Stop the Amended California AB396

Prohibits Rental Owners from running criminal checks in the initial screening phase and forces those that find a criminal record to hold the unit vacant for a minimum of 14 days.

Republished with permission from Contemporary Information Corporation. To view the original article, please visit www.residentscreeningblog.com

On April 30, 2015, California State Assembly amended AB 396 (authored by Assembly Member Jones-Sawyer D-59); Rental housing discrimination: applications: criminal records . While the new language technically 'allows for' the reporting and use of criminal records in the resident screening and selection process, it creates a situation wherein landlords and property managers who do so will face a number of additional steps, including the creation of a two-step screening process and the **setting aside of their rental unit for 14 days or longer for a denied application based on criminal records.**

During the Committee hearing on April 29th, Jones-Sawyer stated "if a rapist applies after serving their time, the manager should sit down with the ex felon, have a dialogue with the applicant to determine what exactly happened and where they are now with their life." The Assemblyman's vision is to change the culture of how Californians look at ex-offenders and that residents should be comfortable living with ex-offenders and embrace them into their communities. Assemblyman Jones-Sawyer went on to say that he would like to see California become the "redemption state".

If this bill passes, property managers and landlords will have additional required steps in the rental decision process. This ambiguity will create opportunities for trial lawyers, and the length of the process could cause properties to lose otherwise qualified applicants who will become frustrated with how long it takes to become approved. Those landlords and property managers which decide, (due to the complexity of the process and exposure to litigation that this bill creates), not to request criminal records, will face the very real potential of creating unsafe communities through the introduction of non-reformed ex-offenders.

"Our landlords do not want to rent to violent sex offenders, but now we have to consider them. For instance when we do not want to rent to people who have committed arson or who are felons, even if they were convicted for burning one of our properties…this bill forces us to consider them" stated Ronald Kingston of CALPCG (representing California NAA affiliates).

There is hypocrisy and a double standard between AB396 and the HUD standards. Owners of federal assisted housing properties can establish "discriminatory" rules based on criminal history, but private landlords could not. Private landlords should be able to expect and ensure the same level of protections for their tenants as those enforced under federal rules.

Contemporary Information Corp (CIC) and National Apartment Association affiliates spoke at the public hearing on April 29th to voice their deep concerns and the ramification of this bill. Below are excerpts from the bill which would affect the rental housing industry.

12955.05(a)(3) "Initial application assessment phase" means the period before a decision is made to rent or lease, which shall include the request for, and the provision of, an application to a person seeking a rental housing accommodation and including the time during which the assessment of rental history and credit history, the checking of sources of income, and the scheduling an applicant interview routinely.

This will create a two part application system for every landlord / property manager who wants to check the criminal history of the applicant. Under this bill, they cannot pull the criminal record report with the rest of the application information (thus ending the process for convicted criminals who do not meet their criteria) but instead they must do all other aspects of the application process, and if they are still interested and qualified, then they may pull the criminal record. This added step is entirely unnecessary and is created solely to discourage landlords / property managers from accessing criminal records. While the bill doesn't take away the right to gain access to criminal records (after all they are public records available to everyone), it just makes it needlessly more difficult in an effort to dissuade the use of criminal records in the rental decision making process.

12955.05(b)(1) It is an unlawful housing practice for the owner of a rental housing accommodation to inquire about, or to require an applicant for rental housing accommodation to disclose, a criminal record during the initial application assessment phase, unless otherwise required by state or federal law.

This bill would automatically cause the landlord / property manager to violate the law if they asked about criminal history up front, or if they request a report from a CRA screening provider, in the "initial application assessment phase". This is an ideal situation for trial lawyers. Yet under the Freedom of Information Act, the tenants in the apartment have the right to pull public records, such as the sex offender registry, at any time. Suppose a landlord decides to discontinue pulling criminal records and then his tenants find out a convicted rapist lives in the apartment?

12955.05 (b)(2) Following the initial application assessment phase, an owner of a rental housing accommodation may request a criminal background check and consider an applicant's criminal record in deciding whether to rent or lease. If the owner of a rental housing accommodation is considering denying an application to rent or lease after requesting a criminal background check or considering an applicant's criminal record, he or she shall promptly provide the applicant with a written statement listing the reasons for the possible denial before making a final decision.

This portion of the bill seems to indicate that an adverse action statement is given to applicants who "might possibly" fail, which is quite ambiguous we might add, to meet the criminal record criteria as set forth by the landlord / property manager. There is no definition as to what "promptly provide" means nor does it state, although it seems to imply, that the adverse action notice also include the criminal records as obtained from the CRA screening provider. Again, this ambiguity is ideal for trial lawyers and the entire onus to perform this falls on the landlord / property manager.

Not only a two-step process, but…

12955.05 (b)(3) If, within 14 days of receipt of the written statement described in paragraph (2), the applicant provides the owner of the rental housing accommodation notice orally or in writing of evidence demonstrating the inaccuracy of the item or items within the applicant's criminal record or evidence of

rehabilitation or other mitigating factors, the owner of the housing accommodation shall delay the denial for a reasonable period after receipt of the information and reconsider his or her decision in light of the information. If, upon individualized assessment of the applicant's criminal record and the evidence of rehabilitation and mitigating factors, the applicant still has an unacceptable criminal record, then the owner of the housing accommodation shall notify the applicant of his or her final decision to deny the application in writing.

So now CA landlords have to hold their units vacant for convicted criminals who did not meet their criteria in the first place to be able to dispute the records? And there is no absolute definition of proof? Under this bill the applicant must only "orally" demonstrate the inaccuracy of the criminal record, or tell them that they went through some kind of rehabilitation, leaving it up to the untrained landlord / property manager to determine the accuracy and validity of the statements given. As before, this is all written in an ambiguous fashion to put the onus on the landlord / property manager. Under this bill, the process can easily take up to a month, while the unit remains vacant. This is all very vague and will most certainly lead to lost rent, frustration, and litigation.

AB396 is to be heard before the Assembly Appropriations Committee May 13th. On behalf of both the consumer reporting industry as well as the property management industry, CIC strongly urges industry partners, property managers, owners, investors and landlords to contact their representatives and push to defeat this ill-conceived bill.

Your voice needs to be heard in opposition of this bill. Contact your local legislator in your district. Click here to find your legislator http://findyourrep.legislature.ca.gov/