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When Screening Tenants, Landlords Must Follow Federal Rules

By Anna DeSimone

PEOPLE SEEKING TO RENT HOMES AND APARTMENTS very often are pre-screened by real estate agents and owners of rental properties. Customarily, the qualifying steps include an investigation of the applicant's credit history as well as obtaining references from former landlords. Other professional intermediaries may be hired to provide screening or reference-checking services on behalf of landlords. Whether occupancy of the premises is a leasehold or tenant-at-will, there are federal regulations regarding tenant screening that apply to landlords, real estate agents and screening services.

The types of reports landlords and their agents commonly use in evaluating rental applications include:

- Report furnished by a credit bureau.
- Tenant screening service feedback based on reference checks.
- Tenant screening service feedback based on a credit report.
- Reference checking conducted by persons on behalf of the landlord.

Under the provisions of the Fair Credit Reporting Act, landlords must issue a notice of adverse action to any prospective tenant who is denied eligibility to rent a dwelling or is offered stricter requirements such as requiring a co-signer on the lease, adding to any security deposit or increasing the rent. The rule covers decisions based on information taken from consumer credit reports as well as reference checks. Even if the information in a credit report plays only a small part in the overall decision, the notice must be given and is required for any of the following situations:

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- Denying the application.
- Requiring a co-signer on the lease.
- Requiring a deposit that would not be required of another applicant.

Increasing the rent or amount of deposit. To be covered by the Fair Credit Reporting Act, a credit report must be prepared by a bona fide consumer reporting agency. Three national repositories, known as bureaus, compile and maintain consumer credit data transmitted by retail stores, credit and financial institutions and public records. The three bureaus are: Trans Union, Experian and Equifax. Independent consumer credit agencies subscribe to the bureaus to obtain data and provide additional services such as employment verification. The adverse action notice must include:

- The name, address and telephone number of the credit agency that supplied the consumer report, including the agency's toll-free telephone number.
- A statement that the credit agency that supplied the report did not make the decision to take the adverse action and therefore cannot provide a specific reason for the decision.
- A notice of the individual's right to dispute the accuracy or completeness of any information the credit agency furnished, and the consumer's right to a free report upon request within 60 days.

The FCRA serves to promote accuracy, fairness, and privacy of information in the files of every consumer and to ensure that information supplied by consumer reporting agencies is as accurate as possible. The law gives consumers specific rights, as listed:

- Consumers must be told if information in their file has been used against them.
- All consumers can find out what is contained in their credit file.
- Inaccurate information can be disputed with the credit reporting agency.
- Inaccurate information must be corrected if verifiable data and sources are provided.
- Outdated information can be deleted.
- Access to a file is restricted to a creditor, insurer, employer, landlord or other permissible business purpose.

Consent is required for reports that are provided to employers, or reports that contain medical information.

Consumers may have their name excluded lists for unsolicited credit and insurance offers.

Consumers may seek damages from violators.

Legal Consequences

In an effort to monitor compliance, The Federal Trade Commission studied 15 landlords in five major cities. While most landlords had procedures in place for providing adverse action notices, some did not realize that using information in a credit report to change rental conditions and not just denying a rental also triggers the FCRA notice. The study further revealed misconceptions regarding information sources as including both traditional credit reports as well as other screening information, such as prior reputation as a tenant.

Landlords who fail to provide required disclosure notices face legal consequences. The FCRA allows individuals to sue landlords for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations of the FCRA. In addition, the Federal Trade Commission, other federal agencies and the states may sue landlords for non-compliance and impose civil penalties. Landlords who inadvertently fail to provide a required notice in an isolated case have legal protections, so long it can be demonstrated that at the time of the violation reasonable procedures were in place to assure compliance with the FCRA.

The Federal Trade Commission has issued a facts-for-business guide entitled "Using Consumer Reports: What Landlords Need to Know." To request a copy of the guide, call 1-800-FTC-HELP or visit www.ftc.gov and click on Business Guidance. The guide provides examples and discusses scenarios including, for example, a situation where an applicant's income was the primary factor in the denial – but a consumer credit report was obtained. ■