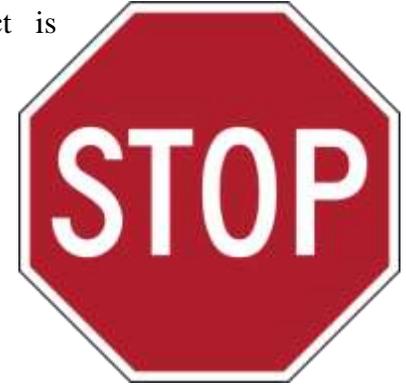


Are Criminals a Protected Class? Understanding the Connection Between Fair Housing and Criminal Records

By Christopher D. Cutting, Cutting Law Office PC

In April 2016, the United States Department of Housing and Urban Development (HUD) released guidance that screening requirements which do not take an individual's particular circumstances into consideration disproportionately impact African Americans and Latinos. This impact is considered unlawful discrimination because race is a protected class.

The Washington Attorney General has been actively investigating and fining housing providers that do not follow the HUD guidance. In January 2017, five Seattle and Tacoma area property management companies paid large fines to the Attorney General's office for improperly using criminal records in their screening policies.



What should you do?

Housing providers cannot have blanket bans on individuals with criminal records. Housing providers who wish to consider an individual's criminal history must be able to prove through reliable evidence, not stereotypes, that their policy serves a substantial, legitimate, non-discriminatory purpose and does so in the least discriminatory way possible. Any such policy must individually evaluate each applicant's criminal history based on his or her particular circumstances.

- Arrest records are not reliable and can never be considered
- A blanket ban on particular crimes is not sufficiently narrow
- A lawful policy considers the nature and severity of the crime and the duration since the offense
- Factors which mitigate a criminal history include mitigating factors about the crime, the applicant's age at the time of the offense, evidence that the applicant is a good tenant, and completing the sentence

What tips will make my policy comply?

A housing provider should consider all objective factors first, such as credit and income, before considering criminal records. If an applicant passes all objective requirements, the housing provider should determine whether any prior offense would result in a denial. If the answer is yes, the housing provider should notify the

Disclose to applicants that "We do an individualized assessment of each applicant's criminal records."

applicant and give him or her a reasonable opportunity to provide additional information regarding his or her work to rehabilitate, complete his or her sentence and restitution, and show any other mitigating factors.

In Seattle, First in Time Ordinance contains additional rules and the Fair Chance Housing Ordinance prohibits criminal records in almost all rental relationships beginning in February 2018.

2701 First Avenue, Suite 500, Seattle, WA 98121



ltservices.net



Cutting Law Office PC
www.cuttinglaw.com

206.241.1550

cuttinglaw.com

last updated: 12/17/2017