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Co-op & Condo Law-Legislative Update

Criminal Background Searches Materially Limited In Residential Housing

BY GEOFFREY R. MAZEL, ESQ.

As the year 2023 has drawn to a close, so has the New York City Council legislative session. Although there was not a large volume of legislation passed, one bill will have a significant and profound effect on owners of real property in New York City, including Cooperative Board of Director's, when doing criminal background checks for prospective residential tenants. On December 20, 2023, the New York City Council passed Introduction 632/2022 by an overwhelming majority. The bill is currently on the Mayor's desk awaiting signature. This bill creates a set of significant limitations and guidelines that a property owner must follow when leasing property for residential purposes to an individual.

More importantly, the bill effectively creates a protected class for individuals with a criminal history and failure to comply with this law could result in liability for a Property Owner in the form of a Human Rights complaint for discrimination.

By way of background, Intro 632 was introduced to the New York City Council on August 11, 2022 by New York City Council Member Keith Powers. The bill was heard by the Committee on Civil and Human Rights on December 8, 2022. The hearing was extremely contentious since the original version of the bill excluded Property Owners, including Cooperative Board of Directors, from conducting a criminal background search of prospective shareholders when purchasing a unit. The use of a criminal background search has been a basic tool for Property Owners, including Co-op Boards when doing a background search of prospective purchasers for decades. The rationale was quite simple—if someone has committed

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LINK TO THE BILL:
https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5755059&GUID=1081D9A0-5626-4DE4-BB6A-142AB373A4AF

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a serious crime that would affect their ability to make good neighbor, the Owner/Board wants to vet this when deciding whether or not to accept this application.

The reasoning put forth by the proponents of the bill is that once a person has been convicted of a crime and has paid their dues to society, they should have a fair chance to find accommodation like everyone else in society. They further reasoned that criminal background searches put the person with a criminal history in a position where finding housing is nearly impossible. The opposition to this bill argued that if someone has been convicted of a serious crime, then it is the right of the Property Owner/Cooperative Board to be aware of that fact. In addition, the original version of the bill did not have any hold harmless language protecting the Property Owner in the event the convicted individual creates a situation where damage could accrue to the Property Owner.

The original version of Intro 632 was met with fierce resistance and subsequently was amended to compromise concerns of the opposition to this bill.

The summary of the bill is as follows:

- This bill would prohibit housing discrimination on the basis of criminal history, with limited exceptions. Landlords, owners, brokers and other covered entities may not consider criminal record until after determining a housing applicant's other qualifications.
- Covered entities may consider registered sex offenses as well as misdemeanors and felonies for 3 and 5 years, respectively, after completion of a prison sentence. If an applicant is rejected because of this reviewable criminal history, the entity must provide a written explanation for why the rejection was due to a legitimate business interest.
- This bill would not apply where federal, state or local laws, including laws protecting victims of domestic violence, sex offenses or stalking, require or permit exclusion based on criminal history.
- This bill does not apply to two-family owner-occupied housing or rooms in owner-occupied housing.
- Covered entities would not be liable under other laws for complying with this law.

The final version of the bill does provide several areas of compromise. Most importantly it does give a Property Owner's limited ability to view a prospective tenant's criminal background. However, the law is extremely technical, and every criminal search must be made in conformity with the law. Failure to follow these strict guidelines may result in the Property Owner being the subject of a Human Rights proceeding for discrimination.

On the other hand, it does contain the following language regarding liability immunity: " A covered entity shall be immune 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 covered entity should not have sold, rented or leased, or otherwise granted a housing accommodation or an interest therein, to such individual or as a result of a covered entity's decision not to perform a criminal background check". This provision was insisted upon by Property Owners and did make its' way into the final bill.

Even though this law is severely limits a Property Owner's ability to do a criminal background search, it is better than the original version of Intro 632, which completely banned criminal background searches by Property Owners, except for the sex offender registry. As stated above, this law creates a protected class for individuals with a criminal history and must be followed copiously when a Property Owner is evaluating a tenant application for residential housing. A word to the wise, please review the law carefully before advising a client regarding the use of a criminal background search for applications for prospective tenants for residential housing.

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