

Fair Housing Compliance Considerations When Screening for Criminal History

The essence of fair housing is equal opportunity, equal access and equal enjoyment. In order to comply with federal, state and local fair housing laws, multifamily professionals must provide an equal opportunity for everyone to:

1. Buy or lease the home of their choice, provided they qualify, and
2. Have equal enjoyment of the home they have purchased or leased.

When we treat someone differently based upon their membership in one or more of the federal and state protected classes, we can be held liable for discrimination due to different treatment. So, as long as we treat everyone exactly the same, we should be fine, correct? Actually, NO!

While it's true that many fair housing classes tell us to "treat everyone the same", fair housing compliance is not always about "same treatment". Fair housing IS always about "equal opportunity" and "consistent treatment for same circumstances." It's possible to treat one hundred people exactly the same and have some of those folks experience discrimination because even though they received the same exact treatment, it affected them in a disproportionate manner. That's called discrimination due to disparate impact and it is something we need to be aware of with regard to our "neutral policies" – those policies which tell us to treat everyone exactly the same with regard to a specific issue, such as "We don't accept anyone who has any criminal convictions."

Since people who have a criminal history do not constitute a specific protected class, we should be able to (and most of us do!) have a policy that says we don't accept anyone with a criminal history since our job is to protect the residents and the owner of the community, right?
Not anymore!

The 2016 guidance memo from HUD recognizes several minority groups, including African Americans and Hispanics, "are arrested, convicted and incarcerated at rates disproportionate to their share of the general population"¹. In other words, when a policy restricting occupancy to those persons who have no criminal history is enforced, it will have a disparate – a disproportionate – impact on people of color and that policy could be considered a violation of the fair housing act.

The immediate effect of the 2016 HUD guidance memo has been the reexamination of rental qualifying guidelines with regard to criminal history. It is generally agreed that a blanket policy disallowing any and all criminal history is no longer appropriate. Instead, adopt a policy that considers the specific nature of a crime, the severity of the crime, and how long ago the crime was committed

so that you can justify (and defend) the policy as being necessary to protect the other residents and the owner.

A good starting point is to remember not to consider an arrest when evaluating the rental application. An arrest is nothing more than an allegation of wrong doing, so unless a conviction is obtained, it would be extremely difficult to prove the applicant represents a threat to the community; only actual convictions should be considered.

The next step is identify what types criminal history can be considered to be legally sufficient to justify the denial of the applicant. The HUD guidance memo states that "Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction."

Douglas D. Chasick – The Apartment Doctor

Doug has over 37 years of hands-on property management experience, gained from on-site, supervisory, consulting and executive positions with such industry giants as Johnstown Properties, R & B Realty Group (Oakwood), The Related Companies and First Capital Companies. He began his career as a Resident Manager for a 524-unit apartment property, and has since been responsible for portfolios of over 28,000 apartments, and more than 8 million square feet of commercial, retail and industrial properties.

Doug is an accomplished speaker and author, with numerous articles published in the *Journal of Property Management*, *UNITS Magazine*, *The Apartment Professional*, *Sales & Marketing Magic for Apartment Managers*™ and many regional and local property management publications. He was the Editor of *NOI News*™, a web-based subscription newsletter for multifamily professionals, and is co-author of the textbook *"How To Excel in Leasing"*, published by the National Association of Homebuilders. Doug has spoken many times at the annual NAA, IREM and NAHB educational conferences; The Annual Brainstorming Sessions; Multi-Housing World; at many apartment association events and annual conferences, and for many private company conferences.

Doug is the 2010 recipient of the Apartment Career and Education (ACE) Award for Professional Educators from The National Apartment Association Education Institute (NAAEI) and the 2010 "Legends of the Industry" award from Multifamily Pro and the Annual Brainstorming Sessions. He was the 2003 & 2004 President of the Space Coast Apartment Association and has served on the Board of Directors of the National Apartment Association as the Region III Vice President and on the Board of Directors of the NAAEI. He was the 1998 & 1999 Chairman of the Editorial Advisory

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Doug earned his Certified Property Manager (CPM®) designation in 1978 from the Institute of Real Estate Management. He served as a member of the National Faculty of IREM for eight years, teaching Course 101, "Successful On-Site Management", Course 301, "The Marketing and Management of Residential Property" and Course 400, "Managing Real Estate As An Investment". A member of the National Apartment Association Education Institute National Faculty, Doug is a Senior Instructor for the NAAEI Advanced Instructor Training Course and also teaches the NALP, CAM, CAS and CAPS courses for NAAEI and many NAA affiliates. Doug is licensed as a Real Estate Broker in Florida and Georgia, certified as an Expert Fair Housing Instructor by the Commonwealth of Virginia, and is an NAA/HUD certified Lead Hazard Awareness Training course Instructor. A member of ASTD and SHRM, he received his Synchronous Learning Expert (SLE) certification in 2006 and Certified Distance Learning Educator (CDEI) certification from ARELLO/IDECC in 2009.

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