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Re: Tenant Screening

Dear Mr. ██████████ and Mr. ██████████:

You asked the New York City Department of Consumer Affairs (the "Department") a number of questions concerning tenant screening report disclosures. This letter is in response to your questions.

- (1) How do the "sign" and "application" disclosures pertain in virtual or online situations?

Sign Disclosures

Section 20-809(a) of the Code states:

"Any person requesting application information from a prospective tenant or tenants shall post a sign, the form and manner of which shall be determined by rule of the commissioner, in any location at which the principal purpose is conducting business transactions pertaining to the rental of residential real estate properties. Such sign shall be posted in a location visible to potential subjects of such reports and shall disclose in conspicuous size type the name and address of all consumer reporting agencies used."

(Emphasis added.)

The rules implementing Section 20-809(a) state that the sign must be visible "to a customer who is seated." See 6 RCNY Section 5-265(c).



It is clear from the plain language of the Code and Rules that the requirements with regard to sign disclosures apply only to physical brick and mortar locations.

Application Disclosures

With regard to the disclosures in applications, Section 20-808(b) of the Code requires that the disclosure be “located immediately adjacent to where personal information is requested, and set off in a box and printed in a color that sharply contrasts with the print surrounding it.”

In contrast to the sign requirements, the plain language of the statute does not limit this requirement to brick and mortar locations. Thus, when applications are offered online, such disclosures must be made available online in the same manner as they would be required on a printed page, i.e., “immediately adjacent to where personal information is requested, and set off in a box and printed in a color that sharply contrasts with the print surrounding it.”

- (2) If an owner living in his/her building of 5 or fewer units uses a real estate licensee to rent/lease their apartments, is the licensee responsible for posting the Tenant Screening sign, the building owner, or both?

Section 809 of the Code imposes sign posting requirements on “[a]ny person” requesting information. The licensee actually renting/leasing the apartment(s) is the person who requests the information from the tenant, and is thus subject to this provision. The licensee is also responsible for posting the Tenant Screening Sign “at any location at which the principal purpose is conducting business transactions pertaining to the rental of residential real estate properties.”

Section 20-809(b) of the Code provides an exemption to the posting requirement for owners actually occupying buildings with five or fewer units. Moreover, such an owner probably has no “location at which the principal purpose is conducting business transactions pertaining to the rental of residential real estate properties.” Thus, the owner is not responsible for posting the Tenant Screening Sign.

- (3) Who is responsible for the language on the application if supplied by a building owner that uses a licensee to rent/lease out apartments in their building in situations where the application utilized by the owner is not compliant?

Both the licensee and the building owner are responsible for the language on the application. The legislative history of Title 20, Subchapter 16 of the Code indicates that the City Council was primarily concerned with the actions of landlords, but also sought to hold brokers, management companies, and others accountable as well. See New York City Council Hearing Transcript 2/11/10 at 29:19-23. Where, as here, the owner him/herself supplied the application and the licensee actually gave the application to the prospective tenant, both would be accountable for the compliance of the application with the disclosure requirements.

- (4) if “online” applications comply with the requirements the law pertaining to contrasting colors as required in Section 20-808(b) of the Code but the applicant prints the application



out in black and white and submits it to the owner or licensee is the owner or licensee liable in any way for the “now” non-compliant application?

As long as the method by which the owner and/or licensee made the disclosures and presented the application to the prospective tenant conformed to the disclosure requirements, the applicant can print out and submit the application in black and white. However, the owner or licensee could not print out a black-and-white copy of the application and provide that to the applicant..

We hope this letter is of assistance.

Thank you for your inquiry.

Sincerely,

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A black rectangular redaction box covering the name of the sender.
Staff Attorney