

Property Owners Beware: Criminal Background Checks Could be a Way of the Past



Leni Morrison Cummins

**Chair,
Condominiums
& Cooperatives**

lcummins@cozen.com
Phone: (212) 883-4954
Fax: (212) 509-9492

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Effective January 1, 2025, housing providers in New York City will need to think twice about how they use criminal background checks. Local Law No. 24, titled the Fair Chance Housing Act, limits the use of criminal background information in property sales and lease applications, making it an unlawful discriminatory practice for housing providers to deny housing based on certain arrest or conviction records. Proposed in 2020, the bill initially drew criticism from real estate groups for its broad scope. However, the version approved on December 20, 2023, has been refined to prioritize safety, combat housing discrimination, and address homelessness. It remains very unpopular with property owners who aim to protect their properties and residents from harm.

Local Law No. 24 makes it unlawful for property owners, including condominium and cooperative boards, managing agents, and unit owners or shareholders, to deny or withhold a housing interest from an individual because of his or her criminal history, with limited exceptions. Further, criminal background checks must be performed pursuant to specific rules.

Housing providers cannot deny housing on the basis of criminal background *unless* the applicant:

1. Is on a sex offender registry or
2. has multiple close-in-time convictions.¹

These two items constitute reviewable criminal history information. Everything else is off-limits.

Further, all other vetting must be completed prior to the performance of a criminal background check. Housing providers cannot perform a criminal background check until after the property owner has accepted an offer or provided the lease agreement in writing. Additionally, the property owner is required to provide advance notice of the criminal background check and a written copy of the Fair Chance Housing Notice.

Background checks must be limited to reviewable criminal history information, or there will be a rebuttable presumption that the property owner relied on the criminal history information in violation of the law.

What constitutes a criminal background check is extremely broad and goes far beyond hiring a third-party vendor to run a search. Asking a candidate about their criminal background, conducting a search on a public search engine, and likely even checking social media constitute a background check.

Therefore, if a property owner wishes to perform a criminal background check, it is advisable to hire a reputable search firm that is familiar with the law to ensure the results are limited to reviewable criminal history information. Property owners must also delete any questions pertaining to an applicant's criminal background from application forms. Further, board members of condominiums and cooperatives need to be educated about what they can and cannot do when they receive and review applications.

Adverse action cannot be taken against a housing applicant on the basis of a criminal background check until the property owner:

1. provides the housing applicant with a written copy of the records/report;
2. has given the housing applicant five business days to correct any errors in the records/report and provide any mitigating information in support of the application;
3. reviews the information provided by the housing applicant in connection with the criminal history and

4. provides the candidate with a written reason for the adverse action with supporting documentation, including the property owner's legitimate business interest and how the mitigating information/corrections submitted by the candidate were accounted for.

If a property owner chooses not to perform a background check, the law grants it immunity from liability in any civil action arising as a result of an alleged act of an individual with a criminal history based on the claim that the property owner should not have sold, rented, or leased to such an individual because of his or her criminal background.

¹ A misdemeanor conviction within three years of the date of release from incarceration/date of sentencing if the applicant has not yet served time, or a felony conviction within five years from the date of release from incarceration/date of sentencing if the applicant has not yet served time, is considered close in time.
