



**Division of
Human Rights**

NYS Human Rights Law

Housing Discrimination Update: Recent HRL Amendments

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New York State Human Rights Law

- New York was the first state in the United States to have an anti-discrimination enforcement law.
- The predecessor statute to the Human Rights Law was passed in 1945, and created the predecessor agency to the Division of Human Rights.
- Housing discrimination provisions began to be added in 1955.

Human Rights Law and Regulations

- The Human Rights Law is codified as Article 15 of the N.Y. Executive Law, sections 290-301.
- The Division's Rules of Practice are found at 9 NYCRR 465.
- The Division's General Regulations are found at 9 NYCRR 466, including regulations as to reasonable accommodation, association discrimination and gender identity.
- All the above available on Division website.

New Legislative Topics for Housing

- Liberal Construction § 300
- Protection from discrimination in housing on the basis of a prior arrest, sealed conviction, youthful offender adjudication or adjournment in contemplation of dismissal
- Gender Identity or Expression
- Protection for Domestic Violence Victims
- Regulations requiring housing providers to provide notice to tenants and potential tenants of the right to reasonable accommodations and modifications for tenants with disabilities.
- Reasonable accommodation – assistance animals
- Procedures following final determination of no probable cause or no jurisdiction
- Changes regarding 2-family owner occupied housing
- Citizenship and immigrations status

New in 2024!

- Statute of Limitations extended from one to three years for all discrimination complaints, effective February 15, 2024.
 - This applies only to discrimination that occurs after the effective date.
- Expanded provisions relating to protections for person with sealed records.
 - Effective November 16, 2024 – Clean Slate Act
 - See discussion below as to current protections in this area.

Legislative Change 2019: Enhanced Liberal Construction Clause

- Liberal construction clause in § 300
- HRL to be interpreted liberally, **regardless of whether similar federal laws have been interpreted more narrowly**
 - “The provisions of this article shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed. Exceptions to and exemptions from the provisions of this article shall be construed narrowly in order to maximize deterrence of discriminatory conduct.”

What is “Liberal Construction”?

“A liberal construction ... is one [that] is in the interest of those whose rights are to be protected, and if a case is within the beneficial intention of a remedial act it is deemed within the statute, though actually it is not within the letter of the law”.

- Quoted from commentary on New York Statute law
- Quoted in *Dewine v. State of New York Bd. of Examiners of Sex Offenders*, 89 A.D.3d 88 (1st Dept. 2011)
- Cited in *People v. Ivybrooke Equity Enterprises, LLC*, 175 A.D.3d 1000 (4th Dept. 2019)

Legislative Change 2019: Housing & Lawful Source of Income

- Effective April 12, 2019
- Applies to:
 - § 296.2-a - (publicly-assisted housing)
 - § 296.5(a) - (private housing)
 - § 296.5(c) - (real estate brokers, real estate salespersons or any employee or agent thereof)
- Lawful Source of Income Guidance available on DHR website

What is Lawful Source of Income:

- Includes, but is not limited to:
 - child support
 - alimony or spousal maintenance
 - foster care subsidies
 - social security benefits
 - federal, state, or local public assistance
 - federal, state, or local housing assistance, including **section 8 or any other type of voucher, or any other form of housing assistance, regardless of whether paid to the tenant or the landlord**
 - any other form of lawful income

Differing “Terms, Conditions or Privileges”

- Housing providers cannot deny the use of any facilities open to non-subsidized tenants, such as roof gardens, pools, exercise facilities, etc.
- Subsidized tenants must get the same access to the building, parking, storage space, etc. accorded other tenants, on the same terms.
- Housing providers cannot refuse or delay making repairs, or otherwise maintain premises differently, because the rent is paid with a housing subsidy.

Unlawful actions may be indirect

- HRL may be violated even if there is no direct statement that vouchers are not accepted.
- Refusal to rent because of source of income may consist of:
 - Offering fewer housing options;
 - Delaying review of applications;
 - Not responding equally, or at all, to applicants with subsidies or
 - Any other practices that create a barrier to housing for subsidized tenants.

Inquiries about Income, Assets, or Credit History

- As a general matter, any income, wealth or credit history requirements may not be:
 - Used as a reason to avoid the law **or**
 - Have the effect of frustrating the purpose of the law.
- A housing provider may not have an apparently neutral policy that is equally applied but has the effect of excluding persons with rental vouchers, other assistance subsidies, or other forms of lawful income.

Legislative Changes 2019: Arrest Provisions Expanded

- *New 2019:*
 - *Effective July 11, 2019*
 - **Arrest provisions of the HRL apply to all areas of housing jurisdiction, covering**
 - all housing providers
 - co-ops, condos
 - managing agents or companies
 - all real estate professionals
 - any agents or employees of the above

What is Protected by the Arrest Provisions?

- HRL § 296.16 are referred to as the “arrest provisions” but more than just arrests is protected:
 - Arrests – or any criminal accusation or proceeding – which has been resolved in the individual’s favor;
 - Pending arrests with Adjudications in Contemplation of Dismissal
 - Youthful Offender adjudications;
 - A variety of sealed convictions.
 - Effective November 2024 – Clean Slate Act expands convictions subject to sealing

Inquiries & Answers

- Respondents **may not ask** any questions about arrests, proceedings or prior convictions covered by § 296.16
- ***New 2019:*** If such question is asked, the individual “may respond as if the arrest, criminal accusation, or disposition of such arrest or criminal accusation did not occur”

Legislative Change 2019: Gender Identity or Expression

- HRL amended to explicitly make it unlawful to discriminate on the basis of gender identity or expression
- Effective February 24, 2019, though HRL previously provided protection under sex and disability
- All areas of jurisdiction are amended to include gender identity or expression

Gender Identity or Expression

- The amendment adds a definition at § 292.35:
 - The term "gender identity or expression" means a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.
 - The Division recently issued a new publication, ***Guidance on Gender Identity Protections under the New York State Human Rights Law***, available on the DHR website, which contains information and examples relative to housing.

Legislative Change 2019: Hairstyles Associated with Race

- Race discrimination (including in housing) includes discrimination on the basis of hairstyles associated with race.
- Effective July 12, 2019, but DHR would cover even without the amendment (theories of adverse impact or subterfuge).

Legislative Change 2020 – Reasonable Accommodation

- HRL 296.2-a(d)(2) and 296.18(2) amended to clarify that reasonable accommodation to enable a person with a disability to use and enjoy a dwelling includes the use of an animal to alleviate the symptoms of a disability.
- Effective August 11, 2020.
- This amendment clarified the appropriate broad standard to be applied in these cases, which was also recognized in court cases in 2019.

Companion Animals Cases-2019

- *Delkap Management, Inc. v. N.Y.S. Div. of Human Rights (Birch)*, 144 A.D.3d 1148 (2d Dept. 2017), rev'd 33 N.Y.3d 925 (2019)
 - Appellate Division held that showing the companion dog helped a tenant with her symptoms by easing her stress and causing her to be more active did not prove that the dog was actually necessary in order for her to enjoy the apartment
 - Court of Appeals reversed and reinstated the Division's final order finding that the housing provider failed to reasonably accommodate.
- *Hollandale Apartments & Health Club, LLC v. Bonesteel*, 173 A.D.3d 55 (3d Dept. 2019)
 - Prior to the above case, applied the broader standard for a showing of the need for the companion animal.
- *Toms Point Lane Corp. v. N.Y.S. Div. of Human Rights (Hough)*, 2019 WL 5198890 (2d Dept. 2019)
 - Following the Court of Appeals case, the Second Department applied the correct standard.

Legislative Change 2020 – Procedures after Dismissal

- Amends HRL § 297.9 and § 298
- Effective January 5, 2021
- Amends HRL to provide that, in cases of housing discrimination only, following a dismissal of a complaint by DHR for lack of jurisdiction or lack of probable cause, a complainant may either
 - Seek judicial review of the final order in court (as is currently permitted), or
 - Bring a de novo action in court on the underlying claim.

Legislative Change 2021

Housing Exemption Narrowed

- Owner-occupied two-unit dwellings are still exempt from the nondiscrimination requirement;
- But no longer exempt from nondiscrimination in statements, advertising or publication.
- Violation causes the owner to lose the exemption
- Amendment is located at HRL 295(5)(a),
 - New subparagraphs (4)(i) and (4)(ii)
 - Effective July 16, 2021

New in 2022

- Protections for victims of domestic violence added to housing and other provisions of the HRL (previously only available in employment jurisdiction).
- Citizenship and immigration status added as a protected basis in all areas of the HRL; verification of citizenship or immigration status and adverse actions based thereon not prohibited where required by law.

New in 2021

- HRL 297.1 was amended, effective July 16, 2021, so that complaints may now be filed “under oath” or “by declaration”.
- Previously complaints had to be signed before a notary public. *i.e.*, “under oath”.
- Complaints may now be filed with a declaration that the complaint is true.

Division Complaint Process

- The Division of Human Rights has regional offices around the state where information may be obtained and a complaint filed.
- Complaint forms are also available on the Division's website, www.dhr.ny.gov.
- A complaint must be filed with the Division within one year of the occurrence of the discrimination.
- Complaints may be filed directly in state court, within three years of the alleged discrimination.
- Complaints may not be filed in both the Division and state court.

Complaint Investigation

- The Human Rights Law requires that the Division investigate complaints promptly, to determine if Complainant was discriminated against because of membership in a protected class.
- The Division regulations provide that the investigation may be made by a field visit, witness interview, written or oral inquiry, conference or any other method deemed suitable.

Investigative Determination

- Based on all the evidence collected by the investigator, the Regional Director will make a determination as to whether there is probable cause to believe that discrimination occurred.
- If the Regional Director determines that there is no probable cause to believe that discrimination occurred, the Complaint is dismissed and the Complainant may seek judicial review of the dismissal in court or, effective January 5, 2021, with respect to housing discrimination cases, may commence a de novo action in court.

After Probable Cause

- If there is a determination of probable cause, the case is forwarded for a public hearing before an Administrative Law Judge.
- In cases of housing discrimination only, following probable cause, either party may elect to have the case heard in state court.

Public Hearing

- At the public hearing before an Administrative Law Judge, material issues of fact and law can be resolved, testimony is taken under oath, witnesses are subject to cross-examination and a full record is made.
- Complainant may be represented by his or her own attorney, or a Division attorney will be appointed to present the case in support of the Complaint.
- The Administrative Law Judge submits a Recommended Order for the Commissioner's consideration.

Final Orders

The Commissioner reviews all submissions, relevant evidence and the Recommended Order, and issues a Final Order either finding discrimination or dismissing the Complaint.

Remedies - Housing

If the Commissioner finds that discrimination has occurred, remedies may include:

- **Making the housing at issue available;**
- **Making reasonable accommodations and/or modifications to housing or housing policies;**
- **Compensation for mental anguish;**
- **Compensation of out of pocket expenses;**

Remedies - Housing

- **Punitive damages;**
- **Civil fines up to \$100,000;**
- **Requiring the housing provider and staff to attend anti-discrimination training;**
- **An order to cease the discriminatory actions or policies;**
- **Attorney's fees;**
- **Other related and reasonable relief.**

QUESTIONS?