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New York Appellate Ruling Reshapes Section 8 Housing Obligations

April 29, 2026

A recent decision by the New York Appellate Division, Third Department, has unsettled the legal foundation of the state's Section 8 housing voucher program, signaling that New York state and New York City may need to rethink the underlying Section 8 legal framework to avoid the Fourth Amendment issues cited by the court. In the immediate term, landlords in New York state may elect, without compulsion, whether or not to participate in the Section 8 program.

In *People v. Commons West, LLC*, the court ruled that New York may not require landlords to accept Section 8 housing vouchers through its source-of-income discrimination law. The case came to the forefront when the New York Attorney General brought enforcement proceedings against a landlord that allegedly refused to rent to prospective tenants using Section 8 vouchers. As such, the court was asked to determine whether the law effectively forces landlords to participate in the Section 8 program and, if so, whether that requirement violates the Fourth Amendment of the United States Constitution regarding unlawful searches.

The court focused on the requirements of participation in the Section 8 program. A landlord that accepts vouchers is required by law to comply with a range of program conditions, including allowing government inspections of the landlord's apartment units (to confirm whether the apartments satisfy the Section 8 housing quality standards) and providing government authorities access to the landlord's financial and rental records (to confirm whether the rent charged by the landlord is reasonable). The court viewed these requirements as effectively forcing landlords to consent to government searches without a warrant. Because the housing anti-discrimination laws effectively prohibit a landlord from refusing to participate in the Section 8 housing program, a landlord is effectively required to participate in the Section 8 program. The court found that the requirement to participate in the Section 8 housing program, together with the inability to refuse warrantless government inspections of the landlord's property and records, constituted a violation of the Fourth Amendment.

In its ruling, while the court acknowledged the need for many tenants to have access to affordable housing, the court altered the Section 8 process to resolve the violation of the Fourth Amendment that existed pursuant to the current Section 8 program by, as mentioned above, permitting a landlord to elect, without compulsion, whether or not to participate in the Section 8 program.

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