

The Minneapolis Civil Rights Ordinance (MCRO) Title 7, section 139.40(e)(1) creates an affirmative defense if the requirements of the public assistance program pose an undue hardship to a landlord.

If a Complainant establishes a prima facie case of discrimination based upon participation in a public assistance program, the Minneapolis Department of Civil Rights (MDCR) will then analyze whether participation in the public assistance program would pose an undue hardship, **if** this defense has been raised by the landlord. Landlords may raise an undue hardship defense as part of their response to a Charge of Discrimination. This document specifically addresses the undue hardship defense.

Pursuant MCRO section 139.20, an undue hardship is “a situation requiring significant difficulty or expense when considered in light of a number of factors to be determined on a case-by-case basis.¹ These factors include, but are not limited to:

1. The nature and net cost of complying with any requirement of a public assistance program, taking into consideration existing property management processes;
2. The overall financial resources of the landlord, taking into consideration the overall size of the business with respect to the number of its employees, and the number, type, and location of its housing stock; and
3. The impact of complying with any requirement of a public assistance program upon the business and dwelling.²

Undue hardship is an affirmative defense. This means that landlords have the burden of asserting the defense and the burden to provide sufficient evidence that compliance with the Ordinance would impose an undue hardship. Complainants do not have the burden of proving the absence of an undue hardship.

ASSERTING AN UNDUE HARDSHIP DEFENSE

1. How can a landlord raise an undue hardship defense?

The affirmative defense may be raised when the landlord in good faith believes that complying with the requirements of a public assistance program poses significant difficulty or expense. A landlord must raise an undue hardship defense in its formal response, called a Position Statement, within twenty (20) days of service of the Charge (the Complainant’s formal complaint). The Position Statement should include all of the landlord’s defenses, including but not limited to undue hardship. A landlord may not preemptively request a determination of an undue hardship prior to being served with a Charge of Discrimination by the Minneapolis Department of Civil Rights (MDCR).

¹ MINNEAPOLIS MINN., CODE OF ORDINANCES Ch. 139, §139.20 (2017).

² *Id.*

Example A: Landlord is served with a Charge of Discrimination alleging that it illegally refused to accept a tenant because the potential tenant participated in the Section 8 voucher program. In response, the landlord submits a Position Statement specifically raising undue hardship as an affirmative defense.

Example B: A landlord feels that renting to Section 8 tenants would pose significant difficulty or expense. Landlord then requests that MDCR grant him a waiver from accepting future Section 8 applicants. The MDCR would **NOT** consider such a request. The MDCR does not issue advisory opinions on whether an undue hardship may exist.

2. What will the MDCR do when a landlord raises an undue hardship defense?

Assuming that Complainant has met their burden of establishing a prima facie case, the MDCR will then review the undue hardship defense on a case-by-case basis, taking into account the factors outlined in MCRO section 139.20. The landlord carries the burden of clearly identifying the burdens posed by the requirements of the public assistance program to its specific business operations.

3. May the MDCR ask the landlord for documentation to substantiate the hardship posed by the requirements of the public assistance program?

Yes. In evaluating an undue hardship defense, MDCR may request that the landlord provide additional documentation through a Request for Information (RFI). As part of the RFI, MDCR may request financial statements or any other evidence it may deem necessary in reaching an informed decision.

The landlord is not required to provide supplemental documentation as part of their initial assertion of the defense or in response to an RFI. However, failure to provide supplemental evidence may result in the landlord failing to meet its burden of establishing the defense.

In the event that the requested documentation is incomplete or insufficient, the MDCR may provide the landlord an explanation of the deficiency and grant an opportunity to cure it. Documentation is insufficient if it does not adequately specify the nature of the hardship and explain the need for an exception.

4. How quickly will the MDCR make a determination on an undue hardship defense?

Typically, case investigations take approximately 270 days. The defense of undue hardship is not evaluated separately from the merits of the case. In reaching its determination, the MDCR will evaluate all claims and defenses raised.