MAKING THE RIGHT CHOICE: USING INDIVIDUALIZED TENANT ASSESSMENT IN SCREENING APPLICANTS

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Fair Housing and Racial Disproportionality
- Racial disproportionality in the criminal justice system
- How interaction with the criminal justice system shapes access to affordable housing
- How housing providers can address racial disproportionality in screening applicants
- How housing laws address racial discrimination

Fair Housing Act: Overview
- Prohibits discrimination based on race, color, national origin, religion, sex, familial status or disability
  - Refusing to sell, rent, make unavailable, or refuse to negotiate
  - Applying discriminatory terms, conditions, or privileges of sale or rent of dwelling
  - Making any discriminatory statement or publication
Fair Housing Act and Criminal Background Screening Concerns

- Forms of discrimination most relevant to examining a housing provider’s criminal background screening practices
  - Different Treatment: applying different policies or procedures based on a protected class
  - Disparate Impact: neutral policies that have a predictable discriminatory effect on a protected class

Discriminatory Effects under the Fair Housing Act (As of February 15, 2013, 24 CFR 100.500)

- Discriminatory effect: neutral practice actually or predictably results in a discriminatory effect on a group of person protected by law
  - Laws, rules, decisions, standards, policies, practices, or procedures, including those that allows for discretion or the use of subjective criteria
  - Burden shifting to housing provider to show substantial and legitimate non-discriminatory reason for policy

Substantial and Legitimate Business Reasons

- Examples:
  - Laws that permit or require a particular policy or practice
  - Federal programs or funding sources that require a particular policy or practice
  - Legal requirements under landlord tenant laws
Identifying Discriminatory Effects of Housing policies and practices

- Identify the policy or practice that may have a disparate effect
- Burden on the housing provider to show that practice is housing related and based on a business necessity
- Consider alternative policies or practices that have a less discriminatory effect

Best Practices: Individualized Tenant Assessments

Factors to consider:
- Facts or circumstances surrounding the offense or conduct
- Number of offenses
- Time elapsed since conviction
- Length and consistency of tenant history
- Rehabilitation efforts or seeking support in the community
- Tenant or character references

When to request and consider the information

- At all stages of the application process
  - At the time of application
  - At the time of screening
  - Following completion of screening report
  - After issuance of an adverse action notice
- More opportunity for applicant to provide the information accomplishes several objectives:
  - More complete information to consider risk
  - Establishing clear and consistent communication with applicants
  - Demonstrating transparency and compliance with fair housing laws
Who makes the decisions to accept or deny an application

- Staff who initially process the application
- Supervisor role in reviewing the application
- Oversight and tracking for consistency and minimized error
- Who is involved in deciding reviews, appeals and grievances

Reminder...
- Review should be timely and transparent
- Prompt follow-up communication with applicant
- Be aware of confidentiality issues when communicating with third party

How to document this process

- Clear screening framework
- Available at all of your leasing offices and hard copy for applicants
- Brochures and marketing materials reflect your policies and practices and accessible to applicants (literacy and language)
- Certain that policies are available to staff
- Train consistently and regularly
- Maintain and archive current and past practices

Fair Housing Complaint

- Contain the following information:
  - Allege an unfair housing practice
  - Describe the alleged unfair practice and include date, location, and individuals involved
  - In writing and signed by the Charging Party
  - Authorized by law: enforcement agencies authorized to investigate complaints
  - Statute of Limitation: 1 year from the last date of incident or ongoing
### In the Response

- **Narrative of Charging Party’s tenancy**
  - **Who** was involved?
    - staff, tenants, witnesses, decision-makers
  - **What** happened?
    - Tell your side of events
  - **When** did it occur?
    - Chronology of events that occurred
  - **Where** did it happen?
    - Property location and unit
  - **Why** or how did you make your decision?

### Responding to a Complaint

- **Take a deep breath!**
  - Investigation is a fact-finding not adversarial
- **Cooperate**
  - Gather information
  - Provide a complete response to the complaint
  - Participate in the investigation
  - Consider opportunities for early resolution
- **Be Professional**
  - Be aware of retaliation

### Documenting your Policies and Practices

- **Fair housing policy**
- **Lease agreement**
- **Rental policies and procedures**
- **Tenant rules and regulations**
- **Rental application**
- **Tenant file (relevant parts)**
- **Correspondence**
- **Notices and eviction documents**
- **Staff or witness documents or correspondence**
- **Staff or witness(es) to interview**
Ensuring Outcomes for Applicants

- Comparator information
  - Who are same or similarly situated individuals and the protected class information?
  - What are the demographics of the applicants or tenants?
- Why is gathering comparator information important?
  - Policies do not have a discriminatory effect based on race
  - All applicants have access to a fair and open process

Questions?

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