

Kimball, Tiley & St. John LLP

Application Screening Fees for California Residential Landlords

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California residential application fees are governed by California Civil Code §1950.6. The full text of that code section is attached to this article. A discussion of the law is below.

Maximum Application Screening Fees. When Civil Code §1950.6 was first enacted, owners and managers could not charge more than \$30 per applicant for an application fee. The law allows the landlord to increase the \$30 charge annually according to the consumer price index (CPI). In 2019, the maximum statutory amount is \$50.94.

To avoid unfair business practice claims, conservative property owners and managers set their application fees at the lesser of the statutory maximum or their actual screening costs. An application screening fee should not be charged if the property owner or manager does not incur any screening costs (i.e. when no credit report is run or if the owner or manager did not perform a personal reference check or other processing).

Application Screening Fees When No Unit is Available. Unless the applicant agrees in writing, owners and managers cannot charge an application screening fee at all if they do not have a current vacancy or do not anticipate vacancies becoming available within a reasonable period of time. *Civil Code §1950.6(c). The intent of the law is to prohibit any owner or manager from charging application screening fees when there are no units currently available to rent. But, if the applicant agrees in writing to have the report run when there are no current vacancies or no vacancies available within a reasonable period of time, an application screening fee may be charged. Otherwise, alternatives are to run credit reports and process the application at the landlord's expense or wait to charge the fee and process the application when the applicant is at the top of the waiting list.*

Charging Application Fees for Husband and Wife. Treating married couples differently than single persons is discriminatory in California. Each adult applicant should complete a rental application and should be charged the same fee. The monetary limit is per person regardless of the relationship between the parties.

Information to Include on the Receipt for the Application Fee. The applicant must be given an itemized receipt showing the *actual charge* for the credit report and the "soft costs" for the time and expense incurred by the owner/ manager for obtaining, processing and verifying the application (i.e. including past rental history, current employment, bank accounts, etc.). *Civil Code §1950.6(d) and (f).* If the total cost is less than the fee collected, the remaining sum should be returned to the applicant. Many application forms and some holding deposit agreements contain a receipt for the application fee, so often the application fee receipt is provided on either the application form or the holding deposit agreement form.

If an Application Screening Fee is Received but the Application is Denied before Completing the Entire Application Screening Process. Return the portion of the application screening fee not used. *Civil Code §1950.6(e).* Note: If it is a company's practice to stop the screening process at the point at which disqualifying information is obtained, this policy should

be applied equally and ideally should be in writing. To avoid a potential fair housing violation, always go through the same screening process for every applicant.

If the Resident Requests a Copy of the Consumer Credit Report. If requested, the landlord must provide the applicant with a copy of the applicant's consumer credit report. *Civil Code §1950.6(f) shown below.*

If you have questions regarding this article, please contact Jamie Sternberg at (800)574-5587 or jamie.sternberg@kts-law.com.

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California Code of Civil Procedure §1950.6

(a) Notwithstanding Section 1950.5, when a landlord or his or her agent receives a request to rent a residential property from an applicant, the landlord or his or her agent may charge that applicant an application screening fee to cover the costs of obtaining information about the applicant. The information requested and obtained by the landlord or his or her agent may include, but is not limited to, personal reference checks and consumer credit reports produced by consumer credit reporting agencies as defined in Section 1785.3. A landlord or his or her agent may, but is not required to, accept and rely upon a consumer credit report presented by an applicant.

(b) The amount of the application screening fee shall not be greater than the actual out-of-pocket costs of gathering information concerning the applicant, including, but not limited to, the cost of using a tenant screening service or a consumer credit reporting service, and the reasonable value of time spent by the landlord or his or her agent in obtaining information on the applicant. In no case shall the amount of the application screening fee charged by the landlord or his or her agent be greater than thirty dollars (\$30) per applicant. The thirty dollar (\$30) application screening fee may be adjusted annually by the landlord or his or her agent commensurate with an increase in the Consumer Price Index, beginning on January 1, 1998.

(c) Unless the applicant agrees in writing, a landlord or his or her agent may not charge an applicant an application screening fee when he or she knows or should have known that no rental unit is available at that time or will be available within a reasonable period of time.

(d) The landlord or his or her agent shall provide, personally, or by mail, the applicant with a receipt for the fee paid by the applicant, which receipt shall itemize the out-of-pocket expenses and time spent by the landlord or his or her agent to obtain and process the information about the applicant.

(e) If the landlord or his or her agent does not perform a personal reference check or does not obtain a consumer credit report, the landlord or his or her agent shall return any amount of the screening fee that is not used for the purposes authorized by this section to the applicant.

(f) If an application screening fee has been paid by the applicant and if requested by the applicant, the landlord or his or her agent shall provide a copy of the consumer credit report to the applicant who is the subject of that report.

(g) As used in this section, "landlord" means an owner of residential rental property.

(h) As used in this section, "application screening fee" means any nonrefundable payment of money charged by a landlord or his or her agent to an applicant, the purpose of which is to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property.

(i) As used in this section, "applicant" means any entity or individual who makes a request to a landlord or his or her agent to rent a residential housing unit, or an entity or individual who agrees to act as a guarantor or cosignor on a rental agreement.

(j) The application screening fee shall not be considered an "advance fee" as that term is used in Section 10026 of the Business and Professions Code, and shall not be considered "security" as that term is used in Section 1950.5.

(k) This section is not intended to preempt any provisions or regulations that govern the collection of deposits and fees under federal or state housing assistance programs.