Fair Housing and Criminal Record Screenings

A Fairfax County, Va., publication

Overview

The Fair Housing Act prohibits discrimination on the basis of seven protected classes including: race, color, national origin, sex, religion, familial status, and disability. Many housing providers screen prospective tenants' criminal histories when deciding whether to rent to them. These checks – even if they seem fair or neutral – often disqualify people of color and people with disabilities from housing opportunities at disproportionately high rates, and may constitute illegal discrimination.

Disparate Impact

Nationally, people of color and people with disabilities are arrested, convicted, and incarcerated at disproportionately high rates. Because of this, some policies enacted by housing providers might result in discrimination, even if they seem neutral and are not designed to discriminate.

Let's say a housing provider states on their website that they won't rent to anyone with a felony conviction. This policy does not seem to mention any protected class, but due to the racial and ethnic disparities present at every level of the criminal justice system, this type of a blanket ban will disproportionately limit housing opportunities for Black and Latino applicants. Insubstantial or illegitimate policies that restrict housing access on the basis of criminal history may violate the Fair Housing Act when such policies have a disparate impact on members of a protected class.

Discriminatory Intent

Sometimes, a housing provider might use a criminal record check as a pretext to intentionally discriminate against an applicant.

If a property manager discourages a Black prospect from applying, saying that her criminal history would likely lead to a rejection, and then encourages a White applicant with a comparable criminal history to apply, that would likely constitute illegal race-based discrimination under the Fair Housing Act.

Because these checks are often inaccurate, incomplete, and have no relationship to whether someone will be a good tenant, the U.S. Department of Housing and Urban Development (HUD) recommends that housing providers not screen prospective tenants' criminal histories.

Best Practices

HUD has provided strategies for housing providers who still wish to utilize criminal background checks in a less discriminatory manner. As a best practice, providers should rely on criteria like the applicant's ability to pay rent, rental history, or personal references.

Housing providers who choose to screen applicants' criminal backgrounds should:

- Have a written policy that is readily available and serves to protect residents' safety or property.
- Conditionally accept the prospect's application before screening.
- Consider whether a conviction occurred – an arrest is not an acceptable reason to deny a person housing.
- Consider the nature, severity, and timeline of any convictions as well as any rehabilitation efforts.
- Avoid third-party screening companies that may use biased algorithms.
- Allow applicants to correct false information.
- Consider any reasonable accommodation requests related to the screening process.

Fair Housing and Criminal Record Screenings

A Fairfax County, Va., publication

Contact Us

Housing discrimination is illegal. To report possible housing discrimination, you can contact the Fairfax County Office of Human Rights and Equity Programs or Equal Rights Center.

Fairfax County Office of Human Rights and Equity Programs:
703-324-2953 | TTY 711
www.fairfaxcounty.gov/humanrights/

Equal Rights Center:
202-234-3062
www.equalrightscenter.org

To request this information in an alternate format, call the Fairfax County Office of Human Rights and Equity Programs, 703-324-2953 | TTY 711.

The Fairfax County Office of Human Rights & Equity Programs produced this publication in conjunction with The Equal Rights Center, a national nonprofit organization dedicated to advancing civil rights for all. The work that provided the basis for this publication was supported by funding under a grant from the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The authors and publishers are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the federal government.

Published February 2023.