

**Effective Immediately: “Lawful Source of Income” is a protected class in New York State**

On April 12, the “Lawful Source of Income Non-Discrimination Act of 2019” was signed into law by Gov. Andrew Cuomo. The new law is **effective immediately** and adds “lawful source of income”, as a protected class for the sale or lease of any real property. This new law impacts the entire state and those areas that currently have lawful source of income laws at the local level. **New York City, Nassau, Suffolk, Westchester, Erie, Syracuse, Hamburg, West Seneca must now comply with the state law.** The provisions of the local law that are less restrictive are no longer enforceable, but the more restrictive provisions may still be enforced through pre-emption.

Pursuant to New York Executive Law §292(36):

"lawful source of income" shall include, but not be limited to, child support, alimony, foster care subsidies, income derived from social security, or any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and any other forms of lawful income. The provisions of this subdivision shall not be construed to prohibit the use of criteria or qualifications of eligibility for the sale, rental, leasing or occupancy of publicly-assisted housing accommodations where such criteria or qualifications are required to comply with federal or state law, or are necessary to obtain the benefits of a federal or state program. A publicly assisted housing accommodation may include eligibility criteria in statements, advertisements, publications or applications, and may make inquiry or request information to the extent necessary to determine eligibility.

As can be seen from the definition of “lawful source of income” there are no carve outs or exemptions that were included in some of the local laws. These exemptions were based on the number of residential units, whether the building was owner-occupied or whether the property was commercial, vacant or residential. Those provisions of the local laws creating such a carve out or exception are less restrictive than the new state law and are now illegal. Furthermore, the definition of “lawful source of income” permits the use of “criteria or qualifications of eligibility” for the sale, lease or occupancy of “publicly assisted housing accommodations” when such criteria or qualifications are required to comply with federal or state law or is required to obtain the benefits of a federal or state program. A definition of “publicly assisted housing” can be found at the end of this article.\*

So, what does this mean for REALTORS® in New York? There are many changes that come with lawful source of income as a protected class. Owners, landlords, property managers and rental agents are no longer permitted to refuse potential tenants who receive any type of lawful housing assistance such as section 8. Furthermore, any advertisement, publication or application which expresses, directly or indirectly, any limitation,

specification or discrimination as to lawful source of income such as “No Section 8” or “No Programs” is specifically prohibited. Any licensee receiving a directive from the owner, landlord, property manager, rental agent or other licensee to discriminate against individuals because of their lawful source of income should advise the individual that such actions are unlawful and you are unable to follow their directive. For instance, if an owner tells you not to present them with any applications from tenants receiving section 8, you would need to advise the owner you are unable to follow their directive as it is unlawful. It should also be noted that if a licensee knows the landlord will accept an application from a section 8 tenant but will never approve the application, the licensee should terminate their involvement with the discriminating individual or entity. It is also advisable to document the discriminatory actions of the individual or entity and the termination of your professional relationship in the event any action is taken by the person(s) being discriminated against.

What is not clear is whether an owner of a non-publicly assisted housing accommodation may use any criteria or qualifications for those individuals protected under lawful source of income. For instance, is a landlord permitted to request a credit report from the recipient of housing assistance if all of the rent is paid for by the program since the creditworthiness of the applicant is moot if the rent is being paid in full through the program? What if only a portion of the rent is paid through the program and the tenant must cover the rest of the rent? NYSAR is in discussions as to what extent tools such as a tenant screening, credit check etc. may or may not be used when evaluating a tenant or purchaser claiming protection under lawful source of income.

Another matter that needs to be clarified is when the property has to pass an inspection in order to qualify for a particular program. Some programs require an inspection of the property in order to comply with certain requirements of the program. The requirements of the inspections are sometimes more stringent than state and local laws regarding what qualifies as a legal rental. In other words, if a local building inspector or code enforcement officer were to inspect the property, there would be no violations and it could be legally rented. Only the inspection required by the program holds the property to a higher standard. What happens if the property is in full compliance with all state and local laws, has a valid rental permit (where applicable) but the inspection requires an issue or item be remedied in order for the tenant to receive the program? Does the owner or landlord have to remedy the issue if it is not contrary to any state or local laws? Can the owner or landlord deny the tenant instead of remedying the item?

NYSAR is in communication with state agencies and departments to clarify those parts of the law that remain unclear. Like any new law, minor issues that were not foreseeable present themselves upon implementation of the law.

NYSAR is aware there will be many questions from its members as to what is and is not permitted, what questions can be asked and which are unlawful, and other matters that will present themselves as the law is implemented throughout the state. NYSAR members who have further questions about lawful source of income can call the NYSAR Legal Hotline.

***The NYSAR Legal Hotline is a free member benefit and is available Monday-Friday from 9 a.m. -3 p.m. at 518-436-9727 or 518-43-NYSAR.***

\*Definition of “Publicly assisted housing”

Executive Law §296(11) The term “publicly-assisted housing accommodations” shall include all housing accommodations within the state of New York in:

- (a) public housing,
- (b) housing operated by housing companies under the supervision of the commissioner of housing,
- (c) housing constructed after July first, nineteen hundred fifty, within the state of New York note
  - (1) which is exempt in whole or in part from taxes levied by the state or any of its political subdivisions,
  - (2) which is constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred forty-nine,
  - (3) which is constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or
  - (4) for the acquisition, construction, repair or maintenance of which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance,
- (d) housing which is located in a multiple dwelling, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance; and
- (e) housing which is offered for sale by a person who owns or otherwise controls the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), if (1) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodations is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance, or (2) a commitment, issued by a government agency after July first, nineteen hundred fifty-five, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.