

AB 976 – UPDATE YOUR TENANT SCREENING POLICY

By Elva D. Harding

In 2007, the California State Legislature passed and Governor Schwarzenegger signed into law, AB 976, a new anti-discrimination law impacting the residential rental housing industry.

AB 976, which has been codified as Civil Code section 1940.3, places restrictions on both local governments and housing providers. Specifically, the new law prohibits cities and counties from requiring landlords to determine, disclose or make rental decisions based on the immigration or citizenship status of prospective or current residential tenants.

The new law imposes similar restrictions on landlords and their agents. Specifically, housing providers may not:

1. “Make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property.”
2. “Require that any tenant, prospective tenant, occupant, or prospective occupant of the rental property make any statement, representation, or certification concerning his or her immigration or citizenship status.”

Because only citizens and legal residents will have social security numbers, requiring an applicant to provide a social security number arguably violates the law. Nevertheless, the law clearly states that it is not intended to prohibit landlords from verifying a tenant’s or prospective tenant’s identity or his or her financial qualifications. Nor is it meant to prohibit a landlord from complying with any legal obligation under federal law.

So how is a responsible housing provider to screen tenants after AB 976? As always, with care.

Landlords and agents should always make sure they know who they are dealing with by checking applicants’ identification. Although, AB 976 does not prohibit landlords from asking for identification, specifically requiring a US or California issued form of identification, would likely be a violation. However, requiring a verifiable form of identification or a government-issued ID should satisfy the law and the landlord’s legitimate interests. For example, a foreign passport or driver’s license would suffice.

The more difficult issue is how to verify an applicant’s financial qualifications if the applicant does not provide a social security number. Remarkably, many credit reporting agencies can provide fairly accurate credit reports without the use of a social security number. Tax identification numbers can be used or in some cases a significant amount of information is available with little more than a name and accurate information regarding employment and residential history.

In the event a credit report is not available, or provides insufficient information, the landlord should offer alternative means of establishing credit-worthiness. An alternate approach is to allow the applicant to provide documentation such as several months of bank statements and utility bills showing consistent on-time payments, reasonable bank balances and no penalties for insufficient funds.

Of course, landlords should always get good references from applicants’ current and previous landlords and this new law makes it all the more important. If the prospective tenant is moving from a professionally-managed property this should be an easy process. However, if the landlord reference is not a professional manager, it is important to make sure you are speaking to the actual landlord or someone with the knowledge and authority to make representations regarding the applicant’s tenancy. Make sure that “on-time” payment means the same to you and the other party. Ask how often late charges have been assessed and how often checks have been returned for insufficient funds.

A landlord is still within his or her rights to insist on an additional security deposit (up to the legal limit of two months rent for an unfurnished rental) or for a guarantor who must also meet your pre-established rental requirements. It should be noted that AB 976 does not prohibit housing providers from requiring a social security number from an individual who shall not occupy the premises but is solely guaranteeing the prompt payment of rent on behalf of a prospective tenant. Of course, a guarantor should always sign a separate guarantee agreement rather than being made party to the lease. In fact, best practices demand that your lease include a representation that the guarantor shall not be a tenant nor occupy the premises.

Finally, if an applicant is unable to establish his credit-worthiness given reasonable alternative methods that are not based on citizenship or immigration status, the landlord is entirely within his or her rights to deny the rental application.

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