

Criminal Record Tenant Screening: How Can I Ensure I'm Following the Fair Housing Act as a Landlord?

As a landlord, it can be challenging to find an applicant who you feel is trustworthy while also adhering to the Fair Housing Act (FHA)¹ and HUD guidelines. While a criminal record is not a protected class under the FHA, HUD acknowledges that people of color most often face housing barriers due to a criminal record, and race is a protected class. Applicants who feel discriminated against can easily submit a claim online, and citations amount to tens of thousands of dollars.

To protect from inadvertently or unconsciously discriminating against an applicant, consider the following steps:

- **Establish a written tenant screening criteria form.** This form acts as a checklist for reviewing an applicant. Using a list of all screening requirements streamlines the process and prevents subjective decisions. Share with applicants before they apply. Keep in mind the FHA does not require a landlord to screen for any record. Click [here](#) to view an example screening policy.
- **Avoid a ban on all criminal records.** Blanket bans are a violation of the FHA, and private real estate companies have been sued as a result of such policies.²
- **Do not consider arrest records.** HUD has ruled the use of arrest records to deny an individual from housing as a violation of the FHA, as it disproportionately affects people of color.³ Consider contacting your screening provider to ask them to restrict records to those that can be legally used in your decision.
- **Determine whether a screening policy or practice relates to being a good tenant before adopting.** Research shows that certain convictions⁴ have no effect on fulfilling tenant obligations, while others may require an individualized review of circumstances to determine whether the offense was directly related to the applicant's ability to meet tenant obligations. Click [here](#) to view an example screening policy with individualized review.
 - To meet HUD standards, landlords must be able to demonstrate that their policy accurately distinguishes between criminal conduct that represents a risk to resident safety and property, and criminal conduct that does not. The landlord must prove a substantial, legitimate, nondiscriminatory interest for a policy that denies individuals, and that alternatives do not exist.
 - If an applicant's criminal record is related to a disability (including substance abuse if the applicant is now in recovery), landlords should grant reasonable accommodation of the conviction under FHA. Learn more [here](#).

¹ Under the FHA, it is illegal to discriminate against applicants because of their race, color, religion, ancestry, national origin, disability, familial status, and sex. In [Philadelphia](#), this is extended to sexual orientation, domestic/sexual violence survivor status, ethnicity, gender identity, age, marital status, retaliation, and source of income. Landlords cannot refuse housing, make housing unavailable, set different terms, or refuse to make reasonable accommodations because of these classes. This applies to advertising practices as well.

² See *Fortune Society, Inc. v. Sandcastle Towers Housing Development Fund Corp.* (E.D.N.Y.)

³ See [HUD 2016 Guidance](#)

⁴ [Warren \(2019\)](#) finds that marijuana possession, minor drug offenses, prostitution, alcohol-related offenses, and minor public order offenses have no effect on an applicant's ability to meet tenant obligations. A prior criminal offense is insignificant after two years for a misdemeanor and five years for a felony.

- Philadelphia's [Fair Practices Ordinance](#) includes survivors of domestic violence as a protected class. If an applicant's criminal or eviction record is related to being a survivor of domestic violence, landlords should grant reasonable accommodation to otherwise qualified applicants.
- **If you choose to ask applicants for criminal and eviction record information, first consider other qualifications.** There are various more relevant criteria to consider when evaluating an applicants' qualifications for housing. Consider other criteria such as employment, income, and current housing situation before you assess the relevance, if any, of the applicants' criminal record.
- **Ask for an applicant's signature before running a background check.** Include a signature line in your application to attain applicant's consent, as required by the Fair Credit Reporting Act. Ask for an applicant's middle name to increase the accuracy of a background screening report.
- **Allow for the correction of inaccurate and irrelevant background checks.** Criminal and eviction records are quite often inaccurate (ex: identities are mixed up) and incomplete (ex: charges are incorrectly written). It may be a violation of the Fair Housing Act to consider as grounds for denial: arrests not followed by conviction, dropped charges, and convictions that have been sealed, dismissed, expunged, or statutorily eradicated.
- **Give applicants an opportunity to share their story and explain any positive changes since the offense prior to any denial.** If an applicant does not pass the tenant screening criteria because of a prior criminal record, provide them with an opportunity to respond, and consider reevaluating them based on their explanation.
 - HUD urges housing providers to consider the seriousness and nature of the offense, the amount of time that has passed since the offense, and other factors that may include but are not limited to participation in the community, rehabilitative efforts, and other positive changes the person has made in their life since the offense.
- **Apply screening criteria consistently.** For example, do not refuse to consider a hispanic applicant who has a criminal record if you consider a white applicant with a similar criminal record.
- **Tell the applicant exactly why they are being denied.** If you are denying an applicant based on information found on a consumer report (includes credit report, eviction history, criminal record), the Fair Credit Reporting Act requires you to send an adverse action notice to the applicant. The adverse action notice may address the denial or may ask the applicant for a co-signer on the lease, a larger deposit, or higher monthly rent. The notice should at minimum provide the applicant with the contact information of the reporting agency and the reason for the denial.

To read HUD's 2016 guidance, click [here](#).

To learn more best practices from the National Association of Realtors, click [here](#) and [here](#).

For an example screening policy from Sterling Glen Apartments, click [here](#).

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