



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Text

File #: 19-4770, Version: 4

PROPOSED SECOND SUBSTITUTE TO FILE 19-4770 (Rules Committee 11/20/2019)

REPLACES ALL PRIOR VERSIONS OF THIS FILE

ID SUGGESTED MODIFICATIONS TO PUBLIC FACING RULES AND REGULATIONS

PART 700

**JUST
HOUSING
AMENDMEN
T
INTERPRETIV
E 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 (“Commission”), 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. When the applicant is a person with a disability, “demonstrable risk” must be based on (a) objective evidence and (b) a conclusion that any purported risk cannot be reduced or eliminated by a reasonable accommodation.

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 from the previous three (3) years. An individualized assessment is not required for convictions that are more than three (3) years old. 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;
- (8) Whether the criminal conviction(s) was related to or a product of the applicant’s disability; and
- (9) If the applicant is a person with a disability, whether any reasonable accommodation could be provided to ameliorate any purported demonstrable risk.

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 from the previous three (3) years shall apply only after a housing applicant has been pre-qualified. The criteria must explain how applicants’ criminal conviction history from the previous three (3) years will be evaluated to determine whether their conviction history poses a demonstrable risk to

personal safety or property.

SUBPART 730 **TWO STEP 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 Part 700 of the Commission's procedural rules or a link to the Commission's website, with the address and phone number of the Commission.

Section 730.110 **Step One: Pre-Qualification**

No person shall inquire about, consider or require disclosure of criminal conviction history before the prequalification process is complete, and the housing provider has determined the applicant has satisfied all other application criteria for 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 that a criminal background check will be performed or solicited.

Section 730.130 **Step Two: Criminal Background Check**

After a housing provider sends the notice of pre-qualification required by Section 730.120, a housing provider may conduct a criminal background check on the prequalified applicant. However, the housing provider may not consider any information related to the criminal convictions that are more than three

(3) years old or any covered criminal history as defined in Section 42-38(a) of the Ordinance.

SUBPART 740 **CONVICTION DISPUTE PROCEDURES**

Section 740.100 **Notice**

Within five days of obtaining a background check on an applicant, the housing provider must deliver a copy of the background check to the applicant. The housing provider must complete delivery in one of the following ways: (1) in person, (2) by certified mail, or (3) by electronic communication (e.g., text, email).

Section 740.110 **Opportunity to Dispute the Accuracy and Relevance of Convictions**

Once a housing provider complies with the requirements of Section 740.100, the applicant shall have an additional five (5) business days to produce evidence that disputes the accuracy or relevance of information related to any criminal convictions from the last three (3) years.

Section 740.120 **Dispute Procedures and Other Applicants**

Nothing in these rules shall prevent a housing provider from approving another pre-qualified individual's housing application during the pendency of the criminal conviction dispute process.

SUBPART 750 **REVIEW PROCESS**

750.100 **General**

After giving an applicant the opportunity to dispute the accuracy and/or relevance of a conviction, a housing provider shall conduct an individualized assessment, in accordance with Sections 720.120 through 720.140. of these rules, to determine whether the individual poses a demonstrable risk. If the applicant poses a demonstrable risk, the housing provider may deny the individual housing.

Section 750.110 **Exceptions**

A housing provider must perform an individualized assessment prior to denying an individual housing based on criminal conviction history, 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); and/or
- (B) A current child sex offender residency restriction.

Section 750.120 **Prohibited Factors**

Any person conducting an individualized assessment, as defined in Section 720.130 of these rules, is prohibited from basing any adverse housing decision, in whole or in part, upon a conviction that occurred more than (3) years from the date of the housing application.

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 three (3) business days of receipt of information from the applicant disputing or rebutting the information contained in the criminal background check.

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 Commission.

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.

SUBPART 770 **EVALUATION**

Section 770.100 **Evaluation and Report**

The Commission on Human Rights shall conduct an evaluation of the rules implementing the Just Housing Amendment to the Cook County Human Rights Ordinance to determine whether the rules should be amended to

better effectuate the Amendment's purpose. The evaluation shall include an analysis of whether applicants who receive a positive individualized assessment from housing providers are ultimately admitted into the unit that they applied for. This analysis will inform the Commission on Human Rights on whether it needs to modify the rules to re-instate a requirement that housing providers hold the unit open during the individualized assessment process. In addition, the evaluation should include data about complaints brought under the Just Housing Amendment. The evaluation shall be completed and made publicly available by March 31, 2021.