



TO: Chairman Kumar Barve

FROM: Aaron Greenfield

SUBJECT: House Bill 560, Human Relations – Discrimination in Housing – Reentry-Into-Society Status

DATE: February 15, 2021

Following testimony on House Bill 560, Committee members raised a number of questions related to the rental application process and in particular third party companies that conduct individualized assessments.

I. Process

The traditional rental application process:

- A. Prospective resident completes a rental application
- B. Property owner reviews application and makes a decision on whether to approve or decline.
- C. If the property owner identifies a factorable criminal record issue with the application, the property owner could elect to decline the application.
- D. If the property owner’s policy extends the option of an Individualized Assessment (IA), the property owner either initiates and conducts the IA, internally, or outsources the IA to a third party provider. The IA is used solely for criminal record issues, not for financial, credit, rental or income issues.
- E. Individual assessment undertaken

II. Background

Ensuring resident safety and protecting property are often considered the most fundamental responsibilities of a housing provider, and courts may consider such interests to be both substantial and legitimate...” HUD Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” April 4, 2016.

III. HUD Guidance on Criminal Background Checks

On April 4, 2016, the Office of General Counsel for the U.S. Department of Housing and Urban Development (HUD) issued new guidance with respect to criminal background checks.

https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

HUD's guidance identified the types of criminal information in an applicant's history which may be considered in making a rental decision. HUD advises that criminal policies should not bar a prospective tenant from renting due solely to arrest records. A housing provider can never consider arrest records. Instead, only convictions can be considered. Blanket bans on any applicants who have a conviction are not allowed. HUD also advises against utilizing blanket bans of certain categories of crime (except for drug manufacture or distribution).

HUD's guidance also urges the use of an "individualized assessment" of each prospective resident with a conviction history. HUD does not provide clear guidance on what shape this individualized assessment should take, but suggests that possible factors that may be considered in this assessment are:

- Facts or circumstances surrounding the criminal conduct
- The age of the individual at the time of the conduct
- Evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct
- Evidence of rehabilitation efforts

IV. Sample Individualized Assessment

Individualized Assessment Guide Worksheet

Name:

File #: SSN: xxx-xx-

Client:

Community:

*Are you the defendant in the criminal record in question? _____

*Is the criminal record accurate? _____

*Nature of the offense: _____

*Gravity of the offense: _____

*Facts/circumstances surrounding the offense: _____

*Number of offenses for which you have been convicted: _____

*Age at the time of the offense: _____ *Age now: _____

*Time that has passed since the offense occurred: _____

*Sentence Received: _____ *Served: _____

*Time that has passed since completion of the sentence: _____

*Attorney name & contact information: _____

*Probation/Parole Officer name & contact information: _____

*Criminal charges since completion of sentence:

1. Number of incidences: _____

2. Nature & Gravity of offenses: _____

3. Underlying conduct of the offenses: _____

*Rehabilitation Efforts:

-education _____

-training _____

-substance abuse treatment _____

-counseling _____

-other _____

*Have you been bonded under a federal, state or local bonding program?

*Consistency of residence history since completion of sentence:

*Consistency of employment history since completion of sentence:

*Number of Jobs, since completion of sentence: _____

*Length of employment history at the most recent PRIOR job: _____

*Your CURRENT employment history:

1. Name of Current Employer: _____

2. Length of Current Employment History: _____

*Additional information you would like to provide:

Please let me know if you have any questions or concerns.