

State of New York

Executive Department

NEW YORK STATE DIVISION OF HUMAN RIGHTS

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RECOMMENDATIONS ON
HOUSING INQUIRIES

Relating to Race, Age, Creed, Color,
National Origin, Sexual Orientation, Military Status, Sex, Disability,
Marital Status and Familial Status

Under the New York State Human Rights Law
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1. FOREWORD

The New York State Human Rights Law (Executive Law, Art. 15) prohibits the printing or circulation or use of any statement, advertisement, publication or application form, as well as making any record or inquiry, which expresses, directly or indirectly, any limitation, specification or discrimination as to the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status or familial status in connection with the prospective purchase, rental or lease of a housing accommodation, land or commercial space.

The Division's recommendations as to appropriate and inappropriate inquiries may be used by real estate owners, sellers, managers, brokers, mortgage lenders and their agents, as well as those either seeking or providing housing accommodations, land or commercial space as a guide to the interpretation of the housing provisions of the Human Rights Law.

The public is cautioned that these recommendations are merely guidelines and not the equivalent of a final determination made following the filing of a complaint with the Division. Any complaint filed pursuant to the Human Rights Law will receive an independent and fair investigation by the Division based on its particular facts.

The New York State Human Rights Law has been certified as substantially equivalent to the Federal Fair Housing Act and the Division therefore cooperates with the Secretary of Housing and Urban Development to carry out programs in order to prevent or eliminate housing discrimination.

2. NEW YORK STATE CONSTITUTIONAL PROVISION AGAINST DISCRIMINATION

A. No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

(New York State Constitution, Article 1, Section 11, as adopted by the Constitutional Convention of 1938 and approved by vote of the people, November 8, 1938.)

3. NEW YORK STATE HUMAN RIGHTS LAW

The Human Rights Law prohibits housing discrimination on the basis of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status and familial status. N.Y. Executive Law Sections 296.2-a (publicly-assisted housing) and 296.5(private housing).

Discrimination is prohibited with respect to:

- sale/rental/lease. N.Y. Executive Law Sections 296.2 a, 296.5(a)(1) and 296.5(b)(1).
Commercial space/land included. N.Y. Executive Law Section 296.5(b).
- terms/conditions/privileges of sale/rental/lease.
N.Y. Executive Law Sections 296.2 a(b), 296.5(a)(2) and 296.5(b)(2).
- advertisement/inquiries. N.Y. Executive Law, Sections 296.2 a(c), 296.5(a)(3) and 296.5(b)(3).
- "blockbusting." N.Y. Executive Law Section 296.3 b.
- coercion and retaliation. N.Y. Executive Law Sections 296.6 and 296.7

Housing for persons age 55 and over (contains an age, familial status exemption), see N.Y. Executive Law Section 296.5(a) (4) (private housing), N.Y. Executive Law Section 296.5(b)(4)(commercial space, land).

Discrimination is banned by:

- owners, lessees, sublessees, assignees, or managing agents.
N.Y. Executive Law Sections 296.2 a, 296.5(a) and 296.5(b), and the salespersons, employees or agents thereof.
- real estate brokers. N.Y. Executive Law Section 296.5(c)(1).
Making false representations as to the availability of housing accommodation is specifically prohibited.
- mortgage lenders. N.Y. Executive Law Section 296 a.1(a)(b)(c)(d)(e) & (f).
- real estate boards. N.Y. Executive Law Section 296.5(d). Individuals may not be barred from membership on a real estate board because of race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status or familial status.

The following recommendations governing housing inquiries should be considered in conjunction with the decision in *Matter of Delta Air Lines, Inc. v. New York State Division of Human Rights, et al*, 666 N.Y.S.2d 1004,

91 N.Y.2d 65, 74, 689 N.E.2d 898 (1997), in which the Court of Appeals, in the context of pre-employment inquiries, stated:

[A]ppellants challenge Delta's preemployment inquiries and medical examination. They specifically argue that Delta unlawfully asked preemployment questions regarding age, disabilities and physical impairments, family relations, marital status, roommates, and prior treatment for drug or alcohol abuse. We agree with the Appellate Division that the record does not support the contention that the interview inquiries by Delta's representatives contributed to the eventual decision not to hire them. Merely establishing that a particular question was asked, even one that might be viewed as objectionable out of context or in the context or in the abstract is insufficient, without some causal consequence or relevant relationship, to establish a claim for discrimination under the New York State Human Rights Law in these circumstances.

The State Executive Law declares unlawful the making of any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color or national origin, sex, or disability or marital status, or any intent to make any such limitation (Executive Law 296(a)(d)). The interview inquiries here are not actionable or sustainable because appellants fail to produce any evidence or suggest any inference that the subject inquiries reflected a limitation, specification or discrimination (see, matter of New York Times Co. v. City of New York Commn. On Human Rights, 41 N.Y.2d 345, 349, 393 N.Y.S.2d 312, 361 N.E.2d 963; see also Alexander's Inc. v. White, 115 A.D.2d 424, 426, 496 N.Y.S.2d 227).

4. DIRECTLY OR INDIRECTLY REVELATORY INQUIRIES

The New York State Human Rights Law prohibits landlords, real estate sellers, brokers and appraisers and home mortgage lenders from asking certain questions which express, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status, or any intent to make any such limitation, specification or discrimination. Such inquiries should not be made in an application form, or in a personal interview before selecting a tenant, making a real estate transaction, extending credit or appraising a home, unless the information is expressly required by Federal or State statute .

The following are examples of different types of inquiries that are recommended or not recommended.

SUBJECT	RECOMMENDED(i)	NOT RECOMMENDED
Age	Are you 18 years of age or older? If not, state your age.	How old are you? What is your date of birth? What are the ages of your children? Requirement that applicant submit birth certificate, naturalization or residency papers, passport or any other document that reveals age, such as driver's license, green card, military discharge, etc.
Disability	None	Do you have a disability? Have you ever been treated for any diseases. . . ? Requirement that applicant submit any medical documentation.
Marital Status	How many people will occupy the premises?	Are you married? Single? Divorced? Separated? Name or other information about spouse. Requirement that applicant submit any document that will reveal his/her marital status.
Familial Status	How many people will occupy the premises?	Do you intend to have children? Will the children be living in the unit? Age and sex of children? Requirement that applicant bring entire family to interview, or provide a photograph of family.

(i) See Section 6, Disparate Impact Inquiries.

National Origin	None	<p>Inquiries as to applicant's lineage, descent, national origin, parentage or nationality.</p> <p>Inquiries as to nationality of applicant's spouse, parents or children.</p> <p>Requirement that applicant submit naturalization or citizenship papers, green card, passport from country of origin or military discharge. Inquiries about applicant's native language, relatives, country of origin.</p>
Sexual Orientation	None	<p>Inquiries as to sexual orientation.</p> <p>Are you married or single? Do you have a girlfriend/boy-friend?</p> <p>Requirement that applicant produce any document that would reveal marital status.</p>
Race or Color	None	<p>Inquiries as to race, complexion or color of skin.</p> <p>Request to submit photograph with application form.</p> <p>Requirement that applicant submit any document that identifies the race of applicant.</p>
Religion/Creed	None	<p>Applicant may not be asked his/her religious denomination or affiliation, or religious holidays observed.</p> <p>Requirement that applicant submit any document that will reveal the religious denomination, affiliation or beliefs of applicant.</p> <p>Housing providers must not ask or volunteer information, orally or through ads, about the religious makeup of a neighborhood or the location of a house of worship</p>
Sex	None	<p>Inquiries as to gender.</p> <p>Requirement that applicant submit any document that would reveal gender.</p> <p>Inquiries relative to pregnancy or childbearing potential or plans.</p>

5. DISPARATE IMPACT INQUIRIES

Selection criteria which appear to be facially neutral in their treatment of different groups but which impact more severely on one protected group, and cannot be reasonably justified, are unlawful. See *Griggs vs. Duke Power Company*, 401 U.S. 424 (1971).

Thus, inquiries which would otherwise be deemed lawful may, in certain circumstances, be deemed evidence of unlawful discrimination when the inquiry seeks to elicit information about a selection criterion which has a disproportionately burdensome effect, and the criterion has no relation to the housing accommodation or mortgage loan sought. Such criteria may not be used as a basis for deciding whether to make a real estate or mortgage transaction or lease. The inquirer may justify the making of such inquiry by showing its necessity.

6. DRUG USE

An individual who is currently using drugs illegally is not protected by the Human Rights Law. The Law does protect an individual who is a recovered or recovering drug addict.

7. HARRASSMENT

Housing and mortgage providers, real estate agents and superintendents should be aware that harassment of tenants or potential tenants, purchasers of real property or applicants for credit, based on any of the protected categories, is a violation of the Human Rights Law.

8. INQUIRIES FOLLOWING OFFER OF HOUSING ACCOMMODATION OR CREDIT

After an applicant has been selected and the housing accommodation offered or the mortgage approved, it may be lawful, under the circumstance described below, to make certain inquiries of the tenant or a party to a real estate or mortgage transaction. This may be done if the information requested is expressly required by State or Federal statute, or if the inquiry is made in good faith and for a proper purpose.

The only legitimate circumstance recognized by the Division under which inquiries as to the age, race and/or disability of an applicant may be requested before selecting the applicant, is when it is expressly required by Federal statute or regulation. In those limited circumstances, private and

public housing providers and mortgage providers conducting Federal, State and local subsidized or assisted housing or mortgage lending programs must ensure that they request only that information required under the law.

(Special care should be taken not to make interpretations of the statute or regulation). The Division recognizes that sometimes it is necessary to collect this information for the purpose of identifying or correcting housing and/or mortgage lending problems or imbalances previously identified, to ensure equal housing and mortgage lending opportunities for all persons.

However, it is the responsibility of the housing and mortgage providers to ensure that information collected regarding the racial and/or ethnic make up of the applicant be properly safeguarded, and kept separate and away from other information about the applicant, including his or her name. Personnel handling the application and selection process should not have access to the racial and ethnic information of any applicant.

Any inquiries made by housing providers for the purpose of recruiting or advertising for its special housing units, targeting senior citizens and/or disabled applicants, should be made in such a way that they avoid any possibility of discriminatory selection. Housing providers should be mindful of the disquieting effects which such surveys or advertisements may engender.

This does not preclude senior citizens and/or disabled persons from self identifying, when seeking access to special housing programs geared for them. This includes housing discounts for senior citizens or disabled persons, commercial space or housing for senior citizens, and special housing programs for the disabled.

Inquiries to applicants about the age, sex, sexual orientation or marital status of a person or persons residing in a given unit, for the purpose of establishing occupancy standards, may be illegal. Such information may only be requested when it is required by local health and/or safety ordinances to avoid overcrowding or to rectify an unsafe condition. In those limited instances, housing providers must justify the necessity for such inquiries. "Reasonableness" should be used when restricting maximum number of persons per room or unit to avoid overcrowding or underutilization. Under no circumstances is the housing provider justified in setting occupancy standards arbitrarily, based on its own personal standards, i.e., requiring children of opposite sex of a certain age to have separate rooms, requiring that only a "married couple" occupy the same bedroom, etc.

9. EXEMPTIONS

Inquiries, or other actions, with respect to real property exempted from the anti discrimination provisions of the Human Rights Law, are not unlawful. The following list enumerates the exemptions or exclusions recognized by the Human Rights Law.

Privately owned Housing

- A two- family dwelling is exempted when the owner resides in one of the units. N.Y. Executive Law Section 296.5(a)1.
- Exemption for rental to individuals of the same sex. N.Y. Executive Law Section 296.5(a)2. Rental of all rooms in a housing accommodation to males or females only.
- Exemption for rental of room(s) by owner or occupant. N.Y. Executive Law Section 296.5(a)3. Single room(s), sharing cooking and bathroom facilities rented by occupant or owner(if he or she resides in premises).
- Exemption for housing for persons fifty five years of age or older. N.Y. Executive Law Section 296.5(a).
- Senior Citizen Discount exemption. N.Y. Executive Law Section 296.17. Offer and acceptance of housing accommodation discount to persons sixty five years of age or older.
- Disabled Discount exemption. N.Y. Executive Law Section 296.19. Offer and acceptance of housing accommodation discount to a person with a disability.
- Religious organization exemption. N.Y. Executive Law Section 296.11. Permits religious organizations to give housing accommodation preference to a person of the same religious denomination.

Publicly assisted Housing

- Age restricted housing exemption. N.Y. Executive Law Section 296.2 a(e). In cases where the Division grants exemptions based on bona fide considerations of public policy.
- School dormitory exemption. N.Y. Executive Law Section 296.2 a(f). Dormitory rooms to individuals of the same sex.

Commercial Space/Land

- Senior citizen exemption. N.Y. Executive Law Section 296.5(b)(4).

10. SPECIFICATIONS IN ADVERTISEMENTS

It cannot be emphasized too strongly that both the person placing a discriminatory advertisement and the person or institution publishing such a discriminatory advertisement, with respect to the sale, rental or lease of housing accommodations, land or commercial space, violate the Human Rights Law and can be liable for both compensatory and other damages, including punitive damages, to any person aggrieved by such discriminatory advertisement. Such persons, including advertising media and advertising agencies, are also required to adhere to the Federal Fair Housing Regulations (Code Federal Regulations Title 24 part 109).

11. SEXUAL ORIENTATION

The term sexual orientation means heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived. However, nothing contained herein shall be construed to protect conduct otherwise proscribed by law. N.Y. Executive Law, Section 292.27.

12. DISABILITY: REASONABLE ACCOMMODATION & ACCESSIBILITY

N.Y. Executive Law Sections 296.2 a(d) and 296.18 parallel the Federal Fair Housing Act of 1988, Section 42 USC 3604(3), as it applies to "reasonable accommodation" and accessibility.

In existing buildings, housing providers must permit, at the expense of the person with a disability, reasonable modifications to the interior of the premises, to afford said person full enjoyment of the dwelling. At the end of tenancy, the tenant is responsible for returning the premises to the former condition, reasonable wear and tear excepted, if required by the landlord.

Housing providers may need to make reasonable modifications, at their own expense, to the exterior of an existing building, to make its public and commonly used areas more accessible. This may include ramps, walks, accessible building entrances, parking access, etc. Housing providers also cannot refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit.

Newly designed and constructed multi-family dwellings, commencing March 13, 1991, must comply with the accessibility requirements of the New York State Uniform Fire and Building Code. This includes the exterior and interior of buildings and surrounding grounds.

For further clarification of these definitions and technical information, please see the U.S. Department of Housing and Urban Development's Code of Federal Regulations (24 CFR Part 14 Sections 100.203 through 100.205).

For accepted accessibility standards, please see the 1992 edition of the American National Standards Institute's publication: "ANSI A117.1 1992". To obtain a copy of this document, contact the Institute at its offices located at 11 West 42nd Street, 13th Floor, New York, New York 10036.

13. BLOCK BUSTING

N.Y. Executive Law Section 296.3-b. "It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status or familial status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities".

Housing providers should be fully aware that persons found guilty of blockbusting are not only liable to their victims for compensatory and punitive damages, but also must forfeit to the state any profit from their illegal activities. Executive Law Section 297.4(c)(vi).

14. CREDIT

Under N.Y. Executive Law Section 296-a.

Unlawful discrimination in credit practices is prohibited by the Human Rights Law. It is an unlawful discriminatory practice for any creditor, or any officer, agent or employee of a creditor, to discriminate against an applicant seeking credit relative to housing or other real estate transactions because of the applicant's race, creed, color, national origin, sexual orientation, military status, age, sex, marital status, disability, or familial status. Credit practices include the granting, withholding, extending or renewing of credit, and the fixing of the rates, terms and conditions of credit. Section 296-a(1)(a).

- It is unlawful to use any credit application form or to make a record or inquiry which expresses, directly or indirectly, any limitation, specification or discrimination on any of the above bases. Section 296-a(1)(c).
- The law also prohibits making inquiries of applicants concerning capacity to bear children or pertaining to the use of any form of birth control or family planning. Section 296-a.1(d).
- It is unlawful to refuse to consider the sources of an applicant's income or to subject such income to discounting on the basis of the aforementioned enumerated bases of discrimination. Section 296-a.1(e).
- It is unlawful for a creditor to discriminate against a married person because such person does not use or is not known by the surname of his or her spouse. Section 296-a.1(f).

Exceptions.

- It is not considered discriminatory for credit decisions to be made based on factually supportable, objective differences in applicants' overall creditworthiness, as long as no consideration is given to aggregate statistics nor assumptions relating to race, creed, color, national origin, sexual orientation, military status, sex, marital status or disability, or to the likelihood of childbearing or childrearing. Section 296-a(1)(3).
- A creditor may consider age when age has a demonstrable and statistically sound relationship to a determination of creditworthiness.

Complaints of discrimination in credit may be filed with either the Division of Human Rights or with the Superintendent of the New York State Banking Department, but not with both agencies.

15. FILING A COMPLAINT

N.Y. Executive Law, Section 297. Procedure.

Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself/herself or his/her attorney at law, make, sign and file with the Division a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the Division.

16. STATUTE OF LIMITATIONS

N.Y. Executive Law Section 297.5 provides that any complaint filed with the Division pursuant to this section must be so filed within one year after the alleged discriminatory practice. Where a complaint has not been filed at the Division, a complaint may be brought directly in state court within three years of the alleged discriminatory practice. *Pan American Airways v. NYS Human Rights Appeal Bd.*, 61 N.Y.2d 542, 475 N.Y.S.2d 256 (1984).

17. ASSESSING PUNITIVE DAMAGES, CIVIL FINES AND PENALTIES

N.Y. Executive Law Section 297.4(iv) allows the Division to award punitive damages in cases of housing discrimination only, not to exceed ten thousand dollars.

N.Y. Executive Law Section 297.4(v) requires the payment to the state of profits obtained from blockbusting activities.

N.Y. Executive Law Section 297.4(vi) allows for the assessment of civil fines and penalties to be paid to the state by a party having committed an unlawful housing discriminatory act in an amount not to exceed fifty thousand dollars or not to exceed one hundred thousand dollars if the discriminatory act is found to be willful, wanton or malicious.

18. ATTORNEY'S FEES

N.Y. Executive Law Section 297.10 empowers the Commissioner or the court, with respect to housing discrimination cases only, to award reasonable attorney's fees to any prevailing or substantially prevailing party; provided, however, that a prevailing respondent may move to recover such reasonable attorney's fees on a showing that the action or proceeding was frivolous.

19. ELECTION OF CIVIL COURT ACTION

N.Y. Executive Law Section 297.9 provides that following a Division determination of probable cause, any party to a housing discrimination complaint has the right within twenty days following the determination to elect to have an action commenced in a civil court and an attorney representing the Division of Human Rights will be appointed to present the complaint in court or, with the Division's consent, the case may be presented by complainant's attorney.