

MEMORANDUM NO.: 16-08-01

To: All Owners and Managers of Affordable Rental Housing

From: Vona Johnson, Director of Rental Housing Management

Date: August 1, 2016

Subject: Fair Housing, Criminal Screening, and Tenant Selection

SDHDA and you, as our partners in providing affordable housing, together have a responsibility to affirmatively further fair housing within the housing programs we administer. As such, it is important that we work together to ensure access to our programs through the application of reasonable selection criteria.

As you know, new guidance related to Criminal Records was recently published, including HUD Notice 2015-10 and HUD's Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction dated April 4, 2016. Although there historically has been a concern that many owners and management agents may have screening policies that are so restrictive they deny access to affordable housing to the people that the programs are designed to benefit, there is a new concern that some owners and management agents will feel they cannot screen potential tenants at all. To that end, SDHDA has developed the attached Sample Policy on Screening Applicants with Criminal Records and encourage you to consider the basic format as a template when updating your policies to address this new guidance. Although we will not be approving your policies, we will be visiting with you during your next review to ensure that you have given this issue proper consideration. If you have questions in the meantime, please do not hesitate to ask.

Along with adopting a criminal background screening policy, we ask that you review your written tenant selection policies and provide us with updated copies. Primarily our concern on this topic is that all criteria used in the decision making process needs to be included in the written policy. The policy needs to have enough specificity that the applicant or a third party can read the policy and reasonably determine the applicant's likelihood of acceptance to the property. The policy also needs to include a nondiscrimination statement and describe your appeals process as well as state the applicant's right to request a reasonable accommodation if they are disabled. It is important to consider the type and severity of the crime or credit history when determining the relevancy to the prospective tenant's ability to be a successful resident.

Please note that this information is provided as a possible guideline or template for you to use and should not be considered as a mandatory form nor should it be considered to be all inclusive of the areas you will want to address in your Criminal Screening or your Tenant Selection Plan. It is not intended as legal advice and does not provide a legal opinion as to the matters stated. We strongly encourage you to consult with a fair housing attorney that is well versed in fair housing law when developing your policy and when making decisions regarding tenant selection criteria.

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We are pleased to be able to offer a session at our upcoming Annual Housing Conference on October 25 and 26 in Pierre that will address this topic and will include a discussion on how the changes with these policies will affect compliance with your Crime Free Housing Program. If you haven't already, I encourage you to implement your new selection policies as soon as you are able to get them approved by the appropriate authority within your organization and also plan to attend the conference session to discuss with our presenters the practical application of these policies and any challenges you have encountered.

Thank you for your attention to this matter. If there are others in your organization that work with screening applicants or tenant selection, please share this memo with them.

We look forward to seeing you at the annual conference in Pierre on October 25 and 26!

VJ

Attachment: Sample Policy on Screening Applicants with Criminal Records

Sample Policy on Screening Applicants with Criminal Records

Screening Process

- In an addendum to the application form, the management company will explain its policies and procedures on criminal activity and will inform the applicant of his or her right to request a reasonable accommodation. The addendum will also inform the applicant of his or her opportunity to submit with the application evidence of mitigating circumstances, as well as the protections available under the Violence Against Women Act.
- The management company will conduct a criminal background check on each adult member of an applicant household. An adult means a person 18 or older or a person convicted of a crime as an adult under federal, state, or tribal law.
- If the criminal background report reveals negative information about a household member and the management company proposes to deny admission due to the negative information, the subject of the record (and the applicant, if different) will be provided notice of the proposed adverse action and an opportunity to dispute the accuracy and relevance of the record. The notice will also provide the opportunity for the applicant to request a copy of the criminal record report.
- If the applicant does not contact the management company to dispute the accuracy of the criminal record within 10 days, the management company will send a written notice of ineligibility to the applicant stating the specific reason for denial. If the applicant did not contact the management company within the specified time period due to a disability, the management company may provide a reasonable accommodation extending the dispute period as is reasonable.

Admission Process

- If a member of an applicant household is subject to a State Lifetime Sex Offender registration requirement, the management company:
 - Will deny admission based on the household member's eligibility for or actual inclusion on the list.
- If a member of an applicant household has been convicted of a felony offense involving the manufacture or distribution of a controlled substance, the management company:
 - Will deny admission based on the conviction of any person convicted of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substance Act (21 U.S.C 802); as permitted by Section 807(b)(4) of the Fair Housing Act.
- If a member of the applicant household has been evicted from federally assisted housing for drug related criminal activity in the past three (3) years, the management company:
 - Will deny admission based on this eviction.
- If a member of the applicant household is currently engaging in illegal use of drugs, the management company :
 - Will deny admission based on evidence of use.
- If a member of an applicant household has been convicted of a violent felony offense involving crimes of physical violence to persons or property or the nature of which would be detrimental to the safety or welfare of other residents or their peaceful occupancy of

the premises, the management company:

- Will deny admission if the conviction, or exit from incarceration, occurred within __ years of application; and
- May deny admission if the conviction, or exit from incarceration, occurred more than __ years before application.
- If a member of an applicant household has been convicted of a nonviolent felony offense, the management company:
 - May deny admission if the conviction, or exit from incarceration, occurred within __ years of application;
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than __ years before application.
- If a member of an applicant household has been convicted of a violent misdemeanor, the management company:
 - Will deny admission if the conviction, or exit from incarceration, occurred within __ years of application;
 - May deny admission if the conviction, or exit from incarceration, occurred more than __ years before application.
- If a member of an applicant household has been convicted of a nonviolent misdemeanor offense, the management company:
 - May deny admission if the conviction, or exit from incarceration, occurred within __ years of application; and
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than __ years before application.
- The management company will not consider an arrest or charge that was resolved without conviction. In addition, the management company will not consider expunged or sealed convictions. The management cannot deny admission or terminate housing solely on the basis of an arrest, although an arrest may be the basis for further inquiry and a decision can be made on the conduct and other supporting information such as police reports detailing the circumstances of the arrest, witness statements, and other relevant documentation.
- Where the management company “may deny” admission to a household, the management company will conduct an individualized assessment of the criminal record and its impact on the household’s suitability for admission. This individualized assessment will include consideration of the following factors: (1) the seriousness of the criminal offense; (2) the relationship between the criminal offense and the safety and security of residents, staff, or property; (3) the length of time since the offense, with particular weight being given to significant periods of good behavior; (4) the age of the household member at the time of the offense; (5) the number and nature of any other criminal convictions; (6) evidence of rehabilitation, such as employment, participation in a job training program, education, participation in a drug or alcohol treatment program, or recommendations from a parole or probation officer, employer, teacher, social worker, or community leader; and (7) tenancy supports or other risk mitigation services the applicant will be receiving during tenancy.