

## Ask the Experts

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### Yes to Section 8

**Q:** My neighborhood is having problems with homeowners renting their properties out to Section 8 tenants. It seems like only three out of 10 of these tenants conduct themselves like adults. If we can obtain the votes necessary to prevent homeowners from accepting Section 8, do you know of any laws that may prevent us from enforcement? —*Hagerstown, Maryland*

**A:** The Fair Housing Amendments Act of 1988 (FHAA) prohibits discrimination in the provision of housing based on race, sex, age, familial status, and national origin. At one time the FHAA specifically barred landlords from discriminating against people holding Section 8 or other housing-assistance vouchers. This provision has since been repealed, but courts in many jurisdictions continue to recognize "discrimination based on source of income" (as it's known), especially since some state statutes and local ordinances still specifically forbid such action. Prohibiting owners from renting their units to Section 8 tenants, even by amendment to the covenants or bylaws, is virtually certain to be deemed discriminatory by any court reviewing the matter. For one thing, housing-assistance programs apply to families, so a court could easily find that the discrimination is based on familial status. Similarly, the discrimination could be found to be based on race, national origin, or sex if a significant number of program participants are minorities or single mothers. In addition, prohibiting owners from renting to Section 8 participants is certain to be deemed against public policy, because the purposes of the program—helping low-income families find better places to live and creating mixed-income neighborhoods—would be thwarted.

A better alternative is to control behavior on the other end. Your association may wish to adopt measures requiring the use of lease addendums that make the association a third-party beneficiary of the lease between a landlord and *any* tenant, Section 8 or otherwise. Such an addendum might specifically require tenants to adhere to association rules and regulations and empower the association to require a landlord to evict any tenant who violates the rules. Problem tenants—of any ilk—could thus be dealt with in a non-discriminatory manner.

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