

TENANT SCREENING CHECKLIST

CREATE A WRITTEN POLICY & TENANT SCREENING PROCEDURES

POLICY REQUIREMENTS:

- In writing
- Give to all agents
- Have agents sign for it
- Make sure it does not have a disparate impact on any protected classes

OK TO ASK ABOUT:

- Pets
- Who will live in the unit
- Income
- Employment
- Credit report
- Eviction history

OTHER CONSIDERATIONS:

- Document retention policy
- Send "adverse action letter" specifying reason for rejecting an application
- Don't forget about the Fair Credit Reporting Act requirements

ALWAYS FOLLOW THE POLICY!

- Not enough to just have a policy - must always implement it the same for everyone
- Periodically review for legal compliance
- DO NOT SCREEN OVER THE PHONE

SPECIAL CONSIDERATIONS FOR CONDO ASSOCIATIONS

CAN CONDOS SCREEN?

- MAYBE!
- Condo associations (boards or their designees) cannot screen tenants without first establishing tenant screening procedures in their governing documents, or "declaration" (F.S. 718.104)

BYLAWS:

- CAN include "reasonable restrictions concerning the use, occupancy, and transfer of units" (F.S. 718.112(3)(b), Coquina Club, 342 So. 2d 112)
- MUST grant board authority to approve/deny tenants (Cool Space, 292 So. 2d 769)

TENANTS SCREENING MUST BE UNIFORM:

- OK to screen if governing docs and bylaws allow it, but must be a uniform process (Woodside Vill. Condo. Ass'n, 806 So. 2d 452)
- Cannot inconsistently apply certain restrictions within screening and application process (White Egret Condo., 379 So. 2d 346)

CRIMINAL RECORDS & CREDIT SCORES

CRIMINAL RECORDS:

- If considering it, look at this last
- Establish reasonable look-back period
- Look at convictions, not arrests
- Consider mitigating factors
- No blanket bans

CREDIT SCORES:

- Credit reports are not always a reliable indicator of a tenant's ability to pay rent or their eviction history
- Best practice: consider holistic review of all other factors instead; do not require arbitrary credit scores or income amounts

LEGALLY SUFFICIENT JUSTIFICATION:

- There could be times when the policy regarding criminal records does have a disparate impact on a protected class - if it does, make sure that the policy is justified and necessary to achieve a substantial, legitimate, nondiscriminatory interest (and that there are no alternatives)

DON'T FORGET - TENANTS' BILL OF RIGHTS WAS PREEMPTED BY HB 1417 (2023)

HB 1417 (2023):

- Effective 7/1/23
- Preempts (gets rid of) the local ordinances that modified the Florida Landlord Tenant Act (Ch. 83, Part II, Fla. Stats.)
- Creates uniformity throughout the state

WHAT THIS MEANS FOR YOU:

- Florida Landlord Tenant Act and leases are what govern tenancies
- DO NOT need to use the "Notice of Tenant Rights" in Miami-Dade County!
- The other requirements are also moot

FAIR HOUSING LAWS STILL APPLY:

- Even though the different versions of the "Tenants' Bill of Rights" were preempted by HB 1417 (2023) throughout the state, fair housing laws still apply

WHEN IN DOUBT, CALL YOUR ATTORNEY OR THE FLORIDA REALTORS LEGAL HOTLINE

LAWYER REFERRAL SERVICES:

- Florida Bar (800.342.8011)
- Miami-Dade Bar (305.371.2200)

FLORIDA REALTORS LEGAL HOTLINE:

- 407.438.1409
- www.floridarealtors.org/tools-research/legal-hotline

OTHER RESOURCES:

- HOPE Fair Housing (305.651.4673)
- Legal Services of Greater Miami (305.576.0080)

