose anticipated expenses or an itemization of expenses incurred.
    o If owner/operator charges amount based on average cost of processing, must include information regarding how that average fee is determined.
    o Provide a receipt.
Colorado’s Rental Application Fairness Act

• Look back periods—
  • Rental or credit history: 7 years immediately preceding the date of the application.
  • Criminal history: any conviction > than 5 years before the date of application.
    – Except:
      • Offenses involving methamphetamine
      • Offenses requiring applicant to register as a sex offender
      • Homicide offenses
      • Stalking
THE KITCHEN SINK - NY

• Wide-ranging legislation built on rent control expansion...and much more.

• No prior rental history in the resident screening.

• Application fees prohibited except to cover background checks and credit checks.

• Cumulative fees no more than the actual costs or $20.00, whichever is less.

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ORS § 90.303

(3) When evaluating the applicant, the landlord may not consider criminal conviction and charging history [if] unless the conviction or pending charge is for conduct that is:
   (a) A drug-related crime, but not including convictions based solely on the use or possession of marijuana;
   (b) A person crime;
   (c) A sex offense;
   (d) A crime involving financial fraud, including identity theft and forgery; or
   (e) Any other crime if the conduct for which the applicant was convicted or charged is of a nature that would adversely affect:
      (A) Property of the landlord or a tenant; or
      (B) The health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord’s agent.

(4) When evaluating an applicant, a landlord may not consider the possession of a medical marijuana card or status as a medical marijuana patient.
A-5711/S-4040

• “Fair Chance in Housing Act”

• Restricts applications that include inquiries regarding the applicant’s criminal records prior to the provision of a conditional offer.
What else is on the horizon?
HR 3685/S 2076
“Fair Chance at Housing Act”
• Consideration of mitigating circumstances

HR 1585
“Violence Against Women Reauthorization Act of 2019”
• Individualized review of the totality of the circumstances
(2) Where a plaintiff alleges that the cause of a discriminatory effect is a model used by the defendant, such as a risk assessment algorithm, and the defendant:

(i) Provides the material factors that make up the inputs used in the challenged model and shows that these factors do not rely in any material part on factors that are substitutes or close proxies for protected classes under the Fair Housing Act and that the model is predictive of credit risk or other similar valid objective;

(ii) Shows that the challenged model is produced, maintained, or distributed by a recognized third party that determines industry standards, the inputs and methods within the model are not determined by the defendant, and the defendant is using the model as intended by the third party; or

(iii) Shows that the model has been subjected to critical review and has been validated by an objective and unbiased neutral third party that has analyzed the challenged model and found that the model was empirically derived and is a demonstrably and statistically sound algorithm that accurately predicts risk or other valid objectives, and that none of the factors used in the algorithm rely in any material part on factors that are substitutes or close proxies for protected classes under the Fair Housing Act; or
A lawsuit has been filed against you.

10. While investigating discrimination in the housing market in early 2019, Mr. [redacted] encountered an advertisement for a Dwelling. The advertisement stated, among other things: “No criminal history.”
Advocacy: An Evolving Playbook

From

- Playing defense
- Mobilizing opposition
- Academic
- Sound policy

To

- Going on offense
- Mobilizing support
- Emotional
- Smart politics
www.naahq.org/advocacy
Find statutory reports, our interactive tracking map and more on policy issues affecting the industry.
Thank you!

Nicole Upano
Director of Public Policy
National Apartment Association
nupano@naahq.org

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