

FAIR ACCESS IN RENTING ORDINANCE

Evaluation of Applicants

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FAIR ORDINANCE HISTORY

- Passed by Portland City Council 4:1
- Final administrative rules clarifying the ordinance released on January 31, 2020
- Effective on March 1, 2020

LAYOUT OF ORDINANCE

NEW PROVISIONS FOR ALL APPLICATIONS

- Mandatory
- Optional

OPTIONS FOR LANDLORDS

- Conventional Screening
- Low Barrier Screening

STEP ONE UPDATE YOUR APPLICATIONS

MANDATORY CHANGES TO APPLICATIONS

- Make sure your applications designate if your unit is an “Accessible Dwelling Unit”

WHAT ARE ACCESSIBLE DWELLING UNITS?

Accessible Dwelling Unit (per Oregon Structural Building Code and ICC) defined as a “Type A Unit” with very specific requirements for measurements of rooms and things like:

- Accessible routes, turning space and doorways
- Bathrooms with grab bars, shower seat reinforcement, toilet heights
- Kitchen configuration

STEP ONE UPDATE YOUR APPLICATIONS

MANDATORY CHANGES TO APPLICATIONS

- Opportunity for the applicant to affirmatively disclose “Disability Status” or if the applicant is “Mobility Disabled” (meaning that the person has a disability that causes an ongoing limitation of independent, purposeful physical movement of the body or one or more extremities and requires a modifiable living space because of, but not limited to, the need for an assistive mobility device).

STEP ONE UPDATE YOUR APPLICATIONS

MANDATORY CHANGES TO APPLICATIONS

- If landlord charges a screening fee, a description of the screening criteria and evaluation process
- Disclosure that applicants may provide supplemental evidence to mitigate potentially negative screening results

STEP ONE UPDATE YOUR APPLICATIONS

MANDATORY CHANGES TO APPLICATIONS

- When screening for income, rent-to-income ratios limited to gross income of up to 2.5 times the monthly rent when monthly rent for the dwelling unit is below 80% Median Family Income as set forth by the Portland Housing Bureau
- All other applicants may be required to have up to 2 times the monthly rent.

STEP ONE UPDATE YOUR APPLICATIONS

MANDATORY CHANGES TO APPLICATIONS

- Income is cumulative and must be defined as including, but not limited to:
 - Wages, rent assistance (non-governmental only),
 - Monetary public benefits

**Landlords should continue to base their analysis of rent-to-income ratios of applicants with local, state, or federal government rent voucher or housing subsidy on the applicant's portion of the rent only.

STEP ONE UPDATE YOUR APPLICATIONS

MANDATORY CHANGES TO APPLICATIONS:

- Language offering Applicants 30 days to appeal denied applications and giving Applicants the opportunity to correct, refute, or explain negative information forming the basis for the denial.
 - Applicants are also prequalified for any rental opportunities at the Landlord's properties for three months following the approval date and all screening fees are waived for three months following the approved appeal.
 - Applicants under these circumstances will be required to certify in writing that no conditions have materially changed from those described in the Landlord's approved application

STEP ONE UPDATE YOUR APPLICATIONS

INCLUDE WITH ALL APPLICATIONS THE FOLLOWING ATTACHMENTS:

- City of Portland Notice to Applicants relating to a Tenant's right to request a Modification or Accommodation
- City of Portland Notice to Applicants referencing where an Applicant could obtain the Portland Housing Bureau's Statement of Applicant Rights

STEP ONE UPDATE YOUR APPLICATIONS

Although not specifically required to be disclosed, the following is strongly recommended because Landlords must accept the following types of documentation if applicants are required to verify their identity for screening:

- Evidence of Social Security Number (SSN Card)
- Valid Permanent Resident Card
- Immigrant Visa
- Individual Taxpayer Identification Number (ITIN)
- Non-Immigrant Visa
- Any government-issued identification regardless of expiration date
- Any non-governmental identification or combination of identifications that would permit a reasonable verification of identity

STEP ONE UPDATE YOUR APPLICATIONS

OPTIONAL CHANGES TO APPLICATIONS

Disclosure that a Landlord may refuse to process an application that is:

- Materially incomplete
- Fails to include information concerning an Applicant's identification or income, or,
- Applicant has intentionally withheld or misrepresented required information.

STEP ONE UPDATE YOUR APPLICATIONS

OPTIONAL CHANGES TO APPLICATIONS

- Inquiries as to whether an Applicant is a current resident or has been a resident of Landlord in the last 365 days (at any property owned or managed by Landlord)

*this serves a secondary purpose of making sure that Landlord does not charge a screening fee to the same applicant more than once in a 60 day period

STEP ONE UPDATE YOUR APPLICATIONS

OPTIONAL CHANGES TO APPLICATIONS

Landlords may refuse to process the application of an Applicant who has “repeated and verifiable” violations of rental agreement within 365 days of the application submission date. “Repeated and verifiable” means:

- At least 3 violations have occurred within a 1 year period, and the most recent violation occurred within 365 days before the Applicants submission date;
- The tenant received notice of each of the 3 violations in writing at the time each violation occurred;
- None of the 3 violations was dismissed, cured or resulted in a general judgment for the Applicant before the applicant submitted the application; and
- The landlord provides the applicant with copies of the notices referenced above.

STEP ONE UPDATE YOUR APPLICATIONS

OPTIONAL CHANGES TO APPLICATIONS

- Language including verifiable friend of family assistance in the calculation of a financially responsible applicant's income

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STEP ONE UPDATE YOUR APPLICATIONS

OPTIONAL CHANGES TO APPLICATIONS

- Applicants who fail to income qualify may be required to pay an additional security deposit in the amount of half a month's rent.
- Guarantor provisions for financially responsible applicants who do not qualify under the rent-to-income criteria
- Guarantors cannot be required to:
 - Have income more than three times the monthly rent amount
 - Exceed the term of the rental agreement.

* Tenants receive at least 48 hours to accept guarantor offer

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STEP TWO CHOOSE YOUR CRITERIA

TWO OPTIONS

- Keep the current criteria and adopt Individual Assessments for denied applications
- Use Low Barrier criteria and avoid Individual Assessments

***IMPORTANT: Applicants under EITHER option still can appeal denials using status as survivors of domestic violence, HUD's 2016 Memorandum on Individualized Assessment and/or Reasonable Accommodation

STEP TWO CHOOSE YOUR CRITERIA

LOW BARRIER SCREENING CRITERIA - INCLUDES:

Limitations on criminal history - cannot consider:

- Arrest records (pending charges can still be considered)
- Diversion or deferred judgments
- Convictions that have been judicially dismissed, expunged, voided or invalidated
- Convictions for crimes no longer illegal in Oregon
- Juvenile convictions
- Misdemeanor convictions for which the dates of sentencing are older than three years from the date of the application (unless there are court-mandated prohibitions at the property)
- Felony convictions for which the dates of sentencing are older than seven years from the date of the application (unless there are court-mandated prohibitions at the property)

STEP TWO CHOOSE YOUR CRITERIA

LOW BARRIER SCREENING CRITERIA - INCLUDES:

Limitations on credit history - cannot consider:

- Credit scores of 500 or higher
- Insufficient credit history (unless applicant in bad faith withheld information that might otherwise form the basis for a denial)
- Negative information provided by a credit agency for past due, unpaid obligations less than \$1000
- Prior rental property damage less than \$500
- Discharged bankruptcy
- Chapter 13 bankruptcy under an active repayment plan
- Medical, education/vocational training debt

STEP TWO CHOOSE YOUR CRITERIA

LOW BARRIER SCREENING CRITERIA - INCLUDES:

Limitations on rental history - cannot consider:

- Dismissed evictions
- Eviction judgments entered 3 or more years before the date of the application
- Eviction judgments entered less than three years before the date of the application for termination based on a no-cause notice or the result of a default judgment due to failure to appear and the Applicant can prove they vacated the unit at the time the notice of the action was served
- Eviction judgments that were subsequently sealed or set aside by law

STEP TWO CHOOSE YOUR CRITERIA

LOW BARRIER SCREENING CRITERIA CONTINUED:

Limitations on rental history - cannot consider:

- Insufficient rental history (unless the Applicant withholds information in bad faith)

- Verbal or written references from prior landlords except for:
 - Defaults in rent
 - 3 or more material violations of a rental agreement within one year of the application resulting in notices issued to the tenant
 - Outstanding balances
 - Lease violations resulting in a termination with cause

STEP THREE ADVERTISING

Landlords advertising the availability of one dwelling unit must publish notices of availability of the unit 72 hours prior to the date and time the Landlord will begin processing applications (regardless of the number of units advertised).

The notice must specify:

- 1 When the Landlord will begin to process applications
- 2 A description of the factors the landlord will consider when evaluating an applicant if the landlord intends to charge a screening fees, and
- 3 Whether the unit is an accessible dwelling unit.

The notice can contain this information or may provide an address, website address, internet link or other method of communicating this to applicants.

STEP THREE ADVERTISING

- If landlords simultaneously advertise the availability of more than one dwelling unit in the same property, landlords may not begin processing applications for available units for 72 hours after they “publish” combined notices for availability.

STEP THREE ADVERTISING

WHAT MUST THE PUBLISHED “NOTICES” USED IN ADVERTISING FOR MORE THAN ONE UNIT DISCLOSE?

- The number of dwelling units available;
- The range of number of bedrooms in the available dwelling units;
- The range of available dwelling unit sizes;
- The range of rents available for dwelling units;
- When the landlord will begin to accept applications;
- The Landlord’s screening criteria (if the Landlord charges a screening fee); and,
- Which specific units, if any, are “Accessible Units” (as described above).

**Does not have to be in ad itself so long as ad refers to an address, website address, internet link or other method of communicating this to residents (i.e. “See our website at _____ for more details!”)

STEP FOUR PROCESSING APPLICATIONS

- The “open application period” begins on the date and time the landlord will begin processing applications.
- If multiple applications are received earlier than the open application period, every complete application must be recorded as being received 8 hours after the start of the open application period.

STEP FOUR PROCESSING APPLICATIONS

- For Accessible Dwelling Units, priority must also be given to applicants with a household member who is Mobility Disabled

STEP FOUR PROCESSING APPLICATIONS

- **Example of order of processing Accessible Dwelling Unit if waiting period applies:**
 - 1st Position: Application received first 8 hours of OAP – mobility impaired
 - 2nd Position: Application received prior to OAP – mobility impaired
 - 3rd Position: Application received first 8 hours of OAP – NOT mobility impaired
 - 4th Position: Application received prior to OAP – NOT mobility impaired
 - 5th Position: Application received after first 8 hours of OAP

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STEP FOUR PROCESSING APPLICATIONS

- Landlords must digitally or manually record the date and time of receipt of completed applications and process those completed applications in order of receipt (including wait list applications)
- Within 5 business days of receiving a “request” from an Applicant, Landlord must give applicant a “record” of date and time the completed application was received (Ordinance does not specify method of delivery)

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STEP FOUR PROCESSING APPLICATIONS

WAIT LISTS

- Similar advertising requirements regarding disclosures
- Separate wait lists must be created for Accessible Dwelling Units
- Open wait lists accepting names on a rolling basis are not subject to the 72 hour waiting period before adding names to wait lists

STEP FOUR PROCESSING APPLICATIONS

EXCEPTIONS:

- Landlords using lottery systems
- Landlords using coordinated access system for buildings housing tenants at 80% Median Family Income or lower

STEP FOUR PROCESSING APPLICATIONS

- When there are multiple applicants for a dwelling unit, the applicants can choose which applicants will be “financially responsible” and which applicants will have no financial responsibility
- Only the “financially responsible” applicant may be screened for financial responsibility but all applicants can be screened for factors relating to maintaining the property, conduct consistent with the health, safety or peaceful enjoyment of the premises by other residents or the Landlord and to evaluate the Applicant’s ability to comply with the Landlord’s rules (i.e. criminal and/or rental history)

STEP FOUR PROCESSING APPLICATIONS

- If the financially responsible applicant is approved but the non-financially responsible applicant is denied, Landlord may not deny the household entirely, but must accept the qualifying financially responsible tenant without the disqualified applicant
- Question as to charging for screening for non-financially responsible applicants

STEP FOUR PROCESSING APPLICATIONS

REQUEST FOR REASONABLE ACCOMMODATION OR MODIFICATION

- Cannot be a factor in the denial of an applicant
- If an applicant requests a reasonable modification of the property that is denied by a Landlord, the applicant must first be provided two successive 24 hour periods to request alternative modifications before the denial is finalized
- If no reasonable modification can be made, the applicant, if otherwise eligible, can accept the dwelling unit without the modification

STEP FOUR PROCESSING APPLICATIONS

LANDLORDS MAY NOT:

- Reject applications as incomplete because an Applicant or member of the Applicant's household does not produce a social security number or prove lawful presence in the country
- Inquire about an Applicant's immigration status

STEP FOUR PROCESSING APPLICATIONS

- If conditionally approving Applicant due to failure to income qualify, communicate conditional approval and indicate need for guarantor or additional security deposit in writing
- Give Applicant 48 hours to accept or decline conditions for approval

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STEP FOUR PROCESSING APPLICATIONS

INDIVIDUAL ASSESSMENTS FOR LANDLORDS NOT USING LOW BARRIER SCREENING

- Must conduct an individualized assessment before issuing a denial to any Applicant
- Must accept and consider all Supplemental Evidence supplied with a completed application

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STEP FOUR PROCESSING APPLICATIONS

INDIVIDUALIZED ASSESSMENTS CONTINUED:

Landlords must also consider:

- Nature and severity of the incidents leading to a denial;
- Number and type of incidents;
- Time elapsed since date incidents occurred; and
- Age of the individual at time the incidents occurred

STEP FOUR PROCESSING APPLICATIONS

INDIVIDUALIZED ASSESSMENTS - DENIALS

- After performing an individual assessment, Landlords may deny the applicant as long as the denial does not violate the Fair Housing Act, the FAIR Ordinance, and all other applicable federal, state and local laws.
- Landlord must also provide a written “Notice of Denial” to the Applicant within 2 weeks that explains:
 - The basis for the Denial
 - Explanation of Reasons that the Supplemental Evidence did not adequately compensate for the factors that informed the Landlord’s decision to reject the application

STEP FOUR PROCESSING APPLICATIONS

- Within two weeks after a Landlord or the screening company completes the evaluation of an applicant, the landlord must provide the applicant with a written communication of acceptance, conditional acceptance or denial.

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STEP FIVE APPEALS

APPLICANTS HAVE 30 DAYS TO APPEAL DENIED APPLICATIONS

- **Applicants must be granted:**
 - The opportunity to correct, refute, or explain negative information forming the basis for the denial
 - Prequalification for any rental opportunities at the Landlord's properties for three months following the approval date
 - Waiver of all screening fees for three months following the approved appeal (but Applicants under these circumstances will be required to certify in writing that no conditions have materially changed from those described in the Landlord's approved application).

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EXEMPTIONS FROM THE FAIR ORDINANCE

A Dwelling unit is exempt from the ordinance if it is:

- Subject to the Multnomah County Coordinated Access system or a formal referral agreement between a landlord and a non-profit service provider or government agency working to place low income or vulnerable tenants into housing
- When local, state or federal funding or loan requirements for Tenant screening are in conflict with the ordinance
- Regulated as affordable housing by a federal, state, or local government for households that earn no more than 80 of the median household income

EXEMPTIONS FROM THE FAIR ORDINANCE

- Not rented to or advertised for rent to the general public (including advertisements on online plate with or without a fee)
- Shared with a Landlord, roommate or sub-lessor using the dwelling unit as a primary residence
- Tenancies where the applicant would occupy one dwelling unit in a duplex where the Landlord's principal residence is the second dwelling unit in the same duplex
- Tenancies where the applicant would occupy an Accessory Dwelling Unit so long as the owner of the Accessory Dwelling Unit lives on the site

DAMAGES

LANDLORDS FAILING TO COMPLY WITH THE ORDINANCE ARE LIABLE TO THE APPLICANT FOR AN AMOUNT UP TO:

- \$250 per violation;
- Actual damages; and
- Reasonable attorney fees and costs

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