

HOUSING COOPERATIVE LAW BLOG

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THE CONVICT NEXT DOOR: NEW RULES ON CONVICTIONS AFFECT ALL COOPERATIVES

July 7, 2016 · by Coop Law · in Housing Coop Law, HUD, Legal Updates, Policies · Leave a comment

By

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and

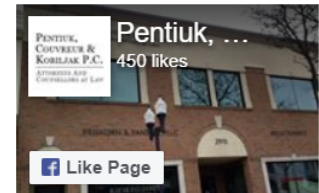
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On April 4, 2016, the Office of General Counsel for the U.S. Department of Housing and Urban Development (HUD) issued a [Guidance](#) on the application of the Fair Housing Act to Cooperatives and other housing providers. The Guidance notes that a greater percentage of African Americans and Latinos than whites have criminal records. The refusal to rent or sell to persons with criminal records may therefore have a disparate impact on race and perhaps national origin.

While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such practices likely violate HUD rules under the Fair Housing Act.

What does this mean for Cooperative Boards and management companies? It means you're your Board need to reevaluate its screening and selection policies. The Guidance applies to all Cooperatives, whether or not they receive federal funds or report to HUD.

The take-away from this development is that Cooperative policies that exclude persons based on criminal history must be tailored to address such factors as the

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type of the crime and the length of time since conviction. Even then, such policies will be subject to review if challenged by HUD or in court.

Here are some suggestions for your Cooperative Board and management company to start considering. Your Application Forms will most likely have to be revised and a separate policy adopted. Your Cooperative Attorney should also be asked to review your current policy. Of course, any policy being considered for adoption should be also reviewed by your Attorney.

Screening Process

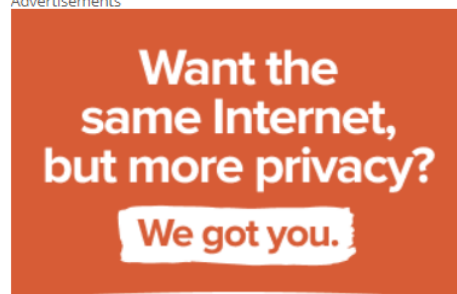
- The Cooperative will conduct a criminal background check on each adult member of an applicant household. An adult means a person 18 or older or a person convicted of a crime as an adult under federal, state, or tribal law.
- On the application form, the Cooperative will request the applicant to identify felony convictions and provide an explanation of any mitigating circumstances, including, but not limited to: (1) the seriousness of the criminal activity; (2) the relationship between the criminal activity and the safety and security of residents, Cooperative staff, or property; (3) the length of time since the offense; (4) the age of the household member at the time of the offense; (5) evidence of rehabilitation, such as employment, participation in a job training program, education, participation in a drug or alcohol treatment program, or recommendations from a parole or probation officer, employer, teacher, clergy, social worker, or community leader; and (6) the effect a denial of admission will have on the household and the community.
- If the criminal background check reveals negative information about a household member, and the Cooperative proposes to deny membership due to the negative information, the Cooperative will make a written independent analysis of the above mitigating factors prior to making a decision on the application. The written analysis shall be made part of the applicant's file. The Cooperative shall thereafter send the subject of the record (and the applicant, if different) a copy of the criminal record, and the cooperative's written analysis of the factors, and provide the applicant an opportunity to dispute the accuracy and relevance of the record and analysis.
- If the applicant does not contact the Cooperative to dispute the criminal record within 14 days, the Cooperative will send a written notice of ineligibility to the applicant and deny membership. The notice of denial will state the specific reason(s) for denial.

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Eligibility Criteria

- The Cooperative will deny admission to a household if a member is subject to a lifetime registration requirement under a state sex offender registration program.
- The Cooperative will deny admission to a household if a member has been convicted of manufacturing or producing methamphetamine on the premises of federally-assisted housing.
- The Cooperative will deny admission to a household if a member has been evicted from federally-assisted housing for drug-related criminal activity within the past three years, unless the member has successfully completed a supervised drug rehabilitation program or the circumstances leading to the eviction no longer exist.
- The Cooperative will not consider unproven allegations or arrests that did not result in convictions as evidence of criminal activity. In addition, the Cooperative will not consider expunged/purged/sealed convictions as evidence of criminal activity.
- The Cooperative will not consider juvenile adjudications that do not qualify as convictions under state law as evidence of criminal activity.
- If the applicant's past criminal activity was related to his or her disability, the Cooperative will provide a reasonable accommodation if necessary.
- If the applicant's past criminal activity was the consequence of acts of domestic violence, dating violence, or stalking against him or her, the Cooperative will not deny admission.
- If the Cooperative proposes to deny admission to a household based on the past criminal activity of a member, the Cooperative will provide the household an opportunity to exclude the member and obtain admission.

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