

LEGAL UPDATE

How to properly screen tenants for criminal records, credit scores and more

July 28 | 3pm

Ryan McCain, Esq.

Join Ryan McCain, Esq., a partner at Barfield, McCain P.A., and Evian White De Leon, MIAMI REALTORS' Chief Legal Counsel, for an in-depth discussion about how to properly screen tenants. We will focus on how to comply with fair housing laws while screening for criminal records. Participants will also receive a tenant screening checklist.



WELCOME!

We will start shortly.

This session is being recorded and will be available on
MIAMIREALTORS.LIVE.COM.

All attendees will be muted.

Questions? Put them in the chat.
We will address as many questions as possible during the webinar.

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How to Properly Screen Tenants



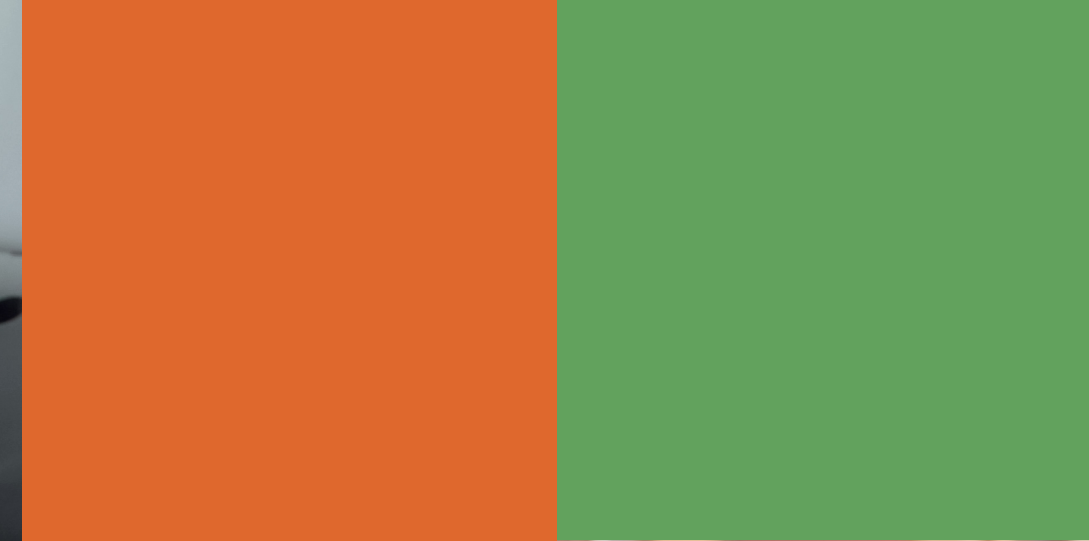
Context &
Best Practices



Tenant
Screening
Checklist

Context

- ➔ Different layers of fair housing laws
- ➔ Lawsuits
- ➔ Best practices



Protected Classes

Groups of people with a common characteristic who are legally protected from housing discrimination based on that characteristic.

Protected classes are created by federal, state, and local laws.



Know Your Protected Classes

FEDERAL FAIR HOUSING ACT:

- Race
- Color
- National origin
- Religion
- Sex
- Familial status
- Disability

FLORIDA FAIR HOUSING ACT:

- Race
- Color
- National origin
- Sex
- Handicap
- Familial status
- Religion

MIAMI-DADE COUNTY:

- Race
- Color
- Religion
- Ancestry
- National origin
- Age
- Sex
- Pregnancy
- Disability
- Marital status
- Familial status
- Gender identity
- Gender expression
- Sexual orientation
- Source of income
- Actual or perceived status as a victim of domestic violence, dating violence, or stalking

BROWARD COUNTY:

- Race
- Color
- Religion
- Sex
- National origin
- Age
- Marital status
- Political affiliation
- Familial status
- Disability
- Sexual orientation
- Pregnancy
- Gender identity or expression
- Veteran or service member status
- Lawful source of income
- Because the individual is or has been the victim of dating violence, domestic violence, stalking, or human trafficking

PALM BEACH COUNTY:

- Race
- Sex
- Color
- Religion
- National origin
- Disability
- Familial status
- Sexual orientation
- Age
- Marital status
- Gender identity or expression

MARTIN COUNTY:

- Race
- Color
- Ancestry
- National origin
- Religion
- Sex
- Marital status
- Familial status
- Handicap

"No criminal records"

WHY WE'RE HERE TODAY:

At last count, about 48 Florida housing providers were being sued for refusing "prior felony" tenants.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

April 4, 2016

Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions

I. Introduction

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.¹ HUD's Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

Tenant Screening Checklist





TENANT SCREENING CHECKLIST

RESOURCES:

- NAR's "Dos and Don'ts of Screening Tenants Legally" (bit.ly/2MMbKVI)
- FR's article on "'Clean Criminal Background' in Ads? Expect to Be Sued" (<https://bit.ly/2ZOe7yF>)
- FR's article on "Lawsuits Claim 48 Florida Property Managers Refused to Rent to Felons" (bit.ly/2MMKaaN)
- Davis Brown Law Firm's analysis of screening for criminal records (bit.ly/30v3p0G)





Make sure the overall policy does not have a disparate impact on a protected class



Make sure the policy is justified and is "necessary to achieve a substantial, legitimate, nondiscriminatory interest"

Periodically review policy



Be consistent





**Don't screen over
the telephone**



**Use a written form,
but don't get too
personal with the
questions**



**Keep all records -
even for tenants
that were not
accepted -
for 10 years**



Criminal records:

- Do not automatically reject applicant
- Generally should not consider arrests
- Make case-by-case determinations
- Consider mitigating circumstances
- Set a reasonable lookback period
- Evaluate criminal records last



Send an "adverse action letter" specifying the reasons for rejecting an application



OK to ask about:

- Pets
- List of people who will live in the unit
- Income
- Employment
- Rental history
- Credit report



**Make sure your
policy is in writing**



**Call your attorney
or Florida Realtors
Legal Hotline when
in doubt**



**Follow the
Fair Credit
Reporting Act
requirements**



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