



## Fair Housing Best Practices for Landlords and Property Managers

### Tenant screening policies

#### Criminal history:

Tenant screening policies that automatically deny housing to applicants with a criminal history may violate the Fair Housing Act (FHA) in several ways. To avoid violating the FHA, when a housing applicant has a criminal record, property managers and landlords need to conduct an individualized assessment of the applicant's criminal history rather than rejecting them outright.

It is a best practice to: (1) limit the screening or "lookback" period to no greater than the past 5 years, since studies have shown that the risk of recidivism declines over time; and (2) consider only felonies that involve crimes against people (such as assault and battery, sexual assault and domestic violence), crimes against property (such as arson, burglary and vandalism) and crimes against society (drug or alcohol-related offenses or those in which firearms were used). Misdemeanors, parking tickets or arrests that did not result in conviction should **not** be considered. Where an applicant has a criminal conviction for a felony that occurred during the "lookback period", the application should be subject to "individualized review." This review is where the property manager or landlord considers the nature and severity of the crime, how long ago it occurred, and mitigating circumstances – such as the age and circumstances of the applicant at the time of the felony and changes in his or her behavior since then. Applicants should be given the opportunity to submit letters of recommendation, diplomas/certificates, and/or other evidence of subsequent good behavior. Adopting – and adhering to – a tenant screening policy that meets the foregoing criteria is the best way for property managers and landlords to avoid liability under FHA.

#### SSN/ITIN:

The Fair Housing Act may offer protections for tenant applicants without an SSN. While some affordable housing programs are not available to people without a Social Security Number (SSN), this is not the case for the Low-Income Housing Tax Credit Program (LIHTC). For properties financed with LIHTC and with no other funding restrictions, it is best practice to ask tenant applicants for *either* a SSN *or* an Individual Taxpayer Identification Number (ITIN). You can also develop policies to ask for alternative documents for people such as temporary visa holders.

#### Eviction history:

Former evictions can follow a person for life, from as far back as childhood. If screening for eviction filings/judgments against an applicant, consider using records from no longer than the last 4-5 years. Ideally, you will exclude eviction records from the period of the COVID-19 pandemic when many renters were struggling through no fault of their own. Unless the eviction was for one of the aforementioned criminal issues, many tenants are just looking for a safe, healthy, and affordable place to live. In addition, an applicant's status as a survivor of domestic violence, sexual assault, etc. cannot, under the Violence Against Women Act (which applies to most affordable housing programs, including LIHTC), be used against a potential tenant to deny admissions. It is possible that a prior eviction (especially from non-subsidized housing) could be related to being a survivor of violence, so property managers should ensure that this is not the case.

### Credit history:

Do not immediately deny an applicant who failed to pay rent or utility bills during the COVID-19 crisis. There were many issues with the rollout of the federal emergency rental assistance program that did not provide enough funds for each renter and many administrative hiccups were experienced nationwide. The vast majority of people experiencing issues during this time were experiencing them due to no fault of their own. In addition, debt is frequently a tool used by abusers in domestic violence situations. Denying admission based on debt due to being a survivor of domestic violence could put you in violation of VAWA.

### Rental references:

Consider documenting how a rental reference will be used and what information may result in an application being denied.

### Denials:

Consider providing written explanations to tenants as to why their application was denied to help tenants further their search for housing.

### Other Best Practices:

- Eliminate application fees or charge on a sliding scale basis depending on a tenant applicant's income.
- Do not accept applications when no units are available.
- Share information with tenants about their rights under the PA Landlord-Tenant Act.
- Institute a late-fee policy that allows extra time for tenants to rectify arrears before filing for eviction. Build relationships with service providers who may be able to help tenants manage emergency expenses.
- Create a clear "self-help" policy that allows tenants to fix health/safety violations on their own that is deducted from their monthly rent to allow tenants to stay habitably housed while taking the burden of coordinating repairs off of the landlord/property manager's hands.
- Implement non-retaliation policies for when tenants need to report unsafe conditions in their unit if a certain amount of time has passed after bringing the issue up with the landlord/property manager.
- Include safeguards available to survivors of domestic violence, sexual assault, stalking, and dating violence such as: protection from eviction as a result of their status as a survivor, allow a lease to be split so they can remain in the home while removing the abuser, allowing a request to be transferred to a new unit without the abuser, and more.
- Only evict tenants when they have made a material non-compliance with the terms of the lease.

These best practices come from the [Philadelphia Renters Access Act of 2021](#), research from the [Urban Institute](#) on renter mobility and landlord-tenant policies, the [Shriver Center on Poverty Law research](#) on tenant screening reports, the [National Consumer Law Center](#) research on tenant debt issues, and [NOLO's](#) legal references and education.

## PA Example of Tenant Screening Policies that are Fair Housing Best Practices:

### High Involvement Management by Housing Development Corporation (HDC) Mid-Atlantic

HDC Mid-Atlantic (“HDC”) is well known in Pennsylvania for its screening standards and fair housing practices. In 2020, HDC overhauled its policy as part of their commitment to racial equity with the understanding of the fact that screening and management policies do not affect everyone equally. Their 56 properties span 12 counties in Pennsylvania, Delaware and Maryland. Like other developers and managers of affordable housing, they receive funding from multiple federal sources and are required to follow extensive rules and regulations for each – including the Department of Housing and Urban Development’s disparate impact guide. They are unusual in their adherence to the latter.

Their screening standards remove many barriers for applicants with credit history challenges and/or criminal convictions by reducing reasons for denial and by apply trauma-informed principles to the process. Rather than denying applicants and offering information about how to appeal the decision, HDC has established a Further Review process for applicants with credit or legal concerns that require more information for a decision to be made.

The Further Review process gives the applicant the opportunity to explain their situations further and provide a wide array of supporting documentation. These documents are reviewed by The Further Review Committee which conducts an individualized assessment based on the totality of the circumstances to determine whether an applicant or household member should be admitted or denied admission.

While this program was only instituted in January 2021, HDC Mid-Atlantic notes that the number of appeals has decreased and individuals who were approved through the Further Review Process were still in their homes 6 months after move in. Part of what makes this program successful in housing individuals who previously experienced barriers in obtaining safe affordable housing is that HDC Mid-Atlantic takes a very hands-on approach to management by developing relationships with residents and providing in-depth training to staff. Additionally, they provide additional services to residents, including their own eviction prevention program, food access, emergency fund, community building, and other programs.