

## **Does Your Screening Policy Comply With the Fair Housing Act?**

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Question: What Does the federal Fair Housing Act prohibit?

Answer: Title VIII of the Civil Rights Act of 1968 as amended prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status and disability. The Washington Law Against Discrimination also prohibits discrimination based on marital status and sexual orientation.

Question: Does this mean that I have to rent to someone just because they are disabled or of a different race than I am?

Answer: You are not required to rent to people who would not be good tenants, no matter who they are. However, you cannot make assumptions about people based on their race, color, religion, national origin, sex, familial status or disability.

Question: How can I ensure that my application and screening process doesn't violate fair housing laws?

Answer: Have a clear, written screening policy based on verifiable facts. Make sure all employees are aware of the policy, and apply it consistently to all applicants. If a criminal background check is performed on one applicant, it should be performed on all applicants.

Question: What should I do if there is more than one qualified applicant for a unit?

Answer: If you have clearly stated and well-thought out criteria, anyone who passes those tests should be a good tenant. If you try to pass judgment beyond these criteria, these judgments are likely to be subjective and may result in a discriminatory decision. Usually the best way to handle this decision is to select tenants by date of application. The first fully qualified applicant should be offered the unit.

Question: What if an applicant was born in another country and doesn't have a social security number?

Answer: There is no legal requirement that anyone, citizen or non-citizen, have a social security number. Similarly, there is no requirement that privately funded housing providers verify citizenship. Alternative documents can be accepted during the screening process to verify identity, rental history, and ability to pay. Contact us to obtain a list of alternative screening documents.

Question: Do individuals with disabilities get special treatment during the application process?

Answer: People with disabilities may have special needs during the application process, or to ensure they can use and enjoy a dwelling. The Fair Housing Act allows individuals with disabilities to request "reasonable accommodations," which are changes, adaptations or modifications of policies, programs or services, which allow them to use and enjoy a dwelling. Requests can be oral or written and do not need to refer to the Fair Housing Act or use the phrase "reasonable accommodation." A request can be made at any time, including at the time of application, and can be requested by someone acting on a disabled person's behalf. A request

must be granted when a person is disabled, there is a nexus between the disability and the accommodation requested, and the accommodation is reasonable.

Question: Can a disabled applicant request, as a reasonable accommodation, that negative history be overlooked?

Answer: The screening policy should initially be applied to all applicants uniformly. However, a disabled tenant may ask that negative aspects of their credit, rental or criminal history not be considered, if there is a direct relationship to the disability. Generally the tenant must provide some assurance that the behavior that led to the negative history will not be repeated. For example, if former problems were the result of an undiagnosed disability, an applicant could provide assurances that he or she will be a good tenant by providing third party verification from a treating physician that the applicant is now receiving treatment that modifies behavior or symptoms associated with the disability.

Question: How do income requirements apply to disabled individuals on fixed incomes?

Answer: Such policies can have a disparate impact on individuals with disabilities who are often on fixed incomes and unable to meet income to rent ratios. Similarly, disabled applicants on SSI cannot meet criteria requiring that an applicant's income be garnishable. Such policies possibly constitute violations of the Fair Housing Act and should at least be waived as a reasonable accommodation for disabled applicants who provide proof of fixed income. Also, since most credit decisions use gross income as the basis for calculating income to housing cost ratio, non-taxed income such as social security should be "grossed up" to give the disabled tenant the same taxable income a person would have to earn to net the amount of the social security income.

Question: Can I screen personal care attendants?

Answer: Criminal screening of live-in attendants is probably allowed. However, income and credit criteria should not be applied to the attendant unless the attendant is also on the lease. It is recommended that non-live-in attendants not be subjected to screening unless all people who work for tenants (e.g. housekeepers, cleaners, babysitters, etc.) are also screened.

Question: Do I have to accept applicants who have been involved in domestic violence incidents?

Answer: You do not have to rent to perpetrators of domestic violence if they do not pass your screening criteria. However, it could be illegal sex discrimination to refuse to rent to women who are victims of domestic violence, particularly if victims of other violent crimes are permitted to rent. It is illegal to evict a victim of domestic violence under a "no violence" policy based upon the violent acts perpetrated by her abuser. Accordingly, it may also be appropriate in the application process to overlook negative rental history of a domestic violence victim (for example, an illegal eviction or police activity at prior residence, etc.). State laws may provide further protection for domestic violence victims.

Information provided by Northwest Fair Housing Alliance (NWFHA) is intended to acquaint landlords with issues implicating by fair housing laws, but is not intended as a substitute for legal advice. For more information about NWFHA visit our website at [www.nwfairhouse.org](http://www.nwfairhouse.org).