

California's New Immigration Law How Does it Affect Tenant Screening? **by Jan Leasure**

As of January 1, 2008, landlords may not ask tenant applicants whether they are U.S. citizens or about their immigration status. This new law makes California the first state to prohibit landlords from asking about tenants' citizenship status. This measure was enacted to prohibit cities, such as Escondido, from passing laws that essentially made landlords de facto immigration authorities.

Last October, the city of Escondido approved an ordinance that made it illegal for landlords to rent to illegal immigrants, thus putting the landlords in the position of policing the immigration status of their tenants. Shortly after the city of Escondido adopted the ordinance, a lawsuit was filed, which led to a temporary restraining ordinance. Subsequently, Escondido rescinded their ordinance.

California's new law places restrictions on cities and counties as well as on rental property owners and their agents when it comes to inquiries about a tenant or applicant's immigration and/or citizenship status. The law specifically provides that no city, county, or city and county can force a landlord or any agent of the landlord to:

- Inquire about or report the citizenship or immigration status of applicants or residents.
- Deny tenancy or evict based on citizenship or immigration status.
- Take any other action based on citizenship or immigration status of an applicant or resident.

The new legislation provides that you (as a landlord or your agent) may not "make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant or prospective occupant," nor may you require that any of those persons, "make any statement, representation, or certification concerning his or her immigration or citizenship status."

You may, however, still ask for proof of an applicant's financial qualifications. You may ask for documents that confirm that the applicant is who he says he is. If, however, it has been your policy to ask for a driver's license when asking for identification, you may want to rethink that policy, since asking for the driver's license could unintentionally exclude applicants based on their immigration status.

Alternately, you may want to consider requiring any government-issued photo ID, since everyone should have some form of government-issued identification, whether they are in the U.S. legally or not. And finally, you may continue to order credit reports on your applicants. Ask your credit report provider what provisions he has for issuing a credit report for an applicant who does not have a social security number, since you will not want to exclude someone, simply because he/she does not have a SSN.

Application Fees for Tenant Prospects

Landlords and property managers have historically charged application fees to prospective tenants to cover the cost of ordering a credit report and, theoretically, to

compensate the landlord/manager for time spent investigating rental history, employment, etc. While the maximum amount that can be charged by law does not reasonably compensate most of us for the time spent evaluating an application, every little bit helps. When the statute originally was passed by the legislature, the maximum amount that could be charged was \$30. The maximum fee that can be charged is adjusted each year, based on changes in the Consumer Price Index since January 1, 1998. **As of January 1, 2008, the maximum amount that can be charged is \$40.64.** You will want to be aware, however, when setting your rate for applying, that prospects will shy away from applying for your rental if your application fee is considerably higher than what other landlords in your market are charging.

Receipt for Application Fee

Keep in mind that you are also required to give the applicant(s) a receipt for the application fee that they paid. The receipt must itemize the actual costs of processing the application. *[Editor's Note: Members can download AOA Form 147, "Receipt of Application Screening Fee" at www.aoausa.com.]*

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