

RENTER'S HANDBOOK ON PORTLAND'S RENTAL APPLICATION AND SCREENING REQUIREMENTS

Starting on March 1, 2020, a new law in the City of Portland (Fair Access in Renting, or "FAIR ordinance") requires landlords to follow certain requirements for how they advertise available rental units located in the City of Portland, how they process applications for available rental units, and how they screen applicants.

This packet contains information about the City of Portland's rental application and screening laws. In many situations, an applicant will be given the opportunity to provide additional information about any barriers in their background that make it more difficult to find housing. By using this handbook and the form letters included at the end of the handbook, you may have a better chance of being approved for housing.

This packet contains the following:

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More information about the City of Portland's application and screening rules is available from the Portland Housing Bureau's Rental Services Office. The Rental Services Office can be reached by phone at 503-823-1303, by email at rentalservices@portlandoregon.gov, and in person at 421 SW 6th Avenue, Suite 500, Portland, Oregon 97204

You can also view the text of the FAIR Ordinance, Portland's rules for how to follow the FAIR Ordinance, and other information at <https://beta.portland.gov/phb/rental-services/application-and-screening>

A landlord who fails to follow this law is liable to an applicant for up to \$250 per violation of the law plus actual damages.

INFORMATION ABOUT THE CITY OF PORTLAND'S RENTAL APPLICATION AND SCREENING LAW

The law is intended to reduce barriers to housing and make it easier for people in Portland to find a safe place to live. However, the law is complicated, so it's a good idea to read through this handbook carefully to know what your rights are as a renter or applicant.

1) EXEMPTIONS FROM THE SCREENING RULES

The FAIR Ordinance's screening rules apply *only* to property that is located in the City of Portland. For property located in Portland, the FAIR ordinance does not apply to the following types of housing:

- Housing not advertised or rented to the general public;
- Housing shared with the landlord;
- Housing shared with an existing tenant who has their own rental agreement;
- One unit of a duplex where the landlord lives in the other unit;
- An accessory dwelling unit ("ADU") where the landlord lives on the same site;
- A house where the landlord lives in the ADU on the same site;
- Housing regulated as affordable housing by a federal, state, or local government for individuals making no more than 80% of the median household income and that is subject to the Multnomah County Coordinated Access System or some other formal referral agreement between the landlord and a non-profit service provider or the government;
- Housing in which there is a conflict between the local, state, or federal funding or loan requirements and Portland's tenant screening law. The parts of the law that conflict with specific requirements will not apply. The remaining parts of the law will still apply.

2) HOW LANDLORDS MUST ADVERTISE AVAILABLE UNITS

If a landlord advertises a single rental unit in the City of Portland, the landlord must:

- Run the advertisement for at least 72 hours before the landlord begins to process applications. The time when the landlord starts to process applications is called the "Open Enrollment Period."
- Include the following information either in the advertisement or at another location (website, posted at the rental office, etc.) that is outlined in the advertisement:
 - When the landlord will begin to process applications (the "Open Enrollment Period");
 - The screening criteria that will be used if the landlord charges an application fee; and
 - Whether the unit is accessible for individuals with mobility impairments (disabilities that make it difficult for an applicant to move around).

If the landlord is advertising for more than one unit at the same property in the same advertisement, the landlord must:

- Run the advertisement for at least 72 hours before the landlord begins to process applications. (The time that they begin to process applications is called the “Open Enrollment Period.”)
- Include the following information, either in the advertisement or at another location (website, posted at the rental office, etc.) that is outlined in the advertisement:
 - When the landlord will begin to process applications (the “Open Enrollment Period”);
 - The screening criteria that will be used if the landlord charges an application fee;
 - Which of the units (if any) are accessible to individuals with mobility impairments;
 - The number of rental units available;
 - The range of bedroom size of the units;
 - The range of unit size; and
 - The range of rents.

If the landlord is advertising the opening of a wait list for housing, the landlord must:

- Run the advertisement for at least 72 hours before they will begin to add names to the waitlist;
- Include the following information either in the advertisement or at another location (website, posted at the rental office, etc.) that is outlined in the advertisement:
 - When the landlord will begin to accept waitlist applications;
 - What the screening criteria will be if the landlord charges an application fee;
 - The number of rental units that can be filled through the waitlist;
 - The range of bedroom size of the units that can be filled through the waitlist; and
 - The range of rents that can be filled through the waitlist.

3) REQUIRED APPLICATION FORMS

All rental applications in the City of Portland must include the following information:

- An option for applicants to state whether they have a mobility impairment or other disability status;
- A City of Portland notice of a tenant’s rights to ask for a Reasonable Accommodation or Reasonable Modification under fair housing laws;
- A City of Portland notice about rental housing applicants’ rights;
- The landlord’s screening criteria and evaluation process, if the landlord requires an application fee;
- That an applicant can provide “supplemental evidence” for a landlord to consider when processing the application.
 - Supplemental evidence is information that helps to explain negative information in an applicant’s background and show why an applicant should be approved despite that negative information.

4) SCREENING FEES

- If a landlord uses a professional screening company to process an application, the landlord cannot charge a screening fee that is higher than the costs charged by the screening company.
- If the landlord uses a professional screening company to screen some, but not all, of an application, the landlord cannot charge a screening fee that is more than 25% of the costs charged by the screening company.
- If the landlord does not use a professional screening company to screen an application, the landlord cannot charge a screening fee that is more than 10% of the costs charged by a professional screening company in the Portland-metro area.

5) HOW LANDLORDS MUST PROCESS APPLICATIONS

Refusal to Process an Application

- A landlord may refuse to process an application that is incomplete. An application is considered incomplete if it:
 - Does not include information concerning an applicant's identification;
 - Does not include information about an applicant's income; or
 - The applicant has intentionally withheld or misrepresented required information.
- A landlord may refuse to process an application if the applicant has had 3 or more verifiable related rental agreement violations with that same landlord.
 - Each violation must have resulted in a written notice that was not cured, dismissed, or resulted in a general judgment for the applicant.
 - A general judgment for the applicant would usually involve a court case that was resolved in the applicant's favor.
 - The 3 or more violations must have happened within a year of each other.
 - The most recent violation must have happened within one year of the application date.

If the Rental Unit is Advertised

- Each complete application received by a landlord must be posted with the date and time it was received. A landlord must consider completed applications in the order that they were received.
 - Applications received prior to the date and time the landlord begins processing applications (the "Open Enrollment Period") will be posted as if they were received 8 hours after the time that applications began to be processed.
 - If multiple applications are received before the Open Enrollment Period, they will all be marked as if received 8 hours after the start of Open Enrollment and then will be considered in the order that they were received in relation to the other early applications.

- **For an accessible unit**, any applicant with a mobility impairment who applies during the first eight hours of the “Open Enrollment Period” will be given priority over applications without a mobility impaired applicant for the unit.
 - If more than one applicant with a mobility impairment applies within the first eight hours, the applicants with a mobility impairment will be considered in the order that they applied.
 - The priority for accessible units does not apply to applications for regulated affordable housing that are leased through a lottery or preference process, or to regulated affordable housing leased through the Multnomah County Coordinated Access System.
- Within 5 business days of receiving a request from an applicant, the landlord must provide the applicant with a record of the date and time that the landlord received the complete application.

When the Landlord Uses a Waitlist

- A landlord must add names to a waitlist in the order that they were received. A landlord must consider completed applications in the order that they were received.

6) REQUIRED SCREENING CRITERIA

All landlords in the City of Portland must follow the rules outlined below regarding criteria for proving an applicant’s identity and proving an applicant’s ability to pay rent.

Proving an Applicant’s Identity

- A landlord may require an applicant to show identification that verifies the applicant’s name, date of birth and that they are who they say they are (such as a photograph). Some acceptable forms of identification may include:
 - Government issued identification (even if expired);
 - Immigrant or nonimmigrant visa;
 - Individual Tax Payer Identification Number (ITIN); or
 - Evidence of a Social Security Number (SSN)
- A landlord **may not ask about the immigration status of the applicant** or members of the applicant’s household (unless the housing applied for has a government subsidy that would require information about the applicant’s immigration status).
- A landlord may not require proof of an applicant’s or member of the applicant’s household member’s lawful status in the United States (unless the housing applied for has a government subsidy that would require information about the applicant’s immigration status).

Proving An Applicant's Ability to Pay Rent ("Income to Rent Ratio")

- *Whose Finances are Screened?*
 - If more than one person is applying to live together in a rental unit, the group can decide which person/persons will be listed on the application as responsible for paying the rent.
 - The applicant or applicants chosen by the group will be the only ones screened for income and ability to pay the rent.
 - Other potential household members who are not chosen to be screened for income can still be screened for rental history and criminal history.

- *How Much Do You Have to Make?*
 - A landlord cannot require that an applicant's gross monthly income be more than 2.5 times the monthly rent if the rent is **less than** an amount that is affordable to those making 80% of the median household income (MHI).
 - A landlord cannot require that an applicant's gross monthly income be more than 2 times the monthly rent for rental units where the rent is **at or above** an amount that is affordable to those making 80% of the MHI.
 - In 2019, the affordable rent for an 80% MHI household for a one bedroom unit was \$1,320; a two bedroom was \$1,584; a three bedroom was \$1,829.

- *What is Considered Gross Monthly Income?* The landlord must consider all lawful sources of income, including public benefits and rent assistance.
 - For applicants who will be receiving rent assistance (like a Section 8 voucher or other regular rent subsidy), the landlord must base their income determination on the rent amount that would actually be paid by the applicant (the total rent minus the amount of rent assistance).

- *Can an Applicant Use a Co-signer or Pay a Higher Deposit if They Don't Make Enough Money?*
 - The landlord is not required to accept a tenant who makes less than the allowed income to rent ratios, even if the applicant has a co-signer or is willing to pay a higher deposit.
 - Higher Security Deposit: If a landlord agrees to accept a higher security deposit, the landlord must make a written conditional approval of the applicant. The conditional approval must include the amount of the increased security deposit. The applicant has at least 48 hours from the written conditional approval to accept or decline the offer.
 - Co-Signer: If the landlord agrees to accept a co-signer, the landlord must make a written conditional approval of the applicant. The applicant has at least 48 hours from the written conditional approval to accept or decline the offer.

- The landlord can do a financial screening of the co-signer and can require the co-signer to make a certain amount of income. If the co-signer is a friend or family of the applicant, the landlord cannot require the co-signer to have a gross monthly income more than three times the monthly rent.

7) OPTIONAL SCREENING CRITERIA

In addition to the screening criteria regarding an applicant’s identity and the “Income to Rent Ratio,” landlords in the City of Portland may **choose** to use additional screening criteria. The additional screening criteria must be one of the following:

1. Low barrier screening criteria set out by the City of Portland; or
2. Additional screening criteria set out by the landlord, plus an “individualized assessment”

If the landlord uses their own additional screening criteria, they must also conduct an “individualized assessment” of all applicants. An “individualized assessment” is described below.

PORTLAND’S LOW-BARRIER SCREENING CRITERIA

Landlords using the City of Portland Screening criteria may screen an applicant only for the items discussed above for proving an applicant’s identity and “Income to Rent Ratio,” and for the items below.

Criminal History

- A landlord may not deny an application for criminal history due to:
 - An arrest that did not result in a conviction;
 - A conviction for a misdemeanor crime where the date of sentencing was at least three years from the date of the application to housing;
 - A felony conviction in which the date of sentencing was at least seven years from the date of the application to housing;
 - Participation in, or completion of a diversion or deferral of judgment program;
 - A conviction that was expunged, voided, invalidated or judicially dismissed;
 - A conviction for a crime that is no longer illegal in Oregon; or
 - A conviction, determination, or adjudication through the juvenile justice system.

- If an applicant has a criminal history that may result in a denial under the City of Portland Screening Criteria, the applicant has the right to submit “Supplemental Evidence” along with their application, and a landlord must consider this “Supplemental Evidence” when reviewing the applicant’s criminal history.
 - Suggested “Supplemental Evidence” includes:
 - A personal letter of explanation explaining the criminal history and what has changed since that time;

- A letter from a parole or probation officer;
- Letter(s) from a caseworker, therapist, counselor, employer, teacher, and/or school official;
- Certificates demonstrating completion of a program such as drug and/or alcohol treatment, rehabilitation, tenant education courses, or other certificates demonstrating completion of groups or workshops;
- Any other type of documentation that demonstrates how the applicant's life has changed since release.

Credit History

- A landlord may not deny an application based upon credit history due to:
 - A credit score of 500 or higher;
 - Insufficient credit history (unless the applicant purposefully withheld credit history information that would have resulted in an denial);
 - Negative information on a credit report about a past due debt of less than \$1,000;
 - Less than \$500 owed to a prior landlord for property damage;
 - A discharged bankruptcy or a Chapter 13 bankruptcy under an active repayment plan; or
 - Any debt for medical treatment or educational/vocational training.

Rental History

- A landlord may not deny an application based upon rental history due to:
 - An eviction court case that was dismissed or resulted in general judgment for the applicant (an eviction case is dismissed if the landlord failed to show up or the tenant followed the terms of a Stipulated Agreement)
 - An eviction court case that the applicant lost less than 3 years ago if:
 - The eviction case was based on a No Cause Termination Notice; or
 - The applicant lost because they failed to appear in court and the applicant can show that the applicant had already moved out of the rental unit at the time the summons for the eviction court case was served.
 - An eviction court case that the applicant lost more than 3 years ago
 - An eviction judgment or court record that was set aside or sealed.
- A landlord may deny an applicant based on a former landlord's reference only if the former landlord's reference is about:
 - Failure to pay rent;
 - Three or more material violations of the rental agreement within the last year that resulted in written notices;
 - Money currently owed to the former landlord; or
 - A lease violation that resulted in a "For Cause" notice of termination.
- A landlord may not deny an applicant for insufficient rental history (unless the applicant purposefully withheld information that would have resulted in a denial).

OPTIONAL LANDLORD SCREENING + INDIVIDUALIZED ASSESSMENT

Landlords can choose to use their own screening criteria. However, a landlord using their own screening criteria must still follow the Required Screening Criteria for proving an applicant's identity and "Income to Rent Ratio."

If a landlord chooses to use their own screening criteria, they must follow Oregon state law for screening criteria. Landlords who use their own criteria are also required to complete an "Individualized Assessment" for each applicant.

Criminal History

Oregon law allows a landlord to consider an applicant's criminal history, with the following limits:

- A landlord may not deny an application for:
 - An arrest that did not result in a conviction;
 - A conviction for a crime, if the conduct for which the applicant was convicted is of a nature that would not adversely affect the property of the landlord or a tenant; or the health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent; or
 - A conviction that was expunged, voided, invalidated or judicially dismissed.

Credit History

- Oregon law does not limit what a landlord using their own screening criteria can consider when looking at a tenant's credit history.
- There may be a basis to assert fair housing protections for applicants of color and applicants with disabilities who are denied due to credit history.

Rental History

- A landlord may not deny an application for rental history due to:
 - An eviction court case that was dismissed or resulted in general judgment for the applicant (an eviction case is dismissed if the landlord failed to show up or the tenant followed the terms of a Stipulated Agreement)
 - An eviction court case that the applicant lost 5 or more years ago; OR
 - An eviction judgment or court record that was set aside or sealed.

Individualized Assessment

- Before denying an application, a landlord in the City of Portland using their own screening criteria must conduct an “Individualized Assessment” for any basis for which the landlord intends to deny the applicant.
- As part of an “Individualized Assessment,” the landlord must consider:
 - The nature and severity of the incident that lead to the basis for denial;
 - The number and type of incidents;
 - The time that has passed since when the incident occurred;
 - The age of the applicant at the time of the incident; and
 - Any “Supplemental Evidence” presented by the applicant.
- An applicant should present “Supplemental Evidence” at the time of application if they believe that they may be denied on one or more basis. Supplemental evidence can include:
 - A personal letter of explanation explaining the incident that created the basis for denial and what has changed;
 - Letters from a caseworker, therapist, counselor, employer, teacher, parole or probation officers, and/or school official;
 - Certificates demonstrating completion of programs, such as: rehabilitation programs; tenant education courses; drug and/or alcohol treatment; other certificates demonstrating completion of groups or workshops;
 - Any other type of documentation that demonstrates how the applicant’s life has stabilized since the incident that forms the basis of denial.

8) APPLICATION APPROVALS AND DENIALS

The following requirements for approving or denying applications must be followed by all landlords in the City of Portland, **regardless of which screening criteria is used.**

- Within two weeks of processing an application, a landlord must provide the applicant with either a written notice of acceptance, a conditional acceptance, or a denial.
 - If the applicant was conditionally accepted or denied, the written notice must describe the basis for the decision.
 - If the landlord used their own screening criteria, the written notice also must describe the reason(s) why any supplemental evidence provided by the applicant did not result in an approval.
- If a non-financially responsible applicant is denied, the financially responsible applicant must be allowed to accept the unit if they would qualify.
- A request for a Reasonable Accommodation or Reasonable Modification may not be a factor in a landlord’s denial of an application.
 - If the landlord denies a Reasonable Modification request, the applicant must have two successive 24-hour periods to request an alternative Reasonable Modification.

- If no Reasonable Modification can be made, the applicant may still accept the rental unit if they are otherwise eligible.

Right to Appeal Denials

- An applicant has 30 days to appeal a denial of housing. The landlord’s appeal process must:
 - Allow an applicant to correct, disprove, or explain negative information that resulted in a denial;
 - Prequalify the applicant for other rental opportunities at the Landlord’s properties in the City of Portland for three months following the date the landlord approves the appeal; and
 - Waive the screening fee for 3 months following the application approval on appeal.

9) REASONABLE ACCOMODATIONS

Under fair housing laws, at any time during the application process, an applicant with a disability has the right to make a Reasonable Accommodation request to the landlord in relation to their housing application.

Who is considered to be a person with a disability according to fair housing laws?

- Disability under state and federal fair housing law means a “physical or mental impairment that substantially limits an individual in one or more major life activities.”
- Examples of major life activities include, but are not limited to: seeing, walking, climbing, standings, lifting, hearing, speaking, breathing, thinking, concentrating, interacting with others, learning, and self-care.
- Alcoholism or a history of drug use/addiction is considered a disability. However, **current users** of illegal drugs are not considered to be disabled.

What is a reasonable accommodation and how does it relate to an application for housing?

- The laws that make housing discrimination illegal require landlords to make reasonable changes or “accommodations” in rules, policies, practices or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common area.
- In other words, fair housing laws require that landlords make reasonable changes so that applicants with disabilities can get into housing if a rental barrier is caused by a disability.
- Some examples of when an applicant may be entitled to make a Reasonable Accommodation:
 - An applicant has a criminal conviction that is related to their past drug addiction, as long as the applicant is no longer using drugs.

- An applicant has an eviction on their record that was due to conduct that occurred before they were taking medication for their mental health impairment
- An applicant has bad credit from the time they were unable to work due to their disability but before they were awarded disability benefits.

Applicants can make a reasonable accommodation request at any time in the application process, but it is best to make the request in writing at the same time of the application. For more information on how to make a Reasonable Accommodation request, see Legal Aid's Renter's Handbook on Reasonable Accommodation located at:

<https://www.oregonrentersrights.org/disability>

10) RIGHTS FOR SURVIVORS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING

Under state law, survivors who have rental barriers that are the result of domestic violence, stalking, or sexual assault have the right to have a landlord overlook those barriers.

- Applicants who are survivors can ask a landlord to overlook a rental barrier that is caused by prior abuse at any time in the application process, but it is best to make the request in writing at the same time of the application.
- A survivor can use the enclosed form letter for submitting supplemental evidence. It is best to include information that shows that you are a survivor and that shows that your rental barrier is related to abuse.
- Some examples of additional evidence may be:
 - A copy of a protective order
 - A letter from a domestic violence advocate
 - A police report
 - A copy of a criminal conviction of the abuser

Letter of Explanation with Supplemental Evidence

Address

Date

RE: Application to _____[address]
Supplemental Evidence

Dear [Landlord/Property Management Name],

I am interested in your rental unit located at _____[address]. It looks like a great property and I believe I will be a good fit for you as a tenant. I would like to give you some more information about issues in my past and provide you with Supplemental Evidence that will help you decide on my rental application.

(Each barrier will have its own paragraph. The paragraph will have three parts.)

When you run my application you will find _____[list first barrier].

Since that time, I have _____[add in what you're doing or what you've done to address that barrier].

To verify this, enclosed please find the following Supplemental Evidence _____
_____ [list the document you have included to show your progress]
or the name and contact information of the person that can verify this].

(Repeat this paragraph for as many barriers as you have)

As a renter, you will find I am _____[list the qualities you have that will make you a good renter].

Thank you for your time and consideration.

Sincerely,

[Sign]

[Your name printed]

Reasonable Accommodation Request

Date: _____

To: _____

From: _____

RE: Reasonable Accommodation Request

Dear [Landlord/Property Management Name],

I, _____, am a person with a disability as defined by the Fair Housing Act. I am requesting a reasonable accommodation under the Fair Housing Act due to a disability.

When you process my application to live at _____ [address], you will see that I have certain barriers in my background. My barriers are _____ [outline what the barriers are]. These barriers are the result of a disability because

[explain how disability is related to barrier]. The specific accommodation I am requesting is that you overlook these barriers and admit me to live at _____ [address].

I appreciate your consideration of this requested accommodation and ask for a written response within 10 days from the date of this letter. If I do not receive a reply, I will assume that you have denied my request.

Sincerely,

_____ [Sign]

_____ [Your name printed]

Sample Verification Letter for Reasonable Accommodation

Date: _____

Name of Professional (therapist, physician, psychiatrist, rehabilitation counselor, or other person with knowledge of your disability)

Address

City, State Zip

Dear _____(Landlord /Housing Provider):

_____ (full name of tenant) is my _____ [patient/ client/ parishioner, other indication of how this person knows you and your disability], and has been under my care since _____. I am familiar with their history and with the functional limitations imposed by a disability. [Your name] meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

As a reasonable accommodation _____ (name of tenant) will need:

_____.

(give detail of requested accommodation—examples: 1. overlook prior eviction on record because eviction happened during a time when patient was unmedicated and applicant is now in treatment and following treatment plan, 2. overlook prior conviction on record because conviction was caused by applicant’s drug addiction and applicant is now clean).

We are requesting this accommodation in order to help alleviate the symptoms of my patient’s disabilities and to enable them to have equal access to enjoy their housing.

Sincerely,

Name of Professional

(Contact Information)

LEGAL HELP

- The Portland Housing Bureau's Rental Services Office may be able to provide more information about any issues you experience with applying for housing in Portland. They can be reached at (503) 823-1303 or their website at <https://www.portlandoregon.gov/phb/72622>.
- For free legal assistance for low-income individuals, you can call Legal Aid Services of Oregon. In Multnomah, Clackamas, Hood River, Wasco, or Sherman county, you can call Legal Aid at 503-224-4086. For resources for other Oregon locations, visit <http://oregonlawhelp.org//resource/oregon-legal-aid-offices>
- Legal services are only available to people whose income is at or below 125% of the federal poverty level, which you can check at <https://aspe.hhs.gov/poverty-guidelines>. (For one person in 2020, the income limit is \$15,950 per year.) However, you may be able to qualify if you have other expenses. If you qualify for public assistance – SNAP, TANF, or SSI – you probably qualify for legal services.
- If your income is too high to qualify for legal services, you can contact the Oregon State Bar's lawyer referral service at 800-452-7636.
- A list of attorneys who represent low income tenants is included at the end of this packet.
- If you decide to bring a claim without an attorney, you may bring your claim in Small Claims Court. Legal Aid has a handbook on representing yourself in Small Claims Court. You can find it on: www.oregonrentersrights.org
- There is also information and assistance available to help you represent yourself in court. For more information, go to your county law library or visit <http://www.courts.oregon.gov/help/Documents/civiltrialbrochure.pdf>

LIST OF LANDLORD-TENANT ATTORNEYS

Jane L. Moisan
971.258.1292
PeoplesLawProject@gmail.com

David Lawrence
503.295.3651
dlawrencelegal@gmail.com

Troy Pickard
503.592.0606
troy@portlanddefender.com

Scott Staab
503.929.9262
skstaab@yahoo.com

Ann Witte
503-477-4690
awitteatty@gmail.com

Harry Ainsworth
503-417-0476
hainsworth03@yahoo.com