

**PROPOSED SUBSTITUTE TO FILE 19-4770**

**(Rules Committee 9/25/2019)**

**SUGGESTED MODIFICATIONS TO PUBLIC FACING RULES AND REGULATIONS**

**Department:** Cook County Department of Human Rights and Ethics

**Summary:**

**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, 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 five (5) 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).
- (B) A current child sex offender residency restriction.
- (C) A conviction or conviction history that, when analyzed by the housing provider in an Individualized Assessment, warrants denial of occupancy or continued occupancy.

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 and whether that history negatively impacts the individual’s ability to fulfill the responsibility of tenancy. 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 shall apply only after a housing applicant has been pre-qualified. The criteria must explain how applicants’ criminal conviction history will be evaluated to determine whether their conviction history poses a demonstrable risk to personal safety or property.

SUBPART 730

**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 the Cook County Commission on Human Rights (“Commission”) interpretative rules, or a link to the Commission’s website, with the address and phone number of the Commission.

Section 730.110

**Pre-Qualification**

The housing provider must first determine that the applicant is qualified for admission to 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

**Criminal Background Check**

After a housing provider sends the notice of prequalification required by Section 730.120, a housing provider may consider information from a criminal background check on the pre-qualified applicant.

SUBPART 740

**CONVICTION DISPUTE PROCEDURES**

Section 740.100

**General**

When 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 any criminal background check and other screening material relied upon; and

(B) A statement of the Individualized Assessment performed by the housing provider to determine that denial of admission or continued occupancy is necessary to protect against a demonstrable risk to the personal safety and/or property of others.

(C) 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

(D) A copy of these rules, or a link to the Human Right's Commission website, with the address and phone number of the Commission.

#### Section 740.110

#### **Opportunity to Dispute the Accuracy and Relevance of Convictions**

(A) Once the housing provider has advised the applicant they are being denied occupancy and has delivered a copy of the denial and a copy of the criminal background check, individualized assessment and other information required by Sec. 740.100, the applicant shall have two (2) 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 the relevance of the information.

(B) The applicant shall have an additional five (5) business days to produce evidence that disputes the accuracy or relevance of information contained within the criminal background check and/or individualized assessment.

#### Section 740.120

#### **Dispute Procedures and Other Applicants**

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

If a housing applicant does not provide notice of intent to dispute the accuracy or relevance of the criminal conviction history within two (2) business days, and the housing provider determines that the applicant poses a demonstrable risk, the housing provider can 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 two (2) business days of receipt of information from the applicant rebutting the information contained in the criminal background check and/or individualized assessment.

#### 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 Human Rights Commission of Cook County.

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.

End.