

19-4770

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Department: Cook County Department of Human Rights and Ethics

PROPOSED SUBSTITUTE TO FILE 19-4770 (Rules Committee 10/23/2019)

REPLACES ALL PRIOR VERSIONS OF THIS FILE ID

SUGGESTED MODIFICATIONS TO PUBLIC FACING RULES AND REGULATIONS

PART 700 JUST HOUSING AMENDMENT INTERPRETIVE RULES

Section 700.100 **Prohibition of Discrimination**

Article II of the Cook County Human Rights Ordinance (“Ordinance”) prohibits unlawful discrimination, as defined in §42-31, against a person because of any of the following: race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge, source of income, gender identity or housing status.

Additionally, any written or unwritten housing policy or practice that discriminates against applicants based on their criminal history, as defined in § 42-38(a) of the Ordinance, is a violation of the Ordinance. Any written or unwritten housing policy or practice which discriminates against applicants based on their convictions, as defined in § 42-38(a) of the Ordinance, prior to the completion of an individualized assessment violates the Ordinance.

Nothing in this section shall be interpreted as prohibiting a housing provider from denying housing to an applicant based on their criminal conviction history when required by federal or state law.

SUBPART 710 AUTHORITY AND APPLICABILITY

Section 710.100 **Authority**

These rules are adopted in accordance with the authority vested in the Cook County Commission on Human Rights (“Commission”), pursuant to § 42-34(e)(5) and §42-38(c)(5)(c) of the Ordinance, to adopt rules and regulations necessary to implement the Commission’s powers.

Section 710.110 **Applicability**

These rules shall go into effect on the effective date of the Just Housing Amendment (No. 19-2394) to the Ordinance and shall only apply to claims that arise out of actions that occur on or after the effective date of the amendments.

SUBPART 720 DEFINITIONS

Section 720.100 **Business Day**

“Business Day” means any day except any Saturday, Sunday, or any day which is a federal or State of Illinois legal holiday.

Section 720.110 **Criminal Background Check**

“Criminal background check,” as referenced in § 42-38(e)(2)(a), includes any report containing information about an individual’s criminal background, including but not limited to those produced by federal, state, and local law enforcement agencies, federal and state courts or consumer reporting agencies.

Section 720.120 **Demonstrable Risk**

“Demonstrable risk,” as referenced in § 42-38(c)(5)(c), refers to the likelihood of harm to other residents’ personal safety and/or likelihood of serious damage to property.

Criminal convictions that are three (3) years old or older do not represent a demonstrable risk to personal safety or property, except in the following circumstances:

- (A) A current sex offender registration requirement pursuant to the Sex Offender Registration Act (or similar law in another jurisdiction); or
- (B) A current child sex offender residency restriction.

Section 720.130 **Individualized Assessment**

“Individualized Assessment,” as referenced in § 42-38(a) means a process by which a person considers all factors relevant to an individual’s conviction history from the previous three (3) years. Factors that may be considered in performing the Individualized Assessment include, but are not limited to:

- (1) The nature and severity of the criminal offense and how recently it occurred;
- (2) The nature of the sentencing;
- (3) The number of the applicant’s criminal convictions;
- (4) The length of time that has passed since the applicant’s most recent conviction;
- (5) The age of the individual at the time the criminal offense occurred;
- (6) Evidence of rehabilitation;
- (7) The individual history as a tenant before and/or after the conviction.

Section 720.140 **Relevance**

“Relevance,” as referenced in § 42-38(e)(2), refers to the degree to which an individual’s conviction history makes it likely that the applicant poses a demonstrable risk to the personal safety and/or property of others.

Section 720.150 **Tenant Selection Criteria**

“Tenant selection criteria,” as referenced in § 42-38(e)(2)(a), means the criteria, standards and/or policies used to evaluate whether an applicant qualifies for admission to occupancy or continued residency. The criteria, standards and/or policies concerning the applicant’s conviction history from the previous three (3) years shall apply only after a housing applicant has been pre-qualified. The criteria must explain how applicants’ criminal conviction history from the previous three (3) years will be evaluated to determine whether their conviction history poses a demonstrable risk to personal safety or property.

SUBPART 730 TWO STEP TENANT SCREENING PROCESS

Section 730.100 **Notice of Tenant Selection Criteria and Screening Process**

Before accepting an application fee, a housing provider must disclose to the applicant the following information:

- (A) The tenant selection criteria, which describes how an applicant will be evaluated to determine whether to rent or lease to the applicant;
- (B) The applicant's right to provide evidence demonstrating inaccuracies within the applicant's conviction history, or evidence of rehabilitation and other mitigating factors as described in §740.100(B) below; 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.

Section 730.110 **Step One: Pre-Qualification**

No person shall inquire about, consider or require disclosure of criminal conviction history before the prequalification process is complete, and the housing provider has determined the applicant has satisfied all other application criteria for housing or continued occupancy.

Section 730.120 **Notice of Pre-Qualification**

Once a housing provider determines an applicant has satisfied the pre-qualification standards for housing, the housing provider shall notify the applicant that the first step of the screening procedure has been satisfied and notify the applicant that a criminal background check will be performed or solicited.

Section 730.130 **Step Two: Criminal Background Check**

After a housing provider sends the notice of pre-qualification required by Section 730.120, a housing provider may conduct a criminal background check on the prequalified applicant. However, the housing provider may not consider any information related to the criminal convictions that are more than three (3) years old or any covered criminal history as defined in Section 42-38(a) of the Ordinance.

SUBPART 740 CONVICTION DISPUTE PROCEDURES

Section 740.100 **General**

Before denying admission or continued occupancy based on criminal conviction history, a housing provider must provide the housing applicant or resident with:

- (A) A copy of the tenant selection criteria, any criminal background check or other screening material relied upon by the housing provider, and the individualized assessment performed by the housing provider.
- (B) Notice of the applicant's right to dispute the accuracy or relevance of any conviction(s) in accordance with Section 740.110 of these rules; 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.

Section 740.110 **Opportunity to Dispute the Accuracy and Relevance of Convictions**

Once a housing provider complies with the requirements of Section 740.100, the applicant shall have:

- (A) five (5) business days from the postal or electronic mail date stamp to notify the housing provider in writing of the applicant's intent to dispute the accuracy or relevance of any criminal convictions from the last three (3) years; and
- (B) an additional five (5) business days to produce evidence that disputes the accuracy or relevance of information related to any criminal convictions from the last three (3) years.

Section 740.120 **Dispute Procedures and Other Applicants**

If a pre-qualified applicant provides notice of intent to dispute the accuracy or relevance of the applicant's criminal conviction history in accordance with §740.110, the housing provider must complete the dispute process in §740.110 before extending housing to another applicant.

If such applicant, after providing notice of the applicant's intent to dispute, fails to dispute the accuracy or relevance of the applicant's criminal conviction history and the housing provider determines that the applicant's criminal convictions from the last three (3) years pose a demonstrable risk, the housing provider may extend housing to another pre-qualified applicant.

However, if such applicant disputes the accuracy or relevance of the applicant's criminal conviction history, the housing provider must perform an individualized assessment to determine whether the applicant's criminal convictions from the last three (3) years pose a demonstrable risk. If the applicant's criminal convictions pose a demonstrable risk, the housing provider may extend housing to another pre-qualified applicant.

SUBPART 760 **NOTICE OF FINAL DECISION**

Section 760.100 **Decision Deadline**

A housing provider must either approve or deny an individual's housing application within three (3) days of a final decision to deny admission or continued occupancy based on criminal conviction history.

Section 760.110 **Written Notice of Denial**

- (A) Any denial of admission or continued occupancy based on a conviction must be in writing and must provide the applicant an explanation of why denial based on criminal conviction is necessary to protect against a demonstrable risk of harm to personal safety and/or property.
- (B) The written denial must also contain a statement informing the housing applicant of their right to file a complaint with the Commission.

Section 760.120 **Confidentiality**

The housing provider must limit the use and distribution of information obtained in performing the applicant's criminal background check. The housing provider must keep any information gathered confidential and in keeping with the requirements of the Ordinance.