

## Tenant Selection: Use of Criminal Records by Landlords

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### Issue

Summarize laws concerning landlords' use of criminal records in tenant selection decisions.

(Determining whether a landlord's consideration of a criminal record resulted in a legally defensible outcome generally requires a legal opinion, which the Office of Legislative Research cannot provide and this report should not be considered one.)

### Summary

Generally, federal and state laws give public and private landlords discretion to reject applicants with a criminal record (i.e., a conviction). But under federal and state statutes and case law, landlords cannot use an applicant's criminal record as a pretext for rejecting him or her for an illegal reason, such as on the basis of race or familial status.

And while public and private landlords generally have the discretion to determine which applicants to rent to, guidance from the federal Department of Housing and Urban Development (HUD) says that landlords may violate the federal Fair Housing Act (FHA) if they refuse, as a general policy, to rent to individuals with criminal records. Instead, landlords must make an individualized assessment that takes into account the nature, severity, and age of convictions ([HUD's April 4, 2016 Guidance](#)). Under the FHA, if an applicant's criminal record is directly related to a disability (e.g., former drug addiction), a landlord must consider providing a reasonable accommodation (e.g., ignoring the criminal record stemming from the disability) ([42 U.S.C. § 3604](#)).

Laws and policies applicable to landlords administering federally or state-assisted housing may provide additional guidance to landlords, as described below. (Such landlords include housing authorities and developers receiving government assistance to build affordable housing.)

## **FHA**

Title VIII of the Civil Rights Act of 1968 is commonly known as the FHA. The FHA prohibits a broad range of practices that discriminate against individuals on the basis of color, disability, familial status, national origin, race, religion, or sex (collectively, “status”) to ensure equal access to housing opportunities. Under the FHA, it is unlawful for direct providers of housing, such as landlords and real estate companies, as well as other entities, such as municipalities, banks, and homeowners' insurance companies, to discriminate in the sale or rental of, or otherwise make unavailable or deny, a public- or privately-owned dwelling because of the status of the renter or buyer. (Connecticut law includes fair housing protections that complement the FHA (see [CGS § 46a-64c](#).)

The FHA applies to public and private landlords, but it does not apply to (1) owner-occupied multifamily housing with four or fewer units and (2) certain single-family house rentals or sales conducted by the owner ([42 U.S.C. § 3603\(b\)](#)). The FHA allows religious organizations and societies to limit occupancy to members when renting, selling, or allowing the use of dwellings for non-commercial purposes. It similarly authorizes private clubs to limit occupancy to, or give preference to, members when providing accommodations for non-commercial purposes ([42 U.S.C. § 3607](#)).

### ***Prohibited Discrimination***

In addition to prohibiting intentional discrimination on the basis of an individual's protected status, the FHA also protects individuals who (1) are members of a class that are disproportionately impacted by a facially neutral policy and (2) have a perceived or actual disability.

*Disparate Impact.* HUD's April 2016 guidance lays out the requirements for making a disparate impact claim under the FHA. In this context, the plaintiff in a disparate impact claim alleges that a facially neutral tenant selection practice (e.g., excluding anyone with a felony record) has a disproportionate impact on a class of individuals with a protected status. It then becomes the landlord's responsibility to prove that the practice is necessary to serve a substantial, legitimate, nondiscriminatory interest. If the landlord can meet this burden, then it becomes the plaintiff's responsibility to show that the interest could be served by implementing a practice that has a less discriminatory effect.

Generally, to defend a disparate impact claim based on the use of criminal records in tenant selection, landlords must show that they made an individualized assessment that takes into account the nature, severity, and age of convictions. This type of assessment ensures that landlords exclude only those individuals that pose a demonstrable risk to property or resident safety. However, the FHA does not prohibit landlords from excluding individuals who are convicted of certain drug manufacturing or distribution crimes, even if such an exclusion has a disparate impact on a protected class.

*Disability Discrimination.* The FHA also establishes safeguards for individuals who have a physical or mental impairment that substantially limits one or more major life activities; have a record of such an impairment; or are regarded as having such an impairment. It is illegal for a landlord to refuse to rent to an individual simply because he or she has a disability. Additionally, the law requires landlords to provide reasonable accommodations to individuals with a disability to ensure that they have an equal opportunity to use and enjoy a dwelling (i.e., make changes to policies, practices, and services). A reasonable accommodation might be warranted if an individual's criminal record is the result of his or her disability (e.g., making an exception to a tenant screening policy that bars applicants based on certain criminal histories).

## **Federal and State Housing Programs**

There are numerous federal housing assistance programs, including HUD's public housing and housing choice voucher programs, the Internal Revenue Service's Low-Income Housing Tax Credit Program, and the Department of Interior's historic preservation programs. Generally, entities responsible for administering federally assisted housing programs are prohibited from serving individuals currently listed on a sex offender registry (the federal registry or any state's). Regulations applicable to specific programs may additionally prohibit individuals with certain criminal histories from participating in a program. Prohibitions related to convictions for violent or drug-related crimes are most common (see, e.g., [24 C.F.R. § 960.204](#) (applicable to certain project-based public housing) and [§ 982.553](#) (applicable to Section 8)). Administering entities, such as a housing authority or nonprofit developer, can formulate additional tenant-selection criteria, as long as they establish a formal policy and comply with fair housing and discrimination laws.

On the state level, there is also a variety of housing assistance programs, including those overseen by the Department of Housing and the Connecticut Housing Finance Authority. Administering entities for these programs are generally required to formulate and submit to the overseeing agency for approval their tenant selection policies. But state law does not establish any mandatory disqualifications based on criminal history. Generally permissible disqualifications are specified for certain programs (see, e.g., [CGS § 8-45a](#) (applicable to project-based public housing) and chapter 15 of DOH's 2015 [Administrative Plan](#) for the Rental Assistance Program).

Because selection policies vary widely at both the federal and state level, individuals should obtain a copy of the policy for each project or program they are interested in applying for.

## Resources

- For further information on the FHA, see HUD's [website](#)
- For help finding emergency housing or obtaining information on housing assistance programs, see the state's 2-1-1 [website](#) and [www.cthousingsearch.org](http://www.cthousingsearch.org)
- For information on fair housing, housing discrimination, and identifying suitable rental housing, see the Connecticut Fair Housing Center's [website](#) and [Renters' Guide](#)
- For information on filing housing discrimination complaints, see the Connecticut Commission on Human Rights and Opportunity's [website](#)
- For information on reasonable accommodations related to criminal history, see these September 2016 [slides](#) prepared by the Western Center on Law and Poverty and the National Housing Law Project

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