



Virginia's BAN ON
SOURCE OF
FUNDS
DISCRIMINATION

Code of Virginia
§36-96.1

Legal Services of Northern
Virginia

Equal Rights Center

June 25, 2021

WHO WE ARE

- Legal Services of Northern Virginia (LSNV) is a non-profit public interest law firm
- Aim to promote justice by providing free, high-quality legal advocacy and information
- For elderly, disabled, or low-income individuals and families who face the loss of a critical need such as personal safety, income, housing, medical benefits, education, or family stability



LEGAL SERVICES
OF NORTHERN VIRGINIA

Opening Doors to Justice

The ERC is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of Greater Washington, D.C. and nationwide.

STRATEGIC PRIORITIES

The ERC's core strategy for identifying unlawful and unfair discrimination is civil rights testing. When the ERC identifies discrimination, it seeks to eliminate it through the use of testing data to educate the public and business community, support policy advocacy, conduct compliance testing and training, and, if necessary, take enforcement action.



**Virginia Law
Prior to July 1,
2020**



• No one could be denied housing due to:

◦ **Race**

◦ **Color**

◦ **Religion**

◦ **National origin**

◦ **Sex (including sexual harassment)**

◦ **Family status (having children under 18, or being pregnant)**

◦ **Elderliness (55 or older)**

◦ **Disability**

- **Landlord could deny housing because a tenant wanted to use a housing voucher or other source of funds.**
- **Sexual orientation, gender identity, veteran status, and source of funds were added in 2020.**

Virginia Law on and after July 1, 2020

- ❑ Source of funds was added to the reasons why a person may not be denied housing

- ❑ Exceptions:
 1. Law does not apply to owners of four or fewer rental units in Virginia.
 2. Those who own a 10% or less interest in four or more units.
 3. Law does not apply if the source of funds is not approved within 15 days of submitting the request to approve the tenancy.

15 days

- Clock starts when the **complete** request for tenancy approval (RFTA) is mailed, emailed, or delivered to the voucher administrator (by either the housing provider or prospective tenant)
- Source of funds considered approved on the date a unit passes inspection.
- Good faith effort from the housing provider.

Code of Virginia
§36-96.1 B
Declaration of Policy

- It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of
- race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability,
- and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and ensured.
- This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

Va. Code
§ 36-96.3(A)(1), (2), (3),
and (4)

The new law adds “source of funds” to all the unlawful discriminatory practices that appear in Virginia Code § 36-96.3, including prohibitions on, for example:

- (1) refusing to rent or sell based on someone’s source of funds;
- (2) imposing terms, conditions, or privileges of the sale or rental of a dwelling based on one’s source of funds;
- (3) placing advertisements that express a preference or limitation for certain sources of funds; and
- (4) representing that, based on someone’s source of funds, a dwelling is unavailable for inspection, sale, or rental.

Source of Funds

Code of Virginia §36-96.1.1 Definitions

For the purposes of this chapter, unless the context clearly indicates otherwise:

“Source of funds” means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

Examples include: **Housing Choice Vouchers**, Disability Benefits, Veteran Benefits, Child Support, Alimony.

Housing providers can ask about income on an application and verify same.

As stated by DPOR's Guidance Document, "It is axiomatic that every housing provider has a legitimate business interest in assuring tenants can pay rent.

- That assurance often necessitates verification of income: a longstanding, rational industry practice.
- Accordingly, housing providers may ask about and verify sources of funds, as long as they do so in a non-discriminatory manner.
- It does not constitute discrimination based on source of funds to make a written or oral inquiry concerning the amount or source of income.
- The prohibition against source-of-funds discrimination does not prohibit a housing provider from determining the ability of any potential buyer or renter to pay a purchase price or pay rent by verifying—in a commercially reasonable manner—the source and amount of income, including any payments or portions that will be made by other individuals, organizations, or voucher and rental assistance payment programs.

Tenant's Portion of rent.

To determine if a tenant can afford the rent, the relevant factor for a landlord's risk assessment is the tenant's portion of rent, not the total rent.

The voucher portion of the rent is secured under a contract with the administrative agency that has already qualified the HCV holder.

The landlord's reasonable focus should be on whether the tenant can afford the tenant's share of the rent.

Therefore, to avoid source-of-funds discrimination liability, housing providers should subtract any source of funds from a rental assistance program (like the HCV) from the total of the monthly rent prior to calculating whether the tenant satisfies the income criteria.

Tenant's Portion of Rent.

Example
Provided by DPOR

A housing provider requires all tenants, regardless of their source of funds, to demonstrate that they have income that is three times the amount of the monthly rent.

- The monthly rent for the unit in question is \$1,000. The tenant earns employment income of \$800 per month. Under the terms of their HCV, the tenant pays \$240 per month towards rent (30% of their income), and the HCV agency pays the remainder, or \$760.

The housing provider subtracts the HCV portion from the total rent to get the tenant's share of rent: $\$1,000 - \$760 = \$240$.

- The housing provider then determines that the tenant meets the income-qualifying standard because the tenant's employment income (\$800) is at least three times as much as the tenant's share of the monthly rent, \$240 when multiplied by three is \$720.
- This application of income-qualifying criteria does not discriminate against HCV holders who apply to live in this complex.

Duration of Source of Funds

“However, housing providers are cautioned not to read a sense of permanency into the definition of “source of funds” that is plainly absent....

Nothing in the definition addresses the duration of the source of funds in question; rather, “source of funds” means any source that lawfully provides funds.

(For instance, one-time assistance grants or temporary income such as unemployment benefits are covered.)

Accordingly, housing providers may not refuse lawful sources of income based on the duration or nature of such funds without potentially violating the VFHL.”

-DPOR Guidance Document

Examples of Unlawful Discriminatory Practices

- **Advertising that a person “must have a job” in order to rent**
- **Requiring documentation, such as pay stubs, that are typically only available to people who are working**
- **Advertisements that express limitations as to the source of funds of potential residents, such as, “No Section 8” or “We do not take public assistance”**
- **Refusing to rent to a person who is receiving public benefits.**
- **Setting income requirements artificially high in order to exclude applicants who receive public benefits**
- **Requiring co-signers or a larger security deposit because of an applicant’s source of funds**

Examples of Unlawful Discriminatory Practices (cont.)

- **Denied the opportunity to rent after mentioning use of a voucher**
- **Quoted a higher rent, or additional or higher fees, than tenants and prospective tenants who do not have a voucher, or are not paying for their rent using SSI or veterans' benefits**
- **Restricted to certain units in the building, when others in the same price range were available, after disclosing how rent would be paid**

Examples of Unlawful Discriminatory Practices (cont.)

- **Subject to different terms or conditions – such as being denied the use of the recreational facilities, being denied the ability to sign a fixed term lease, etc. – because of source of funds**
- **Denied needed repairs or access to any service offered to other tenants because of source of funds**
- **Disqualified for advertised incentives – such as reduced rent or fee waivers – or denied access to certain amenities, such as the swimming pool or gym, because of source of funds**

**Code of Virginia
§36-96.8
Enforcement
(public)**

- **An individual who has suffered from housing discrimination may file a complaint with the Virginia Real Estate Board and Virginia Fair Housing Board**
- **Each Board investigates claims through the Virginia Fair Housing Office**
- **Virginia Fair Housing Office investigates housing discrimination complaints. Anyone who believes that they have been discriminated against in housing may file a complaint with the office**
- **<http://www.dpor.virginia.gov/FairHousing/>**
- **Phone: 804-367-8530 or 888-551-3247**

**Code of Virginia
§36-96.8
Enforcement
(public)**

- **If the complaint is not resolved, each Board can issue a charge on behalf of the claimant and refer the charge to the Attorney General**
- **Attorney General has 30 days after a charge is referred to commence a civil action in the circuit court for the city, county, or town in which the discriminatory housing practice has occurred.**

Code of Virginia
§36-96.18
Enforcement (private)

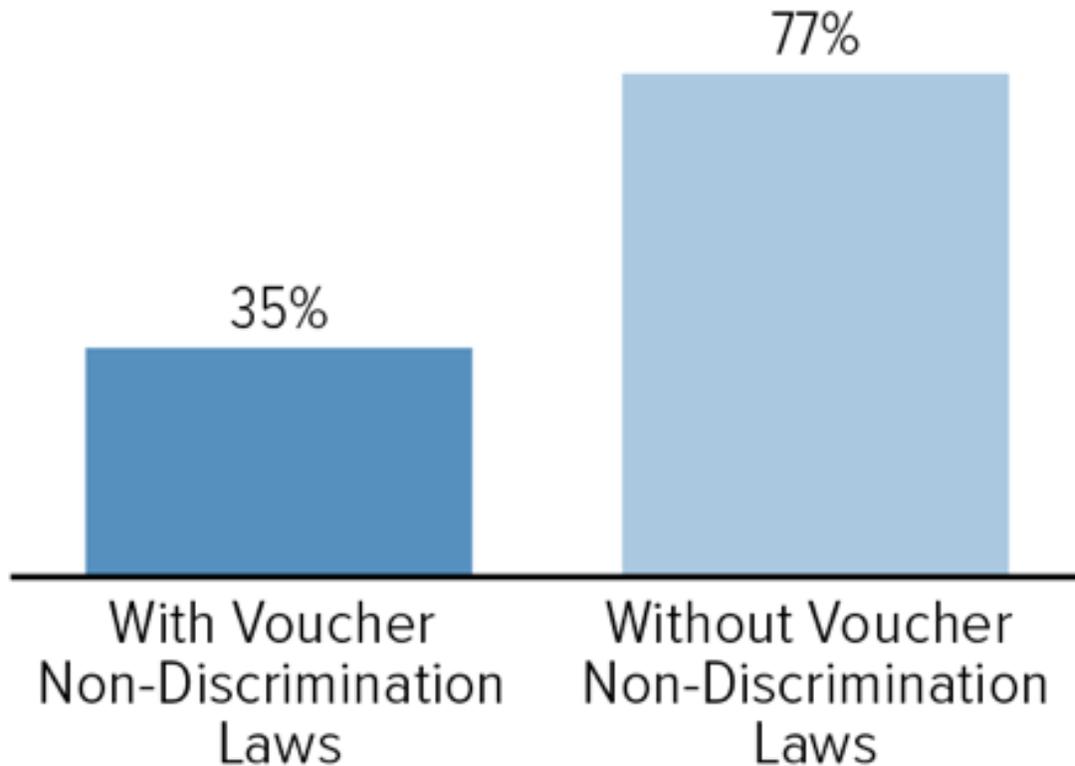
- **An individual may file a civil action in an appropriate United States district court or state court to enforce the Fair Housing Law**
- **Action must be commenced**
 - **Within 180 days after the conclusion of the administrative process with respect to a complaint, or**
 - **Within 2 years after the occurrence of an alleged discriminatory housing practice**
- **An individual also can file a civil action within 2 years of the breach of a conciliation agreement entered to obtain relief with respect to a discriminatory housing practice**

Code of Virginia
§36-96.18(C)
Enforcement (private)

If the court or jury finds that a discriminatory housing practice has occurred or is about to occur . . . the court may award reasonable attorney's fees and costs

Fewer Landlords Reject Vouchers in Areas Blocking Voucher Discrimination

Percentage of landlord rejections



Note: The jurisdictions in the study with voucher non-discrimination laws are Washington, D.C. and Montgomery County, Maryland; Newark and four nearby counties in New Jersey; and the city of Philadelphia. The jurisdictions without voucher non-discrimination laws are Los Angeles County, California (excluding 13 small cities); Fort Worth and Arlington, Texas; and Bucks County, Pennsylvania.

Source: Mary Cunningham et al., "A Pilot Study of Landlord Acceptance of Housing Choice Vouchers," U.S. Department of Housing and Urban Development, September 2018 and additional data provided by the authors.

QUESTIONS



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