



Housing Providers' Use of Criminal Records in Rental Decisions

Have you been denied housing or has your tenancy been terminated for answering “yes” to one of the following questions?

- Have you ever been arrested?
- Have you ever been charged with any crime?
- Do you have a misdemeanor or felony conviction?
- Have you ever been on probation?

Fair Housing Advocates of Northern California

HOUSING PROVIDERS' USE OF CRIMINAL RECORDS

HOW CAN FAIR HOUSING LAWS PROTECT ME IF I HAVE A CRIMINAL RECORD?

The Fair Housing Act (FHA) requires housing providers to treat all tenants and potential tenants equally regardless of race, color, national origin, religion, sex/gender, familial status, or a disability. It also requires housing providers to ensure that neutral policies applied in a consistent manner do not have a disproportionate or disparate impact upon members of these protected classes. Guidance from the U.S. Department of Housing and Urban Development (HUD)'s Office of General Counsel released in 2016 details how using criminal records as a basis to deny housing can violate the FHA based upon race and/or national origin discrimination, for example, under two theories of liability: disparate impact and disparate treatment.

DISPARATE IMPACT (DISCRIMINATORY EFFECT)

While having a criminal record is not considered a protected class under the FHA, given the disproportionate arrest, conviction, and incarceration rates of Black and Latinos in the U.S. when compared to their share of the population, housing providers' use of criminal records to screen applicants/tenants is likely to have a disproportionate impact on Black and Latino home seekers. Housing providers violate the FHA when policies or practices screening for criminal records have a disparate impact upon members of protected classes without a legally sufficient justification (necessary to achieve a substantial legitimate, nondiscriminatory interest without a less discriminatory alternative).

Examples of violations of the FHA: rejecting tenants for prior arrest(s); having blanket bans on criminal convictions, regardless of when they occurred; or failing to make an individualized assessment regarding convictions or to consider mitigating circumstances (such as the amount of time that has passed, the nature and severity of the conviction, or possible rehabilitative or educational changes).

DISPARATE TREATMENT (INTENTIONAL DISCRIMINATION)

Housing providers are also liable for violations of the FHA for treating individuals with comparable criminal history differently because of their race, national origin, or another protected class.

Examples of violations of the FHA: rejecting a Black applicant based on his or her criminal record but admitting a Caucasian applicant with a comparable criminal record, or making exceptions to a policy not to rent to individuals with criminal records only for Caucasian applicants.

Contact us if you suspect discrimination:

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Wheelchair accessible
Se habla español

Our Mission

To ensure equal housing opportunity and educate the community on the value of diversity in our neighborhoods.

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