

Criminal Background Screenings and Housing

- Preview of Law for Housing Providers -

(updated September 25, 2017)



Introduction

Beginning October 1, 2017, the District of Columbia Office of Human Rights (OHR) will be charged with enforcing the Fair Criminal Record Screening for Housing Act of 2016, which prevents unlawful screening of a housing applicant's criminal background. The law imposes several new requirements for **rental housing providers** including: **(1)** provision of written notice of rent eligibility criteria to applicants; and **(2)** not making an inquiry or asking any questions related to an applicant's criminal background or arrest history at any time prior to making a conditional offer of housing to the applicant. Applicants who believe a housing provider has violated the law may file a free complaint with OHR.

Housing Providers Subject to the Law

Covered housing providers may not ask anything related to criminal background before they have made a conditional offer of housing to the applicant. Exceptions apply for some housing providers, including:

- housing providers that live in their own building and that has 3 or less rental units; and
- when federal law or DC law requires housing providers to consider criminal history, or allows for denial of an applicant due to certain criminal convictions.

Additionally, housing providers may not inquire into or require an applicant to disclose or reveal, pending criminal accusations or convictions of an individual under 18 years of age who will reside in the rental unit.

What the Law Requires of Covered Housing Providers

Application Process Requirements

A housing provider must provide the following written notices to applicants before an application is accepted, received, or before accepting an application fee:

- all eligibility criteria used in deciding whether to rent to the applicant, including financial, employment, criminal and rental history; and
- a statement that applicants may provide evidence of errors within their criminal record, rehabilitation or other mitigating factors.

Criminal Background Inquiries

A housing provider may not inquire, directly or indirectly, into any criminal background information before making a conditional offer of housing – this includes arrests. The law defines a conditional offer as an offer to rent or lease a rental unit that is contingent on: **(a)** the housing provider's lawful inquiry into the applicant's criminal record; or **(b)** any other eligibility criteria that the housing provider may utilize.

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After making a conditional offer, a housing provider may only ask about **pending criminal accusations** or **specific convictions** listed in the law that have occurred within the past 7 years.

Withdrawing a Conditional Offer of Housing

A housing provider may **ONLY** withdraw a conditional offer based on the listed criminal convictions or pending criminal accusations, if it is reasonable to withdraw the offer. When deciding whether or not the withdrawal is reasonable, the housing provider must use the following factors in making the decision:

- the nature of the offense and its severity
- how old the applicant was when the applicant committed the offense
- how long it has been since the offense was committed
- information provided by the applicant (or on their behalf) regarding their good conduct and rehabilitation since the offense occurred
- if the offense reoccurred, how safe the provider's other tenants or property would be
- whether or not the offense occurred on property rented by the applicant

Required Documentation

The housing provider must give written notice of the specific reason for withdrawing the offer and a notice of the applicant's right to file a complaint with the DC Office of Human Rights.

The applicant has 20 days to request a free copy of all information that the housing provider used during the application process, including the criminal background report. The housing provider then has 10 days to give the information to the applicant.

Complaint Process

Applicants who believe a housing provider has violated this law have **365 calendar days (one year)** from the date of the alleged violation to file a free complaint with the DC Office of Human Rights. The complaint may be submitted in person, by mail, or online at ohr.dc.gov.

Penalties for Violations

If a violation is found, the following penalties may be ordered (note that penalties may double depending on the circumstances), and half of the penalty will be awarded to complainant:

- up to \$1000 for a housing provider with 1 to 10 rental units
- up to \$2500 for a housing provider with 11 to 20 rental units
- up to \$5000 for a housing provider with 21 or more rental units

IMPORTANT DISCLAIMER: *This preview factsheet is intended to assist covered housing providers but is not an exhaustive review of the law. OHR encourages covered housing providers to review the law in its entirety.*