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Using Consumer Reports: What Landlords Need to Know

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When you use consumer reports to make tenant decisions, the Fair Credit Reporting Act requires you to take important compliance steps. Find out more about keeping your actions within the law.

You're looking at housing applicants or deciding whether to renew a current tenant's lease. You decide to run a tenant background check through a company that compiles background information.

These tenant background checks can include a variety of information, including rental and eviction history, credit, or criminal records. They also are known as consumer reports.

When you use consumer reports to make tenant decisions, you must comply with the Fair Credit Reporting Act (FCRA). The Federal Trade Commission (FTC) enforces the FCRA.

Complying with the FCRA

You must take certain steps before you can get a consumer report and after you take an adverse action based on that report.

What is a Consumer Report?

A consumer report may contain information about a person's credit characteristics, rental history, or criminal history. Consumer reports are prepared by a CRA — a business that assembles such reports for other businesses—and are covered by the FCRA. Examples of 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 reference checking service that contacts previous landlords or other parties listed on the rental application on behalf of the rental property owner; and

- A report from a background check company about an applicant or tenant's criminal history.

Before You Get a Consumer Report

You can only obtain a consumer report if you have a permissible purpose. Landlords may obtain consumer reports on applicants and tenants who apply to rent housing or renew a lease. You may obtain written permission from applicants or tenants to show that you have a permissible purpose.

You must certify to the company from which you are getting the consumer report that you will only use the report for housing purposes. You may not use the consumer report for another purpose.

It's also a good idea to review other applicable federal and state laws related to consumer reports. For example, a blanket policy of refusing to rent to anyone with a criminal record may violate the Fair Housing Act.

What is an Adverse Action?

An adverse action is any action by a landlord that is unfavorable to the interests of a rental applicant or tenant.

Examples of 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.

After You Take an Adverse Action

If you reject an applicant, increase the rent or deposit, require a co-signer, or take any other adverse action based partly or completely on information in a consumer report, you must give the applicant or tenant a notice of that fact – orally, in writing, or electronically.

An adverse action notice tells people about their rights to see information being reported about them and to correct inaccurate information. The notice must include:

the name, address, and phone number of the consumer reporting company that supplied the report;

a statement that the company that supplied the report did not make the decision to take the unfavorable action and can't give specific reasons for it; and

a notice of the person's right to dispute the accuracy or completeness of any information the consumer reporting company furnished, and to get a free report from the company if the person asks for it within 60 days.

The adverse action notice is required even if information in the consumer report wasn't the primary reason for the decision. Even if the information in the report played only a small part in the overall decision, the applicant or tenant must be notified.

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

Take the Case of...

1. *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.

- 2. 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.

- 3. 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.

- 4. 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.

- 5. A landlord who orders a criminal history report on a prospective tenant. Because the report shows that the applicant has a felony conviction, the landlord denies the rental application.*

The applicant is entitled to an adverse action notice. The report is a consumer report and it influenced the landlord's decision to deny the application.

Investigative Reports

Landlords who use "investigative reports" – reports based on personal interviews concerning a person's character, general reputation, personal characteristics, and lifestyle – have additional obligations under the FCRA. These obligations include giving written notice that you may request or have requested an investigative consumer report, and giving a statement that the person has a right to request additional disclosures and a summary of the scope and substance of the report. (See 15 U.S.C. section 1681d(a), (b)).

Disposing of Consumer Reports

When you're done using a consumer report, you must securely dispose of the report and any information you gathered from it. That can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it can't be read or reconstructed. For more information, see [Disposing of Consumer Report Information? Rule Tells How](#).

Other Considerations

If you report information, like late rent payments or evictions, to a company who compiles background information, you have legal obligations under the FCRA's Furnisher Rule. Your responsibilities include:

- furnishing information that is accurate and complete, and
- investigating consumer disputes about the accuracy of information you provide.

For more information, see [Consumer Reports: What Information Furnishers Need to Know](#).

For More Information

Find [specific FCRA information](#) on:

Getting consumer reports (see Section 604(a)(3)(F), 15 U.S.C. § 1681b(a)(3)(F), and Section 607(a), 15 U.S.C. § 1681e(a));

Taking an adverse action (see Section 615(a), 15 U.S.C. § 1681m(a));

Using investigative consumer reports (see Section 606, 15 U.S.C. § 1681d).

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