COOK COUNTY PASSES NEW RESIDENTIAL LANDLORD RULES LEAVING INDUSTRY DYSPEPTIC

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Earlier this year the Cook County Board of Commissioners (the "Board") amended the Cook County Human Rights Ordinance with the "Just Housing Amendment" in an admirable effort to reduce housing discrimination against individuals with criminal records and improve their housing opportunities. The ordinance tasked the Cook County Human Rights Commission (the "Commission") with developing regulations for implementing certain aspects of the ordinance. As industry stakeholders and human rights advocates battled back and forth in months of rule-making, the effective date was delayed until January 1, 2020. Ignoring industry objections, the Commission and Board passed interpretative rules extremely friendly to applicants with criminal convictions. As a result, many industry players will simply stop running criminal background checks to avoid the complex rules, leasing delays and costly regulatory complaints that may be triggered by it.

The new rules provide that before a Cook County landlord, leasing broker or property manager may accept an application fee for residential housing, it must provide to the applicant the following: (a) the tenant screening criteria that will be used; (b) a notice that the applicant has a right to dispute the information contained in a criminal history report and a right to provide evidence of reform and other mitigating information, and (c) a copy of Part 700 of the Commission's procedural rules or a link to the Commission's website, with the address and phone number of the Commission.

Further, the ordinance and rules require that the landlord first qualify the tenant on all other metrics before asking the applicant about criminal history or obtaining a criminal background check. If the landlord would lease to the applicant based on such criteria, only then can the landlord ask about, take into account, or obtain a report on criminal conviction history. The rules then require the landlord to provide a second notice to the applicant, prior to running a criminal background check, stating that the application

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has been approved, subject only to a criminal background check.

Consistent with HUD guidance issued by the Obama administration, the ordinance provides that a landlord cannot deny an application based on (1) any arrest, charge or citation record when the individual was not convicted, (2) participation in a diversion or deferral of judgment program, (3) a record of an offense that has been sealed, expunged, or pardoned in accordance with applicable law, or (4) juvenile records, or juvenile convictions. However, the rules go even further in limiting what information a landlord may use to qualify tenants.

If a landlord does run a criminal background check, illogically, the rules prohibit the landlord from taking into account criminal convictions ***that are at least three (3) years old at the time of application***. The only exceptions to this three-year limitation is for individuals currently required to be registered as sex offenders or those who have a current child offender radius restriction under applicable law.

Case Study Example: Arson, a class 2 felony in Illinois, can carry a 3 to 7-year prison sentence. An arsonist is arrested in 2014, convicted and sentenced to prison in 2015, and released on December 31, 2019. On January 1, 2020, this applicant could not be rejected based on the arson conviction, because the conviction is more than 3 years old.

Even if the applicant has a conviction within the 3-year period, such application cannot be rejected without first performing a seven-factor “individualized assessment” evaluating whether the applicant’s conviction(s) pose a demonstrable risk to other residents’ personal safety or the likelihood of serious damage to property. The applicant has five business days from the date of rejection to notify the landlord of the applicant’s intent to dispute the accuracy or relevance of any criminal convictions from the past 3 years. If the applicant provides the requisite notice, the applicant then has an additional five business days to present information disputing the accuracy or relevance of convictions on which the landlord based the rejection. This entire time, the apartment cannot be rented to anyone else. If, after the dispute resolution period, the landlord rejects the applicant, additional notices must be provided informing the applicant of the basis for the denial and the right to file a complaint with the Commission. Once the landlord makes the decision to reject the applicant based on a criminal conviction, the applicant must be notified within 3 days.

The rules will most likely result in residential property managers, leasing agents, and landlords avoiding criminal background checks altogether. The rules are simply too burdensome and risky for the landlord to continue running criminal background checks, and the limited look back period of three years defeats the purpose. That being said, property managers and owners should remember they need to always monitor their property closely because certain Cook County municipalities have “Crime Free” rental ordinances that can punish landlords with crime ridden buildings and the United States Drug Enforcement Agency will not hesitate to use their powers to seize property used in the sale, manufacture or distribution of illegal narcotics.

Whether or not you use criminal information when screening residential tenants, documentation and process changes will be necessary to comply with the new ordinance. If you are a residential property manager, leasing agent or landlord in Cook County who needs assistance complying with the Just Housing Amendment or needs legal defense against applicant complaints, contact Aaron H. Stanton (astanton@burkelaw.com) and Bradley M. Ader (bader@burkelaw.com) at Burke, Warren, MacKay &

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