

**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

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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

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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

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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

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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

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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

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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



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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



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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



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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?



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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



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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



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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



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Questions?



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