

**SIMONE & BLEVINS**

— LANDLORDS' LEGAL CENTER —

# Screening Tenants & Avoiding Discrimination Lawsuits

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**Advertising Vacant  
Units**

# What rent can I advertise?

## CA Penal Code § 396

- Rent increases **over 10 % are prohibited** during state of emergency
- Applies if the state, county or city where your rental property is located is in a state of emergency
- Also applies to rental properties that become vacant during the state of emergency when you rent to a new tenant.
- **Exception:** If the rent increase is directly related to repairs or additions beyond normal maintenance

# What criteria can I advertise?

## Prohibition on Discriminatory Advertising

- The California Fair Employment and Housing Act (FEHA) prohibits advertising that discriminates based on:
  - race, color, religion, sex, sexual orientation, national origin, source of income, ancestry, marital status, familial status, or disability.
- Govt C §§12926(p), 12955(c).
- **Exception:** Advertising for housing limited to persons of one sex to share living areas in a single dwelling.

## Prohibition on Discriminatory Advertising Source of Income

- Source of Income includes income paid from government subsidies (Section 8 or similar programs)
- Landlords cannot advertise “No Section 8”
- FEHA Definition: “Source of income” means lawful, verifiable income paid directly to a tenant or to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f). Govt C §12927(i)

# Prohibition on Discriminatory Advertising

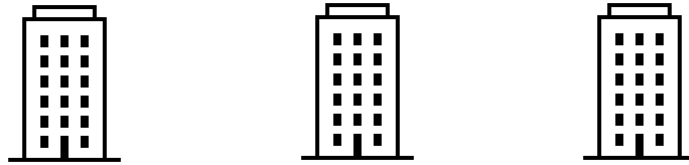
## Source of Income Defined

- City of San Diego: Broader than FEHA to and includes rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, among other sources.
- **Source of income** means all lawful, verifiable sources of income, or rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, or any financial aid from any rental assistance program, homeless assistance program, security deposit assistance program, or housing subsidy program, whether paid directly to the program participant, landlord, or representative of either. **SD Muni. Code § 98.0802**



# • Screening Applicants

# What steps can I take to properly screen my tenants?



1. Have all adult applicants fill out a rental application.
2. Obtain a credit report for all adult applicants.
3. Verify all information on the rental application.
4. Obtain copy of photo ID.



# What factors can I use when screening a new applicant?

- Credit Standing - Do a Credit Check!
- Employment History – Treat all employment equally including those on disability
- Amount of Income NOT Source
- Rental History
- Personal References
- Past bad conduct – Must be relevant to reasonable belief applicant may be direct threat to health or safety of current tenants or neighboring property

# What questions should I ask?

Check the applicant's rental history for the past five years

- Did the applicant timely pay rent?
- Did the applicant take care of the premises?
- Did other tenants make complaints about the applicant?
- Did the applicant follow the rules?

# Can I use criminal background checks when screening a new applicant?

- Yes, but with extreme caution.
- FEHA prohibits using criminal history that has a **discriminatory effect** or that is used as a pretext against a member of a protected class unless there is a *legally sufficient justification*.
- FHA prohibits the use of criminal history when such use has a **disparate impact** on protected classes.
- Limit any inquiries about an applicant's criminal history to information that *directly relates to tenancy obligations or has a legitimate purpose*, such as the safety of other residents

# HUD Guideline on Criminal Background Checks

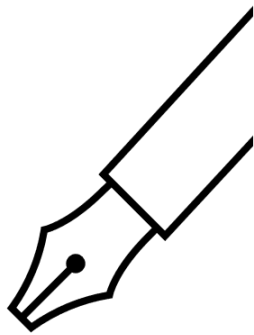
**Indirectly** – Restrictions that indirectly create negative impact on minority groups

Ex: Landlord has a policy of not renting to persons with certain drug convictions that indirectly affects Hispanics more than other protected classes.

**Directly** – Directly targeting a specific protected class

Ex: Landlord rejects a Hispanic applicant based on his criminal record but accepted a non-Hispanic White applicant with a comparable criminal record.

# Illegal Questions



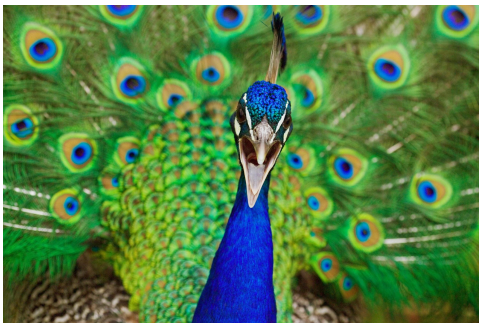
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- **What NOT to Ask:** It is illegal for the Landlord to ask a Tenant questions about race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition or whether you have persons under the age of 18 living in your household.
  - **Exceptions:** Landlord can limit the number of persons per unit.
    - LL can charge up to \$62.02\* as an Application fee to apply to actual out of pocket costs.
- \*This amount changes yearly**



# COVID -19 Rental Debt Discrimination

**California law restricted discrimination against tenants that received COVID-19 rental assistance by making the rental assistance payments a protected source of income.**



# ESA/Service Animals

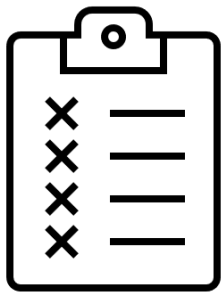
- **Service animal** is defined by the ADA as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”
- **Support animal** or **emotional support animal** provided by HUD is “other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities.”
- **Service animals, support animals, or emotional support animals** are NOT pets. You CANNOT require: 1) Additional Deposit/Pet Deposit or 2) Pet Rent
- You may deny a request if it imposes an undue financial and administrative burden on the housing provider’s operations. Contact an attorney prior to denying the request.

# What are some **red flags** to look out for on a rental application?

- **Applicant does not complete the full application.**
- **Applicant is pressuring you to let them move in quickly.**
- **Applicant is unable to verify name with a government ID.**
- **Social Security numbers on government ID and application do not match.**
- **If after verifying employment you have a bad feeling, use the internet or the phone book to make sure the phone number of the business is correct.**
- **Applicant reports that they have filed bankruptcy or been evicted.**







# Saying No To An Applicant

**You do not need to give a reason, BUT if the applicant is rejected because of information in the credit report, LL MUST immediately send the applicant an adverse action notice:**

- 1) The name, address, and telephone number of the credit reporting agency;
- 2) A statement that the decision to reject the applicant was based wholly or partially on information in the credit report; and
- 3) a statement that within 60 days the applicant has a right to obtain a free copy of the credit report from the agency and the right to dispute the accuracy of the information.



# Leases/Rental Agreements

# Leases and Rental Agreements

## Dos & Don'ts

1. Use an updated lease & fill it out
2. Personalize with Addendums – House Rules
3. Include all required addendums
4. Longer is not always better
5. If it is not in writing behavioral breaches are not enforceable



# Required Lease/Rental Agreement Addendums or Terms

- **Use forms from an association in your area.**
  - The laws and the forms change yearly.
- **Include Exemption/Non-Exemption from California or Local Rent Control Laws**
  - There are penalties if you fail to provide these notices

# Leases and Rental Agreements

## Terms to Look Out for:

1. Attorney's Fees Clauses
2. Addresses
3. Owner Occupancy Termination Clauses
4. Tenants/Occupants
5. Assigning/Subletting
6. Rent Control/Rent Control Exemption
7. Storage/Parking

# Move-in Inspection

- Before signing a Rental Agreement or collecting any rent or security deposit, DO A MOVE-IN INSPECTION!!!!
- Use a written Inspection Checklist
  - It protects you in case of an eviction
  - If you can, take pictures of the unit
  - Make sure LL repairs any items in need of repair.  
**NEVER ALLOW THE TENANT TO MAKE REPAIRS**



# Security Deposits

**Effective July 1, 2024 | AB-12 Amends Civil Code § 1950.5**

- **Security Deposit shall not exceed one month of rent.**
- **Small Landlord security deposit shall not exceed two months' of rent**
  - Capped at one month for servicemembers
  - LL owns no more than two residential rental properties that collectively include no more than four units
  - Natural person or LLC where all members are natural persons
- **If you require a pet deposit it must not exceed the limits above.**
- **Landlords cannot demand first month, last month, and one month's rent in a security deposit.**

- **Late fees cannot be “Excessive”.**
- **Best practice should be to have a late fee that is no more than 5%-6%.**
- **Daily late fee penalties are not enforceable in excess of 5%-6% total.**

# Late Fees



# Utilities

- **Clearly state in your lease/rental agreement who pays for the utilities.**
- **If the tenant's meter services areas outside their unit, then Landlord and Tenant must sign a written agreement as to who pays what.**
- **Failure to disclose the above may result in the Landlord being liable to the Tenant.**

- **Include garage, parking space, and/or storage in your rental agreement or lease for the unit.**
- **Separate agreements = Separate Evictions.**
- **Storage provisions must be specific.**

# Garages/ Parking Spaces

# Questions?

## Simone & Blevins

Please note our new address effective July 1, 2024:

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