

LANDLORD AND TENANT OBLIGATIONS

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FAIR CREDIT REPORTING ACT

A landlord may use consumer reports to evaluate rental applications as long as you follow the provisions of the Fair Credit Reporting Act (the "FCRA"). The FCRA is designed to protect the privacy of consumer report information and to guarantee that the information supplied by a consumer reporting agency (the "CRA") is as accurate as possible. The FCRA requires landlords who deny a lease based on information in the applicant's consumer report to provide the applicant with an "adverse action notice."

CONSUMER REPORT

A consumer report contains information about a person's credit characteristics, character, general reputation, and lifestyle. A report also may include information about someone's rental history, such as information from previous landlords or from public records like housing court or eviction files. To be covered by the FCRA, a report must be prepared by a CRA - a business that assembles such reports for other businesses. The most common type of CRA is the credit bureau. Landlords often use consumer reports to help them evaluate rental applications. These reports include: a credit report from a credit bureau, such as Trans Union, Experian, and Equifax or an affiliate company; a report from a tenant-screening service that describes the applicant's rental history based on reports from previous landlords or housing court records; a report from a tenant-screening service that describes the applicant's rental history, and also includes a credit report the service got from a credit bureau; a report from a tenant-screening service that is limited to a credit report the

service got from a credit bureau; and, a report from a reference-checking service that contacts previous landlords or other parties listed on the rental application on behalf of the rental property owner.

Landlords often ask applicants to give personal, employment and previous landlord references on their rental applications. Whether verifying such references is covered by the FCRA depends on who does the verification. A reference verified by the landlord's employee is not covered by the FCRA; a reference verified by an agency hired by the landlord to do the verification is covered.

ADVERSE ACTION

An adverse action is any action by a landlord that is unfavorable to the interests of a rental applicant. Common adverse actions by landlords include: denying the application; requiring a co-signer on the lease; requiring a deposit that would not be required for another applicant; requiring a larger deposit than might be required for another applicant; and, raising the rent to a higher amount than for another applicant.

When an adverse action is taken that is based solely or partly on information in a consumer report, the FCRA requires you to provide a notice of the adverse action to the consumer. The notice must include: the name, address and telephone number of the CRA that supplied the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide; a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and, a notice of the individual's right to dispute the accuracy or completeness of any information the CRA furnished, and the consumer's right to a free report from the CRA

upon request within 60 days.

Disclosure of this information is important because some consumer reports contain errors.

The adverse action notice is required even if information in the consumer report was not the main reason for the denial, the increase in security deposit or rent or other adverse action. In fact, even if the information in the report plays only a small part in the overall decision, the applicant still must be notified.

The adverse action notice must name the CRA that provided the report to the landlord, even if the information came from another CRA. For example, a report from XYZ TenantScreen includes a credit report from ABC Credit Bureau. The credit report includes negative information that prompts the landlord to turn down the rental application. The adverse action notice should name XYZ TenantScreen as the CRA because XYZ TenantScreen actually provided the report to the landlord. The notice also can explain that XYZ TenantScreen got the credit information from ABC Credit Bureau, but that is not required under the FCRA.

While oral adverse action notices are allowed, written notices provide proof of FCRA compliance.

EXAMPLES

A landlord who orders a consumer report from a CRA. Information contained in the report leads to further investigation of the applicant. The rental application is denied because of that investigation.

Since information in the report prompted the adverse action in this case, an adverse action notice must be sent to the consumer.

An applicant with an unfavorable credit history, like past-due credit accounts, who is denied an apartment. Although the credit history was considered in the decision, the applicant's poor reputation as a tenant in his current location played a more important role.

The applicant is entitled to an adverse action notice because the credit report played a part, however minor, in the denial.

A person with an unfavorable credit history, like a bankruptcy, but no other negative indicators, who applies for an apartment. Rather than deny the application, the landlord offers to rent the apartment, requiring a security deposit that is double the normal amount.

The applicant is entitled to an adverse action notice because the credit report influenced the landlord's decision to require a higher security deposit from the applicant.

A landlord who hires a reference-checking service to verify information included on a rental application. Because the service reports that the applicant does not work for the employer listed on the application, the rental application is denied.

The applicant is entitled to an adverse action notice. The report is a consumer report from a CRA (the agency checking the references provided by the consumer on the application), and its report influenced the landlord's decision to deny the application.

A landlord who makes it a practice to approve an application if the prospective tenant shows an adequate income or has a favorable credit report, is dealing with an applicant who has an inadequate income and a bad credit report.

The applicant is entitled to an adverse action notice because the credit report influenced the denial, even though income was another factor.

NONCOMPLIANCE WITH THE FCRA

Landlords who fail to provide required disclosure notices face legal consequences.

The FCRA allows individuals to sue landlords for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations of the FCRA. In addition, the Federal Trade Commission (the "FTC"), other federal agencies and the states may sue landlords for non-compliance and get civil penalties.

However, a landlord who inadvertently fails to provide a required notice in an isolated case has legal protections, so long as he or she can demonstrate "that at the time of the . . . violation he maintained reasonable procedures to assure compliance" with the FCRA.

REFERENCES

1. Fair Credit Reporting Act, 15 USC Section 1681, et seq (2015).