



# VETERANS' JUSTICE PROJECT

*A Service of Metropolitan Public Defenders*

## **Practice Pointer: What can be considered in denying an application for housing in Oregon?**

**Date: 6 June 2014**

Colleagues:

We've recently had some issues come up about Oregon Landlords denying tenancy under unlawful bases. In January, the Legislature implemented some pretty significant changes to Oregon Landlord-Tenant Law. It is not surprising that some Landlords are not up to speed on the 1 January 2014 modifications to Chapter 90 of the Oregon Revised Statutes, but the matter has come up often enough where I thought it prudent to make a special mailer to our broader group, particularly since (a) I usually don't have visibility of rapid rehousing cases and (b) many of our Participants have significant barriers to getting into housing which might make the newly added Tenant protections under Oregon law relevant to you.

If an Oregon Landlord denies an application for tenancy, ORS 90.304 requires the Landlord to "promptly provide the applicant with a written statement of one or more reasons for the denial" if the Landlord charges an application fee or if the prospective tenant "makes a written request following the landlord's denial of an application." Denials cannot be for impermissible reasons.

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### **FIRST PRACTICE POINTER**

**Housing Advocates should request a written response in every case of tenancy denial, even if you know that the Participant has substantial barriers. You never know if the Landlord will either refuse to provide an explanation (giving me ammunition) or will provide an inapplicable one (giving me more ammunition). Your Participant has the right to a written explanation, don't surrender that right casually. Once you have the explanation, review it in light of the rules below. If it smells bad to you, feel free to consult with me about it.**

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ORS 90.303 discusses impermissible grounds for tenancy denial.

The law provides that Landlords cannot consider an eviction action if (a) the Tenant won, (b) the case was dismissed, or (c) if the eviction was "entered five or more years before the applicant submits the application." (If an eviction action is pending or has been settled but not yet dismissed, then we've got a more challenging case.)

In addition, "a landlord may not consider a previous arrest of the applicant if the arrest did not result in a conviction" or a pending criminal prosecution.

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The only criminal convictions that can be considered in evaluating a tenancy are “A drug-related crime;” “A person crime;” “A sex offense;” “A crime involving financial fraud, including identity theft and forgery; or” “Any other crime if the conduct for which the applicant was convicted or charged is of a nature that would adversely affect: (A) Property of the landlord or a tenant; or (B) The health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord’s agent.” If the Landlord is vague on what “criminal conviction” is the basis of his denial, then ask him to specify. The reporting agency may have only reported it as a “conviction,” in which case I may be able to force the guy into the tenancy unless the Landlord is willing to go and find the specific offense.

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## **SECOND PRACTICE POINTER**

**An Oregon Landlord cannot deny tenancy for an eviction more than five years old, an arrest that didn’t result in a conviction, or some convictions. The Landlord must specify what the grounds are for denial. Clearly, under ORS 90.303, denial based on a “criminal conviction” is going to be a no-go.**