

Banning Income Bias in Housing in New York State

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Source of Income Discrimination in Housing

New Yorkers with low and modest incomes often face a formidable barrier to affordable housing: discrimination based on the source of their income. Many landlords refuse to take tenants who rely on vouchers, rent subsidies or public benefits to pay for housing. It is estimated that more than 575,000 households in New York receive these subsidies and benefits, and are often denied access to housing for that reason. The affected households disproportionately include people who are elderly, people who have disabilities, people of color, domestic violence survivors, children, and people who are homeless. Discrimination based on source of income can seriously restrict the neighborhoods where people with low incomes can live, which can impact opportunities in education, health care, and employment.¹

In response to widespread source of income discrimination, numerous states, counties and cities around the country have enacted laws to outlaw this practice.² This includes a number of counties and cities in New York, but advocates and legislators had not been successful in securing a statewide prohibition against source of income discrimination – **until now**.

In 2016, a coalition of more than 100 organizations throughout the state came together as BanIncomeBiasNY, led by Enterprise Community Partners, ERASE Racism NY, Fair Housing Justice Center and the New York Housing Conference. A well-organized, dedicated effort resulted in passage of the “Lawful Source of Income Non-Discrimination Act of 2019.”

The Lawful Source of Income Non-Discrimination Act of 2019

Prior to the conclusion of this year’s budget process, it was unlawful to discriminate, in access to housing, against individuals or groups on the basis of their “...creed, color, disability, national origin, sexual orientation, gender identity or expression, military status, age, sex, marital status, or familial status.”

¹ Recent testimony at a joint legislative Government Operations Committees hearing by advocates from BanIncomeBiasNY provides an excellent source of background information on source of income discrimination, https://docs.google.com/forms/d/e/1FAIpQLSfsgZfnvn8AWAYswgUR2doqiO6wT4-QbR5AknHelq0_iJ0LBg/viewform.

² For a list of states, counties and cities that have adopted source of income laws, see “Source of Income Discrimination in Housing” on the website of Affordable Housing Online, <https://affordablehousingonline.com/source-of-income-antidiscrimination-laws>.

In this current session, the Legislature adopted, and the Governor signed, the “Lawful Source of Income Non-Discrimination Act of 2019,” amending sections 292 and 296 of the State Human Rights Law (HRL).³ The essence of the law is that it prohibits discrimination in housing based on an individual’s source of income, assuming the income is derived from a lawful source. The new law states that lawful sources of income include: child support, alimony, foster care subsidies, income from Social Security, all forms of “federal, state or local public assistance or housing assistance, including Section 8 vouchers...” and any other forms of lawful income, HRL §292(36). The law makes an exception for types of housing assistance where particular eligibility criteria are established by federal or state law.

Here are the circumstances in which such discrimination is forbidden. It is unlawful:

- For a person to refuse to sell, rent or lease housing based on an individual’s source of income, or to claim, because of a person’s source of income that certain housing is not available when that is not the case.⁴
- To discriminate with regard to the terms of housing, furnishings or services, based on source of income.⁵
- To make any inquiry or record about a person’s source of income when that person is seeking to rent housing.⁶
- To print or circulate any housing information or use any form or application that in any way suggests discrimination based on source of income.⁷
- For a real estate board to exclude or expel or otherwise discriminate against a person based on their source of income.

The process for initiating a complaint of discrimination against any of the protected classes (race, age, source of income, etc.) with the Division of Human Rights or for commencing a proceeding in court are set forth in HRL §297. This section also discusses the actions that may be taken when a finding of discrimination is made, including the issuance of a cease and desist order, the imposition of fines and other penalties, and compensatory damages. In housing discrimination cases, attorney fees may be awarded in a court proceeding, HRL §297(10).

Note some limitations in this law:

³ The Human Rights Law is part of the Executive Law. It covers prohibitions against discrimination in a number of areas. The sections we are focusing on address discrimination in housing.

⁴ This provision about refusal to sell, rent, etc., applies to publicly-assisted housing, §296(2-a)(a); all other housing, §296(5)(a)(1); and housing, land and commercial space, §296(5)(c)(1).

⁵ This provision about housing, furnishing and services, applies to publicly assisted housing, §296(2-a)(b); all other housing, §296(5)(a)(2).

⁶ This provision about inquiring about income sources applies to publicly-assisted housing, §296(2-a)(c); all other housing, §296(5)(a)(3); and housing, land and commercial space, §296(5)(c)(2).

⁷ This provision applies about circulating housing information applies to publicly-assisted housing, §296(2-a)(c-1); all other housing, §296(5)(a)(3); housing, land and commercial space, §296(5)(c)(2).

First, the State Division of Human Rights in its pamphlet on the new source of income law,⁸ states that “... It is not unlawful to ask about income, only to discriminate based on lawful sources of income. Housing providers may ask about income, and about the source of income... in order to determine a person’s ability to pay for the housing accommodation but must accept all lawful sources of income equally.”

In addition, the State Human Rights Law does not cover rental units in two-family homes occupied by the owner; rentals in rooming houses occupied by the owner; rental of all rooms to persons of the same sex; and certain senior housing.

Impact of the law

A law is only as effective as the quality of implementation and enforcement. The success of this source of income law will depend upon the capacity and willingness of people throughout the state to take action when there has been discrimination, and the commitment of state government and the courts to act decisively to ensure compliance. An important impact of this law is the fact that people who have experienced discrimination based on their source of income can now sue in state court or pursue a complaint with the State Division of Human Rights.

Effective implementation of this law should improve the ability of low-income New Yorkers who pay housing costs with the help of subsidies, vouchers and public benefits to access affordable housing. The source of their income can no longer be used as a basis for the denial of housing. Research has shown that holders of Housing Choice Vouchers are significantly more successful in finding suitable housing in localities covered by source of income laws.⁹

This change should better enable New Yorkers with low incomes to achieve a greater degree of stability in their housing, which is essential to greater stability in their lives, with resulting improvements in family well-being, health, educational and employment outcomes.¹⁰

Related Empire Justice Center work

⁸ This is a useful pamphlet, entitled “Source of Income Discrimination in Housing,” <https://dhr.ny.gov/sites/default/files/pdf/nysdhr-income-source-discrimination.pdf>.

⁹ U.S. Dept. of Housing and Urban Development Office of Policy Development and Research, “Study on Section 8 Voucher Success Rates,” November, 2001.

¹⁰ See for example, M. Galvan and J. Luna, “Homelessness and Housing Instability: The Impact on Education Outcomes,” Urban Institute, December 2014; M. Horowski, et al, National Poverty Center Policy Brief, “Housing Instability and Health,” University of Michigan, 2012; M. Desmond and C. Gershonon, “Housing and Employment Insecurity Among the Working Poor,” Social Problems, 2016.

Empire Justice spoke out in support of the BanIncomeBiasNY effort to end discrimination based on source of income while focusing on related housing security efforts. We have been deeply involved in the effort to win legislative passage of the [Home Stability Support](#) (HSS) initiative. HSS is a critical proposal that would significantly supplement the amount of rent that people receiving public assistance can receive, thereby helping them to secure or maintain decent, stable housing.

In addition, we have noted in this article that victims of domestic violence are one of the groups disproportionately subject to source of income discrimination. The Family Violence Option (FVO) is a program in which victims of domestic violence who apply for public assistance are able to advise the Department of Social Services that they are in an abusive situation and are then referred for needed services and are given waivers of certain welfare requirements that might make them more vulnerable. You can read more about the Family Violence Option, the ways in which it succeeds, and the ways in which it could be improved to better serve survivors of domestic violence in our new report, [Poverty and Violence: Does New York's Family Violence Option Make a Difference?](#)

Both the Home Stability Support legislative effort and the Family Violence Option report share a common goal with the source of income legislation: improving the capacity of New Yorkers to attain greater stability and opportunity in their lives.