

RENTING WITH A CRIMINAL BACKGROUND

A FAIR HOUSING GUIDE



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ABOUT THIS GUIDE

This guide was created to provide guidance on fair housing rights to persons with criminal records and their advocates. This publication is for educational purposes only. Nothing in this publication should be relied on as legal advice.

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SECTION 1: INTRODUCTION TO FAIR HOUSING & CRIMINAL BACKGROUND SCREENING

1. OVERVIEW OF THE FEDERAL FAIR HOUSING ACT

The Fair Housing Act (FHA) is a federal civil rights law enacted in 1968 in the United States. The FHA prohibits discrimination in housing based on the following protected characteristics: **race, color, religion, national origin, sex, familial status, or disability.**

Under the FHA, illegal housing discrimination includes (but is not limited to) taking the following actions because of one or more protected characteristics:

- refusing to rent or sell housing
- charging more or offering different terms and conditions for housing
- providing different housing services or facilities
- making discriminatory statements or advertising
- making false statements about availability
- refusing reasonable accommodations to rules or policies for a person with a disability

Most housing providers must comply with the FHA, including private landlords, management companies, HUD-subsidized housing providers, real estate agents, home lenders, homeowners' associations, third-party screening companies, and other entities that operate, administer, or fund housing.

2. FAIR HOUSING & CRIMINAL BACKGROUND SCREENING IN HOUSING

a. Criminal Background Screening Is Commonly Used in Housing

Individuals with criminal histories face barriers to obtaining and maintaining housing because of their criminal record. Even so, housing providers are permitted to require individuals to undergo a criminal background check as part of the housing application process. Housing providers may use the results of the background check to determine whether a person qualifies for housing, so long as they comply with the FHA.

b. Disparities in the Criminal Justice System

The U.S. Department of Housing and Urban Development (HUD) enforces the Fair Housing Act. HUD has recognized that people protected by the FHA are disproportionately represented in the criminal justice system, including people of color and people with disabilities. HUD has also long recognized that research shows these disparities cannot be simply attributed to certain groups committing more crimes.

c. The FHA Applies to Housing Decisions based on Criminal Background

Although the FHA does not explicitly prohibit a landlord from considering a person's criminal history in housing decisions, housing providers that utilize criminal histories to restrict housing access may violate the FHA in some situations.

EXAMPLES OF DISCRIMINATION INVOLVING CRIMINAL HISTORY

- Housing providers may violate the FHA if they refuse to rent to a person because of a criminal background, without considering the nature and severity of the conviction(s), how old the record is, and any rehabilitative efforts since the conviction. This is because landlords who refuse to rent to anyone with a criminal record may be disproportionately limiting housing choices for people protected by the FHA, because of race, national origin, disability, and/or sex.
- Housing providers may also violate the FHA by engaging in intentional discrimination. For example, if a housing provider treats individuals with similar criminal histories differently because of their race, national origin, sex, disability, or other protected characteristic

HOUSING DISCRIMINATION CAN TAKE DIFFERENT FORMS:

- A housing provider refuses to rent because a person was incarcerated for a drug possession conviction 25 years ago.
- A housing provider automatically denies any applicant with a felony conviction.
- A survivor of domestic violence is denied housing due to a misdemeanor property damage conviction, even though the conviction was related to domestic violence and she paid for the damage.
- A person with a criminal record is denied housing due to a past drug or alcohol addiction, despite having successfully completed a rehabilitation program.

d. HUD 2016 GUIDANCE AND 2022 MEMO REGARDING THE FHA AND HOUSING DECISIONS INVOLVING CRIMINAL BACKGROUND.

The FHA applies to housing policies and practices to screen, deny housing, deny lease renewal, evict, or otherwise exclude people from housing because of a criminal background. HUD issued guidance in 2016 and an implementation memo in 2022 that provide information to housing providers, explaining how the FHA will apply to housing decisions based on criminal background.

Best Practices for Landlords Using Criminal Screening

HUD guidance says landlords should:

- Consider individual circumstances.
- Evaluate criminal history on a case-by-case basis, considering the nature and severity of the offense, the length of time since the offense, and evidence of rehabilitation.
- Make determinations based on facts and evidence.

HUD guidance says landlords should not:

- Deny housing because of arrest records.
- Conduct background checks inconsistently, performing them on some and not others based on stereotypes or fears.

HUD's 2022 Memo states private housing providers should consider not using criminal history to screen tenants because it is not a good predictor of housing success.

e. THIRD-PARTY SCREENING COMPANY REPORTS

Housing providers commonly use third-party tenant screening companies that provide background screening reports. These reports are often inaccurate, incomplete, or have no relationship to whether someone will be a good tenant. Third-party companies sometimes independently screen and reject applicants, or they may use algorithms that could contain racial or other prohibited bias in their design.

Third party tenant screening companies may be subject to the FHA and other consumer protection federal laws and regulations. You have a right to request a copy of your screening report from the agency that conducted the report. You can correct errors by contacting the screening company.

EVEN IF THERE ARE NO ERRORS IN THE THIRD-PARTY SCREENING REPORT, YOU MAY APPEAL THE DENIAL OF HOUSING AND REQUEST THAT THE LANDLORD CONDUCT AN INDIVIDUALIZED REVIEW OF YOUR APPLICATION. SEE SECTION 2.

f. HOUSING PROVIDERS MAY STILL SCREEN AND DENY HOUSING BECAUSE OF A CRIMINAL RECORD IN CERTAIN CIRCUMSTANCES WITHOUT VIOLATING THE FHA.

Federal Exemption: The FHA does not require a housing provider to rent to someone that has a conviction for the illegal manufacture or distribution of controlled substance. 42 U.S.C. §3607(b)(4).

Housing Providers Can Develop and Implement Narrowly Tailored Criminal Screening Policies and Procedures: Housing providers that implement and follow non-discriminatory policies and practices that provide meaningful opportunities to access housing may be more likely to be found to be acting in compliance with the FHA. These policies should incorporate regular training for all housing provider staff.

- Policies should take into consideration the length of time since the conviction, the nature and circumstances surrounding the conviction, and circumstances since the conviction.
- Procedures should specify how individuals can request copies of the screening report with information about the criminal background and correcting errors.
- Procedures should clearly communicate how people can appeal a housing denial because of criminal background and request that the housing provider conduct an individualized review of the application. This process should allow the person an opportunity to show circumstances related to the conviction or since the conviction, and other factors for why they would be a good tenant.

Individuals who believe they have been unlawfully denied housing because of a criminal background screening may be able to challenge the denial under the FHA. See page 11 for more information about filing a fair housing administrative complaint.

SECTION 2: APPLYING FOR HOUSING WITH A CRIMINAL BACKGROUND

As explained above, a landlord can conduct a criminal background record search, along with screenings for credit, prior eviction filings, or civil judgments. This is sometimes called a tenant background check or tenant screening report. While there is no law that prohibits landlords from using background checks or reports to decide about whether to rent to someone, HUD recommends that landlords conduct individualized assessments of tenant applications to avoid discriminating on the basis of race, national origin, disability, sex, or other characteristics protected by the FHA. The following steps can help you provide more information about your personal situation to consider as part of an individual review.

BEFORE APPLYING TO RENT AN APARTMENT OR HOUSE:

If you think you have any kind of criminal history, you should do the following:

- 1) **Get a copy of your criminal history, so you know what criminal information may be reported to a landlord in a housing background report.**

You can request statewide criminal record information from any North Carolina courthouse. [Click here to find your local courthouse.](#) North Carolina courts do not have out-of-state criminal information. For criminal records in other states, you may contact the court that handled your case(s).

- 2) **Collect evidence to show potential landlords that you would make a good tenant.**

This could include evidence of employment, participation in a job training program, education, participation in a drug or alcohol treatment program, recommendations from a probation officer, employer, teacher, social worker or community leader, and other documents to show you have made changes in your life. Landlords often make application decisions quickly, so it is important to collect these documents before you apply for housing.

WHILE YOU ARE APPLYING TO RENT HOUSING, YOU SHOULD:

- 1) Ask the landlord for their criminal background policy, in writing if possible. If they don't have a written policy, write down what the landlord tells you.
- 2) Keep copies of any documents you receive from the landlord.
- 3) Keep copies of everything you give to the landlord.
- 4) Communicate by text or email with potential landlords so you have a record of your communication. If you speak in person or by phone, send a follow up text or email confirming your understanding of the conversation.
- 5) Write down the names and contact information of the people you talk to and make notes about what you talked about.

IF THE LANDLORD DENIES YOUR APPLICATION FOR ANY REASON OR IMPOSES ADDITIONAL TERMS AND CONDITIONS TO BE APPROVED, YOU SHOULD:

1) **Get the Denial in Writing.**

Ask the landlord why your application was denied and ask them to send you the reason in writing.

2) **Get a Copy of the Tenant Screening Report. Do not delay!**

If the landlord used a criminal background report to deny an application, ask for a copy of the report or for information about how to get a copy of the report.

Landlords must tell you how to request a copy of the report directly from the screening company. Follow those instructions and request a copy of the report from the screening company. You may correct any errors on the report by contacting the screening company. **Even if there are no errors in the report, you can still appeal the housing denial by sending your request for an individualized review to the landlord.**

3) **Prepare your Housing Denial Appeal for the Landlord.**

You may appeal the denial of housing due to a criminal background by requesting the landlord conduct an individualized review of the application. The **individualized review** is an opportunity to explain that you will be a good tenant. Prepare a letter for the landlord with information and copies of documents, such as:

- facts or circumstances surrounding the criminal conduct;
- age of the individual at the time of the conduct;
- evidence of maintaining a good tenant history before and/or after the conviction or conduct;
- evidence of rehabilitation efforts; or
- showing assistance from a non-profit organization or government agency.

4) **Send the Appeal and Supporting Information to the Landlord and keep a copy for yourself!**

If the landlord gives you an opportunity to appeal, follow their instructions carefully to make sure you do not miss any deadlines. Even if the landlord does not explicitly offer an opportunity to appeal, send your letter and copies of supporting documents to the landlord and ask them to conduct an individualized review of the application. Ask them to reconsider the decision.

Quick Tip:

Subsidized housing providers are required to provide you with a copy of the tenant screening report. You should still request a copy from the screening company.

Quick Tip:

Letters of support may be helpful, such as from a parole or probation officer, employer, teacher, social worker, treatment program, current or prior landlord, or community leader.

IMPORTANT! You may receive a denial letter that *only* includes information about requesting a copy of the screening report and correcting information that is inaccurate or incomplete. You should follow the instructions in the letter to get a copy of the screening report. You should also follow the instructions to correct any errors in the report. **However, you should still submit your appeal of the denial of the housing application to the landlord or property management office for the property where you applied!**

SAMPLE APPEAL LETTER TEMPLATE – PAGE 1 ([click here to download a blank version](#))

Date:

To: [ADDRESS TO LANDLORD/HOUSING PROVIDER, PROPERTY NAME, ADDRESS]

Re: Appeal Denial of My Housing Application [YOUR FULL NAME]

Dear [LANDLORD OR APARTMENT NAME],

I, [YOUR FULL NAME], received your letter stating that my application to rent was denied due to the results of a criminal background screening. I am writing to appeal the denial of my application for housing at [APARTMENT NAME OR ADDRESS].

I request that you conduct an individualized review and approve my application.

My criminal background consists of:

_____.

[YEAR(S) AND BRIEF DESCRIPTION OF CONVICTION(S)]

At the time of my conviction,

_____.

[IDENTIFY FACTORS RELATED TO CONVICTION]

Since my conviction, I have

_____.

I have enclosed in support of my application for tenancy:

<input type="checkbox"/> Character reference(s)	<input type="checkbox"/> Court document(s) or related records
<input type="checkbox"/> Former rental reference(s)	<input type="checkbox"/> Evidence of rehabilitation effort(s)
<input type="checkbox"/> Employer reference(s)	<input type="checkbox"/> Other:

Examples:

- *misdemeanor drug offenses from 4 years ago*
- *non-violent felony convictions from almost 20 years ago*

Examples:

- *I was 19 years old and homeless.*
- *I was a victim of domestic violence.*

Examples:

- *Completed rehabilitation program and have been sober for 9 months.*
- *Completed a job training program. I have maintained employment for 6 months.*

SAMPLE APPEAL LETTER TEMPLATE – PAGE 2

The **Fair Housing Act (FHA) prohibits housing discrimination** and housing practices with unjustified discriminatory effects based on race, color, religion, national origin, sex, familial status, or disability. The FHA applies to private and subsidized housing. HUD issued guidance in 2016 on the “Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions”, and an implementation memo in 2022.

According to HUD, housing providers should consider not using criminal history to screen tenants for housing, explaining that criminal history is not a good predictor of housing success. Housing providers are also not generally required by law to exclude people with criminal histories as tenants. Housing providers can rely instead on other screening criteria that more closely relate to whether an applicant or resident would be a good tenant, such as ability to pay rent, prior rental history, or personal references.

HUD also says that landlords should conduct an individualized assessment of an application denied because of a criminal background report. HUD’s guidance states that housing providers may violate the FHA if they deny housing to applicants convicted for criminal activity without considering other information, such as:

- The facts or circumstances surrounding the criminal conduct
- The age of the individual at the time of conviction
- How much time has passed since the criminal activity occurred
- Evidence of maintained good tenant history (prior to or following conviction)
- Evidence of rehabilitation efforts

Housing providers also cannot treat applicants with similar criminal histories differently due to their race, national origin, or other protected characteristic.

For these reasons, I request that you conduct an individualized review and approve my rental application.

Please respond in writing within ten (10) days of the date of this letter. If I do not hear back from you, I will assume that you have denied this request.

Finally, please send me a copy of your eligibility requirements; a copy of any documentation used as a basis for your denial; and a copy of my application. If a third party or credit reporting agency provided the criminal screening of my application, please provide a copy of the report you received.

Please also provide me with all information I am entitled to receive pursuant to the Fair Credit Reporting Act so that I may obtain such screening information. This information may be sent to me at the mailing address and/or email address provided below my signature.

Thank you for your time and consideration in this matter.

Sincerely,

Name _____

Address _____

Email Address _____

SECTION 3: SPECIAL TOPICS

a. ADDITIONAL PROTECTIONS FOR PEOPLE WITH DISABILITIES: REASONABLE ACCOMMODATIONS INVOLVING CRIMINAL CONVICTIONS

The FHA allows a person with a disability to request a reasonable accommodation - a change to a rule, policy, practice, or service that enables a person with a disability to have an equal opportunity to use and enjoy housing.

A housing provider may be required to change or make an exception to a criminal background policy, when necessary to allow a person with a disability an equal opportunity to use and enjoy housing, as a reasonable accommodation under the FHA.

If you have been denied housing due to a criminal conviction, and the criminal conviction is related to a disability, you may be able to request a reasonable accommodation from the housing provider to disregard the criminal conviction and access housing.

Reasonable Accommodation Tips

- Submit a reasonable accommodation request in writing to the housing provider.
- Explain that you have or had a disability at the time of the conduct that led the conviction, and that the disability played a role.
- Explain what actions you have taken since the conviction to help show that you will not commit the offense again, such as improvements resulting from previous on-going therapy or treatment.
- You should submit documentation from a treating provider, like a doctor, therapist, or social worker to support your request.

b. DOMESTIC VIOLENCE

Survivors of domestic violence are protected from discrimination in housing under the Fair Housing Act, the Violence Against Women Act, and North Carolina's Landlord-Tenant laws.

The FHA and North Carolina's Landlord-Tenant laws apply to private rentals, as well as subsidized housing (e.g. public housing, Section 8 housing). The protections under the Violence Against Women Act apply only to subsidized housing.

- A private housing provider may violate the FHA for refusing to rent to an applicant who is a survivor of domestic violence, if they treat women differently than similarly situated men or if the provider's policies disproportionately impact women more than men.
- A federally subsidized housing provider may violate VAWA if it denies admission to a housing program because that person is a survivor of domestic violence, regardless of the survivor's gender.
- A housing provider may violate the FHA and the North Carolina's Landlord-Tenant laws for terminating the tenancy of a victim of domestic violence because of reasons connected to domestic violence, such as property damage caused by her abuser, calling the police for assistance with DV, or alleged criminal activity.

c. SUBSIDIZED HOUSING

Public Housing Authorities (PHAs) are currently still required under federal law and regulation to deny a housing application, if someone in the household has a:

- Conviction that subjects them to a lifetime registration requirement under a state sex offender registration program;
- Conviction for manufacturing methamphetamine in federally assisted housing; or
- Eviction from federally assisted housing for drug-related criminal activity within the past 3 years *UNLESS* the person has completed an approved drug treatment program or circumstances have otherwise changed; or
- There is a credible allegation against the individual of currently using an illegal drug, or the PHA has reasonable cause to believe the person’s use of an illegal drug may threaten the health, safety, or right to peaceful enjoyment of other residents.

Each **Public Housing Authority (PHA) and Section 8 Housing Choice Voucher Administrator** will generally conduct a criminal background check on each adult applicant. However, each PHA and Section 8 Voucher Administration is independent and may have their own policies.

Individuals may consult their local PHA or Section 8 Housing Administrator for specific information. These agencies are required to have an “*Admissions and Continued Occupancy Policy*” or “*Administrative Plan*” that sets out eligibility. The PHA’s policies and procedures must still comply with the FHA

For housing developed with **Low Income Housing Tax Credits (LIHTC)**, individuals should consult the tenant eligibility criteria published by the North Carolina Housing Finance Agency, which administers the State’s tax credit program.

Resource:

To find your local PHA or Section Housing Administrator, click here:

Copies of some “Admissions and Continued Occupancy Policy” or “Administrative Plan” are available at the Fair Housing Project’s [website](#).

Resource: The minimum requirements for LIHTC affordable housing agencies is available at the North Carolina Housing Finance [website](#).

d. ARREST RECORDS AND PENDING CHARGES

Landlords may not deny housing based on arrest records that did not result in a conviction. Generally, landlords should not automatically deny an applicant with a pending charge. Instead, the landlord should determine whether a conviction for the pending charge would disqualify the tenant. If not, the application should be approved. If the landlord’s policy allows the denial of an application based on a conviction of the pending charge, the tenant should ask the landlord to conduct an individualized review and to consider delaying making a final decision until the criminal case is resolved. LIHTC must offer individuals an opportunity for individualized review involving pending charges, as well as for convictions.

SECTION 4: HOW TO FILE AN ADMINISTRATIVE HOUSING DISCRIMINATION COMPLAINT

If you believe that your rights under the Fair Housing Act have been violated, you may file a complaint with the United States Department of Housing and Urban Development (HUD). You must file your complaint with HUD within one year of the last date of the alleged discrimination under the Fair Housing Act. You can file a complaint with HUD online, by clicking here: <https://www.hud.gov/fairhousing/fileacomplaint>

REFERRAL TO LOCAL AGENCY

Once your complaint is officially filed with HUD, it will either investigate the allegations of housing discrimination in the complaint or refer it to a state or local agency for investigation.

HUD has determined that the North Carolina State Fair Housing Act, as well as the fair housing ordinances in the City of Durham, the City of Greensboro, the City of Winston-Salem, Orange County, and the City of Charlotte-Mecklenburg County, are “substantially equivalent” to the federal Fair Housing Act. Agencies in these jurisdictions receive Fair Housing Assistance Program funding from HUD to investigate and attempt to resolve housing discrimination complaints.

INVESTIGATION

HUD or the agency will assign an investigator to investigate the allegations in your complaint. The investigator maintains a neutral position throughout the investigation. The investigator will gather evidence in many ways, including speaking with the parties and witnesses and reviewing available documentation.

The investigator may ask you - the complainant or the person making the allegations of housing discrimination – to provide more information. You should be prepared to speak with the investigator about your complaint and provide them with documents and other evidence in support of your complaint.

HUD or the agency will provide the respondents with a copy of the complaint and give them an opportunity to respond.

CONCILIATION OR SETTLEMENT

At any time, including throughout the investigation, HUD or the local agency will speak you and the respondents, to try to help the parties resolve the allegations through a voluntary agreement called a conciliation agreement.

If the parties agree, HUD or the local agency will prepare an agreement for the parties to sign. After the agreement is signed, HUD and the local agency will close the investigation and monitor compliance with the agreement.

Quick Tip:

If you file a fair housing administrative complaint, you are called a “complainant.” The people or organizations you file your complaint against are called “respondents.”

Quick Tip:

The processes of HUD's Fair Housing Assistance Program (FHAP) may vary by agency. However, agencies should generally follow the HUD's Intake and Investigation Manual, available online by clicking here.

DETERMINATION

If the parties cannot agree on a resolution during the investigation, the investigator will complete the investigation and issue a “determination” about whether there is reasonable cause to believe that unlawful discrimination occurred.

- **If the agency finds that reasonable grounds do exist** to believe that an unlawful discriminatory housing practice has occurred or is about to occur, the agency may enforce its determination through an action brought before an Administrative Law Judge or a case in court.
- **If the agency finds that reasonable grounds do not exist** to believe that an unlawful discriminatory housing practice has occurred or is about to occur, the agency will generally issue a notice to the individual explaining how to pursue their claims in civil court.

SECTION 5: ADDITIONAL RESOURCES

EXPUNCTIONS

An expunction is the destruction of a criminal record by a court order. Landlords should not consider expunged criminal records when making housing decisions. Legal Aid of North Carolina has resources to help you determine if your criminal conviction or charges can be expunged and, if so, how to file the necessary paperwork.

For more information visit the Legal Aid of North Carolina [website](#).

FCRA

The Fair Credit Reporting Act (FCRA) requires landlords to notify tenants if the landlord denies a tenant’s application *based on information in a tenant screening report*.

For more information, visit the Consumer Finance Protection Bureau’s [website](#).

The landlord must:

- Give you the name, address, and phone number of the company that provided the report
- Notify you that you have a right to a free copy of the screening report if you request it within 60 days of the denial
- Let you know about your right to dispute inaccurate or incomplete information.

Landlords have to follow FCRA **in addition to** the Fair Housing Act.