

# OFFICE OF COMMISSIONER EUDALY

## DRAFT: 10/29/18

### **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.
  4. A Landlord is exempt from the requirements of this subsection whenever a lottery system is used to lease up new residential buildings with rent regulations of 80% AMI or lower.
- 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 may only screen Head(s) of Household. Co-applicants that are not responsible for paying the Rent may be screened for criminal history and rental history (only for violation notices issued to the household for conduct of the co-applicant within the last year that demonstrates they created a hostile, unsafe, or harassing environment for other tenants or engaged in discriminatory conduct), pursuant to procedures and guidelines in this Section 30.01.088.

- d. May require co-applicants not responsible for paying the Rent to sign a Rental Agreement if the household application is approved.
  - e. 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.
  - f. 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. 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 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 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 (non-governmental only), verifiable family assistance for at least three months of tenancy, and monetary public benefits;
  2. Must subtract from the Rent amount any portion of Rent covered by an Applicant's local, state, or federal government rent voucher or housing subsidy before calculating the rent ratio; and
  3. Must apply as a household when more than one adult applies as a group.
- d. A Landlord 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.
  1. To the extent that a Landlord requires a guarantor or Additional Deposit, the Landlord must allow the Applicant to choose between the two options.
- e. A Landlord may 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.

#### G. Screening Standards

- a. A Landlord may choose to establish criteria that does not require Applicants to exceed the following screening standards and approves applications for residential tenancy despite any of the following conditions in an Applicant's history:
  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 criminal history that includes any of the following:
    - a. Any number of misdemeanor convictions where the date of sentencing is older than three years and the release date is older than one year;
    - b. A criminal conviction for any single felony offense where the date of sentencing is older than seven years and the release date is older than one year;
    - c. A criminal conviction for two or more felony offenses where the date of sentencing is older than 10 years and the release date is older than one year;

- d. A criminal conviction for four or more felony offenses where the date of sentencing is older than twenty years and the release date is older than one year;
  7. Credit score at least 500;
  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
  10. Property debt from damages in previous tenancy 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 education/vocational training 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 three 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 a verbal or written rental reference with the exception of defaults in Rent, 3 or more Rental Agreement violations within the last year that resulted in notices issued to the Tenant, outstanding balance due to the Landlord, or lease violations 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.
- b. If an Applicant provides any Supplemental Evidence regarding criminal history (as related to Sec. G.a.6 above) at the time they submit their completed application, then the Landlord has to do an individualized assessment as described in Section H on the sole basis of criminal history prior to deciding whether or not to deny the application.

#### H. Individualized Assessment.

- a. A Landlord that chooses not to adopt the screening standards set forth in Section G, must conduct an individualized assessment for all criteria 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 lack of verifiable credit history.
  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. An applicant reserves the right to use the following information as a request for Individualized Assessment as well:
  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.
- b. 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.

- a. An Applicant that is denied for residential tenancy by a Landlord using the screening standards as described in Section G must have the opportunity to appeal that denial directly to the Landlord based on:
  1. Incomplete or inaccurate information on the application, or
  2. Additional supplemental evidence.
- b. An Applicant must be allowed 30 days, from the date the denial was issued, to request an appeal.
- c. A Landlord is not required to hold the Dwelling Unit for the application during the pendency of the appeal process.
- d. If the appeal results in the denial being overturned, a Landlord must give the Applicant preference for future vacancies on the same property (with similar screening criteria and similar income ratio) if they apply within the first 4 hours of an open application period, for up to 3 months from the date of the original appeal determination.
  1. If a denial is successfully appealed, a Landlord must provide a dated letter, signed by the Landlord, documenting the successful appeal that includes specifics about which properties qualify for the preference.
  2. An Applicant who receives a letter of a successful appeal must attach that letter to future applications with the same Landlord to receive preference, for up to 3 months from the date of the original appeal determination.
  3. An Applicant who successfully appeals a denial cannot be charged a screening fee for future applications with the same Landlord, for up to 3 months from the date of the original appeal determination.
  4. If more than one Applicant provides a letter of a successful appeal during an open application period, the Applicants will receive preference in order of the dates on the letter, with oldest date getting first preference.
  5. If there is a conflict between an appeals preference and an accessible unit preference as described in Section C, the accessible unit preference is first, only superseded by an Applicant with both an accessible unit preference and an appeals preference.
  6. If an Applicant applies with an appeal preference, the Landlord may require the Applicant to self-certify that no conditions have changed since their original application.
- e. A Landlord has the discretion to also maintain a wait list and contact preference applicants (in the order their appeal letter is dated), before advertising a vacant Dwelling Unit to the general public.

#### J. Denials-General

- 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 or misrepresented 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 or occupancy standards.

#### K. Denials-Screening Standards

- a. When denying an application based on screening standards as described in Section G, a Landlord must provide a written “Notice of Adverse Action” compliant with ORS.....to the Applicant within two weeks of the denial.
- b. A Notice of Adverse Action can be provided to the Applicant by either a Landlord or a screening company.
- c. A second denial after an appeal as described in Section I can be written in a manner at the discretion of the Landlord.

L. Denials-Individualized Assessment

- a. When denying an application after performing an individualized assessment as described in Section H, 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, including detailed information received from a rental reference if it is the basis of the denial;
  - 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 how the Supplemental Evidence provided did not address the interest.
- b. A Notice of Denial can only be issued to the Applicant by the Landlord.

M. 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 a payment plan as set forth in Section 30.01.087.
- c. If a Landlord requests an 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.

N. Screening Fees

- a. A Landlord must return a screening fee within two weeks of an application determination if the Applicant was ultimately not screened, not offered tenancy, or not provided any denial notification for a vacant Dwelling Unit.
- 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.

O. 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.

P. 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.

Q. 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.