

Learn about Cook County's Section 8 Guidelines

Cook County amended its Human Rights Ordinance effective August 8, 2013, to delete an exception to the source of income provisions in the Cook County Human Rights Ordinance. The effect of the amendment will be to make it a violation of the Cook County Human Rights Ordinance to discriminate in real estate transactions based upon an individual participating in a housing choice voucher program (Section 8). Source of Income has been a protected class under the Cook County Human Rights Ordinance for a number of years but there has been an exception which excluded housing choice voucher programs from that protected class. Effective August 8, 2013 that exception will no longer apply and the taking of action in a real estate transaction based on a person's participation in a housing choice voucher program will be a violation of the Cook County Human Rights Ordinance.

Illinois REALTORS® sought information from the Cook County Department of Human Rights regarding its interpretation of the impact of this change to the Human Rights Ordinance. IAR received a response from the Cook County Department of Ethics and Human Rights dated October 23, 2013. That letter is reprinted [here](#) for your review.

The impact of this change in the Cook County Human Rights Ordinance is primarily going to affect the rental of housing in Cook County. The Ordinance would prohibit the making of “. . . any distinction, discrimination or restriction in the price, terms, conditions, privileges of any real estate transaction, including the decision to engage in or renew any real estate transaction, on the basis of unlawful discrimination.” To the extent that a decision is made based upon a person's participation in a Section 8 or housing choice voucher program this will constitute illegal discrimination under the Ordinance.

The following questions and answers are intended to illustrate the impact of the changes to the Ordinance and answer a number of your questions regarding the changes.

Q: When are these changes effective?

A: August 8, 2013.

Q: Will the Ordinance apply to all housing?

A: Currently the only type of housing that the changes would not apply to is an owner occupied private home in which the owner is renting a room or rooms. This exception also applies if the owner is absent from the residence for a period of not to exceed 12 months. However, the Ordinance would apply to all other types of housing including rental condominium units, duplexes and any other kind of residential housing under the current language of the Ordinance.

Q: I own a duplex and live in one side of the duplex. Does this change to the Cook County Human Rights Ordinance apply to the rental of my other unit?

A: Yes, under the language of the current Ordinance.

Q: I manage a condominium association and we just evicted an owner for nonpayment of dues and assessments. We are now looking to rent that condominium unit. Does the Cook County Human Rights Ordinance prohibiting discrimination based on participation in a housing choice voucher program apply to that condominium unit?

A: Yes, under the language of the current Ordinance as long as that condominium is in Cook County.

Q: Does this Amendment to the Cook County Human Rights Ordinance prohibiting discrimination based upon participation in a housing choice voucher program apply throughout Cook County?

A: Generally, this change to the Cook County Human Rights Ordinance prohibiting discrimination based upon participation in a housing choice voucher program will apply throughout Cook County. The Cook County Ordinance indicates that it intends to apply to the extent allowed under Article VII, Section 6(c), of the State of Illinois Constitution of 1970. What this means is that the Cook County Ordinance will apply unless there is a conflict between a municipal ordinance and the county ordinance. If there is a conflict between the two then the municipal ordinance will prevail within its own jurisdiction. The Cook County Ordinance goes on to provide that if a municipal ordinance regulates conduct which is prohibited under the Cook County Ordinance and also provides remedies for that conduct that the Cook County Ordinance will not apply and the ordinance of the municipal jurisdiction will apply. The potential problem is that there are not many cases in Illinois dealing with regulatory ordinances and the question of which regulatory ordinance prevails under the Illinois Constitution when a municipal ordinance and a county ordinance are in conflict. Thus, you may have to pursue litigation to resolve the question of whether a municipal jurisdiction that permits discrimination based on participation in a housing choice voucher program applies or whether the Cook County Ordinance applies. A court of law may well determine that the municipal ordinance would apply but the question is whether you want to pursue the litigation and incur the costs involved. Initial indications from the Office of the Cook County State's Attorney are that they will view the Cook County ordinance as prevailing unless a municipality in Cook County has its own ordinance regulating fair housing.

Q: What is your best advice if you have listed rental property in a municipality that permits discrimination based upon participation in a housing choice voucher program in their Ordinance?

A: The best advice is that if you have listed rental property in such a municipality that you will need to follow the direction of the owner. If there is an allegation made that you have discriminated based upon a person's participation in a housing choice voucher program you will certainly use the defense of the local ordinance permitting said discrimination and that based on the Illinois Constitution the municipal ordinance applies as opposed to the Cook County Ordinance. However, the cost of defending such litigation may be more than most parties would want to incur when talking about a rental listing.

Q: What kinds of criteria can a landlord use in screening tenants for their rental property?

A: In a statement issued by the Housing Authority of Cook County in connection with the consideration by the Cook County Board of whether to prohibit discrimination based upon a prospective tenant participating in a housing choice voucher program the Housing Authority of Cook County stated as follows: "Owners still have the ability to screen all applicants for suitability for tenancy, applying their screening criteria – criminal background checks, credit checks, home visits, landlord references, etc. – equitably amongst all applicants. If an applicant doesn't meet the owner's selection criteria, owners may still deny them housing." The key will be applying the screening criteria similarly to all prospective tenants. Note, however that the letter from Cook County dated October 23, 2013 contained extensive discussion regarding the use of rent-to-income ratios. The example used in the letter indicated that a landlord using the criteria of two times income to rent ratio would mean the typical applicant would need \$2,000 of monthly income for a unit with a rental of \$1,000 per month. However, an applicant who has a housing voucher for \$985 and who would only need to pay the other \$15 out of pocket would meet the income to rent ratio if they had an income of \$50 per month. In other words, the income to rent ratio could only be applied to the extent the tenant had to pay the rent from their own income.

Q: Will I need to lower my rent to allow a housing choice voucher program participant to rent the space?

A: Again, in a statement issued by the Housing Authority of Cook County it was indicated that "Owners are not forced to drop their rent to lease to a participant (of a housing choice voucher program). They should not, though, inflate their rent to avoid renting to (housing choice voucher) participants."

Q: Can I decline to rent to a prospective housing choice voucher program tenant because the prospective tenant does not have the funds to make the required security deposit even though the monthly rent can be paid through the housing choice voucher program?

A: Yes, so long as that criteria is applied across the board and uniformly.

Q: Must I rent to a housing choice voucher program participant who makes application to rent one of my properties.

A: The statement provided by the Housing Authority of Cook County indicated that “source of income protection will not require owners to accept housing choice voucher participants simply because they are on the program, but will require owners not to refuse to rent to them simply because they are.” Similarly, in its letter of October 23, 2013 it was stated that “(A) landlord does not have to rent to a tenant simply because the tenant is a HCV holder, but the landlord may not refuse to rent to a tenant because the tenant is a HCV holder.”

Q: If an owner continues to accept applications from prospective market rate tenants and decides to rent to one of those market rate tenants during a period after there has been a tentative agreement with a housing choice voucher tenant pending inspection and determination of a market rent by the Cook County Housing Authority has the owner violated the Cook County Human Rights Ordinance?

A: The key to answering this question, as it would be in answering many questions, is what is the policy of the owner as regards continuing to accept additional applications after one has already been submitted and is this policy uniformly applied. If an owner has a policy to continue to accept rental applications until a final, binding lease is in place and follows that policy in a non-discriminatory fashion then the owner should not be in violation of the Cook County Human Rights Ordinance.

Q: If the owner of a unit submits an application for tenancy approval under the housing choice voucher program, an inspection is done, and certain repairs are needed can the owner choose not to make the repairs, thus making the unit not able to participate in the housing choice voucher program and then rent the unit to another tenant who does not participate in a housing choice voucher program?

A: There is not a clear answer to this particular question. However, it would seem that a unit owner could choose not to make the repairs required to participate in a housing choice voucher program. However, that owner could not then make those repairs in connection with rental of the unit to individuals not participating in a housing choice voucher program. However, there has been no clear guidance in regard to this question.

Q: If a prospective tenant participates in a housing choice voucher program and wants to lease one of my units and the necessary application is submitted to Cook County can I refuse to allow the inspection of the unit to occur until such time as Cook County obtains an administrative search warrant to perform the inspection?

A: There is no clear answer to this question. Under the Constitution of the United States and applicable case law there is a right to request an administrative warrant before an inspection is done. However, there is no clear indicator as to whether requiring such a warrant for an inspection would result in charges being filed for violation of the Cook County Human Rights Ordinance or how such a matter will be decided. Further, once such a matter is decided by Cook County, you may well end up having to pursue further review of this question in the courts.

Q: Does the Cook County Human Rights Ordinance apply to real estate brokerage activities, including leasing?

A: Yes, the Cook County Human Rights Ordinance provides that it applies to real estate transactions which “. . . means with respect to activity conducted or property located in Cook County, the brokering or appraising of residential real property in Cook County ...”

Q: Does the recent change to the Cook County Human Rights Ordinance prohibit my inclusion of language in a rental ad or a multiple listing service that will indicate that housing choice voucher program participants are not accepted?

A: Yes, to the extent that the property is located in Cook County and, according to the Ordinance, to the extent that any of the activity (i.e. advertising) occurs in Cook County. This may be problematic even if the property is located in a municipality that has an ordinance which permits discrimination based on a housing choice voucher program as the ad or multiple listing service language would appear in areas of Cook County outside the municipality and the Cook County Ordinance on its face regulates "...activity conducted or property located in Cook County..." The Ordinance specifically states "no person shall publish, circulate, issue, or display, or cause to be published, circulated, issued, or displayed, any communication, notice, advertisement, sign and other writing of any kind relating to a real estate transaction which would indicate or express any unlawful limitation or discrimination on the basis of unlawful discrimination." A limitation based upon participation in a housing choice voucher program is unlawful discrimination under the Cook County Ordinance.

Q: I just entered into a listing agreement for the rental of a unit in Cook County and which is not located in a municipality that permits discrimination based on participation in a housing choice vendor program. My client has instructed me that he/she does not want to rent the unit to a participant in a housing choice voucher program. I know that under the Real Estate License Act I am supposed to follow the directions of my client. What should I do?

A: You may need to terminate the listing agreement. The statutory requirements of the Real Estate License Act require that you follow the "lawful" directions of your client. In this case the direction not to lease to a participant in a housing choice voucher program is not a "lawful" direction. Also, if you follow that direction and are charged with a violation of the Cook County Human Rights Ordinance and are found to have violated the Ordinance for engaging in discrimination in the providing of real estate brokerage activities the Real Estate License Act provides for a mandatory suspension or termination of your real estate brokerage license.

NOTE: *These FAQs are based on amendments to the Ordinance that existed as of July 15, 2013. Future amendments to the Ordinance could change the answers to these questions.*

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