

OFFICE OF COMMISSIONER EUDALY

DRAFT: 10/10/18

30.01.088 Screening Criteria for Applicants for Dwelling Units.

A. In addition to the protections set forth in the Act and Sections 30.01.085 and 30.01.087, the following procedures and guidelines apply to Landlords when screening an Applicant for residential tenancy in a Dwelling Unit (as defined in the Act).

B. Definitions. For purposes of this chapter, unless otherwise defined herein, capitalized terms have the meaning set forth in the Act.

- a. Applicant: An applicant for a Dwelling Unit covered by the Act.
- b. Supplemental Evidence: Any written information in addition to the application, that the Applicant believes to be relevant to the Applicant's predicted performance as a tenant.
- c. Head(s) of Household: Person or persons listed on a lease as the party or parties responsible for paying the Rent.

C. Applications, Generally.

- a. First-come, First-served.
 1. Completed applications must be received and processed on a first-come, first-served basis.
 2. All completed applications must be time stamped to indicate the date and time that an Applicant submitted the application (the "Submission Date").
 3. A Landlord must provide an Applicant with a written or electronic receipt within one (1) business day of the Submission Date that accurately reflects the Submission Date and assigns the Applicant a queue number.
- b. A Landlord must include the following with every application:
 1. Notice to Applicants of the right to request a reasonable accommodation at any point before, during or after the application process;
 2. Notice that a Landlord may not deny an application solely because of a reasonable accommodation request or because of the nature of the accommodation requested.
 3. Notice to Applicants of their rights under this Section 30.01.088 by including a link to PHB's website and a printed copy of the notice that PHB creates.
 4. A complete description of the applicable screening criteria.
- c. A Landlord that owns less than fifty (50) Dwelling Units within the City of Portland, may refuse acceptance of a completed application only if the Applicant has a verifiable pattern of Rental Agreement violations with the Landlord and the most recent of such Rental Agreement violations occurred within the last 365 days.

- d. Any Applicant that self-identifies as mobility challenged on an application within the first 8 hours of an open application period must be given first priority for any vacant Dwelling Unit that is advertised as accessible in accordance with the General Type A or General Type B requirements.

D. Advertisement of Dwelling Units.

- a. When publicly advertising for specific vacant Dwelling Units, a Landlord must specify an **opening date** when applications will be accepted and cannot accept applications for those specific units outside of the advertised period.
- b. Except as otherwise prevented from complying due to the format requirements of an advertising service, screening criteria required by a Landlord, or a website address to the criteria, must be included in any public advertisement for available Dwelling Units as well as included on the application.
- c. Except as otherwise prevented from complying due to the format requirements of an advertising service, all public advertisements must also include if the Dwelling Unit is accessible by General Type A or General Type B requirements.
- d. When advertising newly vacant Dwelling Units, the open application period must be published at least 3 days prior to the start of the open application period.
- e. **deleted**

E. Identification.

- a. A Landlord must accept any of the following as forms of identification, or combination thereof, that verify the full name, date of birth, and picture of the applicant:
 - 1. Valid Social Security Number (SSN);
 - 2. Valid Permanent Resident Alien Registrations Receipt Card;
 - 3. Immigrant Visa;
 - 4. Individual Taxpayer Identification Number (ITIN);
 - 5. Non-Immigrant Visa;
 - 6. Any other government-issued identification; or
 - 7. Any other non-government document or combination of documents that would allow verification of identity.
- b. A Landlord may not reject an application as incomplete due to the lack of a Social Security Number (SSN).
- c. A Landlord may not inquire about the immigration status of an Applicant or require that any Applicant prove citizenship.

F. Income.

- a. A Landlord may not require an income to rent ratio greater than two times the amount of Rent for the Dwelling Unit when costs for utilities are part of the Rent.
- b. A Landlord may not require an income to rent ratio greater than two and a half times the amount of the Rent for the Dwelling Unit when costs for at least three essential utilities (such as garbage, sewer, water, or heat) are required to be paid separately by a Tenant.
- c. Calculation of the income to rent ratio under this section:

1. Must include all sources of an Applicant's income, including, but not limited to, wages, rent assistance, verifiable family assistance for at least three months of tenancy, and monetary public benefits;
2. May include a requirement for a guarantor (family member, friend, non-profit, or government agency as identified by the Applicant) or an Additional Deposit as described in Section 30.01.087 when the Applicant's income falls at or below two times the amount of the Rent;
3. Must not require family or friend guarantor to have income greater than three times the current Rent but can require verifiable employment, verifiable residence within the United States, and no active collections activity for delinquent property or utility debt;
4. To the extent that a Landlord requires a guarantor or Additional Deposit, the Landlord must allow the Applicant to choose between the two options;
5. Must subtract from the Rent amount any portion of Rent covered by an Applicant's rent voucher or subsidy before calculating the rent ratio;
6. Must apply as a household when more than one adult applies as a group;
7. Must only screen Head(s) of Household. Co-applicants that are not responsible for paying the Rent may be screened for criminal history pursuant to procedures and guidelines in this Section 30.01.088; and
8. May require co-applicants not responsible for paying the Rent to sign a Rental Agreement.

G. Screening Standards

- a. A Landlord that establishes criteria that does not require Applicants to exceed the following screening standards does not need to conduct an individualized assessment before denying an Applicant:
 1. An arrest that did not result in conviction, unless the resulting charge is pending at the time that the Applicant submits the application;
 2. Participation in or completion of a diversion or a deferral of judgment program;
 3. A conviction that has been judicially dismissed, expunged, voided or invalidated;
 4. A conviction for a crime that is no longer illegal in the state of Oregon;
 5. A conviction or any other determination or adjudication in the juvenile justice system;
 6. A conviction or pending charge for any of the following:
 - a. When the date of sentencing is 3 or more years or the date of release is greater than 1 year, whichever is latest, before the Applicant submits the application:
 - i. Misdemeanors;
 - b. When the date of sentencing is 1 or more years, or the date of release is greater than 1 year, whichever is latest, before the Applicant submits the application, driving under the

- influence-related offenses, when the history shows two or more convictions within the timeframe in this section;
- c. A criminal conviction older than 7 years for any conviction, the date of conviction being the date of sentencing, or more than 4 years from the date of release, whichever is latest;
 - d. A criminal conviction older than 10 years for any convictions, the date of conviction being the date of sentencing, when the history shows two or more misdemeanor or felony convictions within the timeframe in this section; or
 - e. A criminal conviction older than 20 years for any convictions, the date of conviction being the date of sentencing, when the history shows four or more misdemeanor or felony convictions within the timeframe in this section.

7. Credit score of 500 or under;

- 8. Lack of credit history, unless the applicant in bad faith withholds credit history information that might otherwise form the basis for denial;
- 9. Adverse accounts under \$1000, unless the account is related to debt from a prior tenancy;
- 10. Property debt under \$500;
- 11. Bankruptcy filed by the applicant is closed;
- 12. Bankruptcy for Chapter 13 filed by the applicant is in an active repayment plan;
- 13. Medical or secondary education debt.
- 14. An action to recover possession pursuant to ORS 105.105 to 105.168 if the action:
 - a. Was dismissed or resulted in a general judgment for the Applicant before the applicant submits the application;
 - b. Resulted in a general judgment against the Applicant that was entered three or more years before the Applicant submits the application;
 - c. Resulted in a general judgment against the Applicant that was entered fewer than five years before the Applicant submits the application if:
 - i. The termination of tenancy upon which the action was based was without cause (no-cause eviction) pursuant to ORS 90.427; or
 - ii. The judgment against the Applicant was a default judgment due to a failure to appear, if the Applicant presents credible evidence to the Landlord that the Applicant had already vacated the unit upon which the action was based at the time that notice of the action was served.

15. Any information that the Landlord obtains from an oral or written rental reference with the exception of defaults in Rent, 3 or more Rental Agreement violations that resulted in notices issued to the Tenant, outstanding balance due to the Landlord or behaviors as a Tenant that resulted in a termination with cause.; or
16. Lack of rental history, unless the Applicant in bad faith withholds rental history information that might otherwise form the basis for denial.

H. Individualized Assessment.

- a. A Landlord that does not adopt the screening standards set forth in Section G, must conduct an individualized assessment before denying an Applicant and should approve an Applicant that meets the screening standards criteria for a Dwelling Unit unless the Landlord can identify a legitimate, non-discriminatory business interest to deny such Applicant.
- b. Any Applicant that believes that they may have barriers to any screening criteria can provide, at the time of application submission, all Supplemental Evidence they believe provides a positive offset to the barriers.
- c. A Landlord has an obligation to consider any such Supplemental Evidence submitted by the Applicant including, but not limited to, the following:
 1. Six or more consecutive months of job or income stability;
 2. Completion of secondary education or job training programs;
 3. Current enrollment in secondary education or job trainings programs;
 4. Current probation or parole oversight;
 5. Certificate of Good Standing;
 6. Current payment plan towards credit debt;
 7. Completion of Rent Well or another tenant education program;
 8. Six or more consecutive months of positive rental payments within the last year;
 9. Completion of credit counseling;
 10. Current participation in credit counseling;
 11. Current participation with a legal or non-profit advocate to clear past collections;
 12. Legitimate explanation of no social security number or lack of credit history based on national origin or other protected class.
 13. The presence of domestic violence as contributing factor to rental issues of concern;
 14. Current payment plan toward outstanding debts owed previous landlord;
or
 15. Any other evidence that the Applicant believes has a tangible impact to the specific barriers identified in an Applicant's history.
- d. If a Landlord receives the following types of Supplemental Evidence, a Landlord should assume that the presentation of such Supplemental Evidence is a request for a reasonable accommodation under the Fair Housing Act:
 1. Completion of drug or alcohol treatment;
 2. Current enrollment in a drug or alcohol treatment program;

3. Completion of psychological counseling;
 4. Current participation in psychological counseling; or
 5. Current case management or peer support services.
- e. In addition, a Landlord must consider the information from the individualized Assessment and Supplemental Evidence in light of the following before denying an Applicant:
1. The nature and severity of the barriers;
 2. The number and type of the barriers;
 3. The time that has elapsed since the date the barriers occurred; and
 4. The age of the individual at the time the barrier occurred.

I. Denials

- a. An application can be denied without a Landlord first conducting an individualized assessment when an Applicant does not meet basic criteria requirements such as incomplete application, identification, income, or an Applicant has purposefully withheld required information.
- b. If an Applicant applies as part of a family or group, a Dwelling Unit can be denied to that Applicant individually but not the family or group as a whole unless it changes the income ratio.
- c. When denying an application based on screening standards, a Landlord must provide a written “Notice of Adverse Action” **compliant with ORS.....** to the Applicant within two weeks of the denial.
- d. When denying an application after performing an individualized assessment, a Landlord must provide a written “Notice of Denial” to the Applicant within two weeks of the denial that includes:
 1. The specific adverse information that matches the screening criteria information as provided with the application;
 2. The Supplemental Evidence, if any, that the Landlord considered and whether it influenced the decision of the Landlord to deny the application;
 3. An explanation of the legitimate, non-discriminatory business interest of the Landlord that justify denial of the application; and
 4. An explanation of Supplemental Evidence, if any, the Applicant could have provided that would have led the Landlord to offer housing to the Applicant.
- e. A Notice of Denial can only be issued to the Applicant by the Landlord.

J. Additional Deposit.

- a. A Landlord may request an additional security deposit as set forth in Section 30.01.087 as an alternative to issuing a Notice of Adverse Action or a Notice of Denial.
- b. To request an additional security deposit, a Landlord must provide a written “Notice of Conditional Approval” to the Applicant that contains the same information as required in a Notice of Adverse Action or a Notice of Denial (depending on the screening process used) and additionally contains the specific

amount being requested as well as the ability for an Applicant to choose an installment plan.

- c. If a Landlord requests Additional Deposit as a condition of offsetting a low income ratio, the Landlord does not need to issue a Notice of Conditional Approval but must follow the code as set forth in Section 30.01.087.

K. Screening Fees

- a. If a Notice of Denial or Notice of Adverse Action is not provided to the Applicant within two weeks, a Landlord must refund the Applicant's entire application fee within the same two-week period.
- b. If using a professional screening company exclusively, the screening fee charged by the Landlord cannot be more than what is charged by the screening company.
- c. If using a professional screening company in addition to screening work by the Landlord, fees cannot exceed 25% above what is charged by the screening company.
- d. If a Landlord screens independently without the use of a professional screening company, fees cannot exceed 10% above what is charged by the average professional screening company in the Portland-Metro area.

L. Modification Requests

- a. An Applicant that experiences disabilities cannot be denied housing based on a denial of reasonable modification alone.
- b. If an Applicant's modification request is denied, the Applicant must be allowed 24 hours to request an alternative modification that meets their needs.
- c. If the second modification request is denied, the Applicant must be allowed another 24 hours to request an alternative modification that meets their needs.
- d. If no reasonable modification can be made in the Dwelling Unit the Applicant applied for, then the Applicant may still accept the Dwelling Unit if they meet the eligibility criteria.

M. Exemptions.

- a. Any housing provider that enters into a partnership or referral agreement with a non-profit service provider working to place low income or vulnerable clients into housing is exempted from this Section for the Dwelling Units covered by the agreement.
- b. Any Landlord who does not rent or advertise to the general public, (including online platforms with or without a fee), to fill vacant Dwelling Units.
- c. Any Landlord who is otherwise complying with state or federal loan or funding requirements is exempt from the parts of the policy in conflict with the loan or funding requirements.

N. Damages.

- a. Any Applicant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and any such other remedies as may be appropriate.