

QUALIFYING A TENANT

From a landlord's perspective, it is very important to have a detailed Rental Application and, in the case of residential property, a written Rental Policy. The more information a prospective tenant provides the better position a landlord is in to make a judgment of the applicant's veracity. Although discrimination based upon race, sex, color, creed, national origin, ancestry, marital status, or physical or mental handicap is prohibited, there are many valid criteria that may be considered. One of the most important criteria is income. Using income as a qualifying criterion is one permitted factor a lessor can take into account in determining if the applicant is appropriately suited to fill the vacancy in question.

Uniformly applying rental criteria to applicants is critical when seeking to avoid liability for discrimination.



The Fair Credit Reporting Act (FCRA)

Landlords who use consumer reports to evaluate rental applications must comply with the **Fair Credit Reporting Act (FCRA)**. This Act protects the privacy and ensures that the information supplied by consumer reporting agencies is as accurate as possible.

One of the requirements of the law: If a landlord denies a rental application

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based on information in an applicant's consumer report, the landlord must provide an "adverse action notice" telling the person the reason for the denial.

A "consumer report" may contain information about a person's credit history, character, general reputation, rental history and lifestyle. Specifically, it may include:

- Credit information from a credit bureau, such as Trans Union, Experian and Equifax or an affiliate company;
- Information from a tenant-screening service that describes the applicant's rental history based on reports from previous landlords, eviction files or housing court records.
- A report from a reference-checking service that contacts previous landlords or other parties listed on the rental application on behalf of the rental property owner.

To be covered by the FCRA, a report must be prepared by a consumer reporting agency — a business that assembles such reports for other companies. The most common type of agency is a credit bureau.

When a prospective tenant fills out a rental application, it's common for landlords to ask for personal, employment, and previous landlord references. When dealing with references, keep in mind that a reference verified by a landlord is not covered by the FCRA. However, the law covers a reference verified by an agency hired by the landlord to conduct the verification.

An "adverse action" is any action a landlord takes that is unfavorable to the rental applicant's interests . Some common examples:

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- Denying an application.
- Requiring a co-signer on the lease.
- Requiring a deposit that would not be required for another applicant or requiring a larger deposit.
- Raising the rent to a higher amount than another applicant would be charged.

Let's say that adverse action is taken, which is based solely or partly on information in an applicant's consumer report. The FCRA requires you to provide a notice to the consumer that must include:

1. The name, address and telephone number of the agency that supplied the consumer report, including a toll-free telephone number for credit reporting agencies that maintain files nationwide.
2. A statement explaining that the credit reporting agency supplying the report did not make the decision and cannot give the specific reasons for it.
3. A notice explaining the individual's rights to dispute the accuracy or completeness of any information the credit reporting agency furnished and the consumer's right to a free report from the agency upon request within 60 days.

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Landlords who fail to provide required disclosure notices can be sued for court costs, reasonable legal fees and punitive damages. Additionally, the Federal Trade Commission and other federal and state agencies can sue landlords for non-compliance and obtain civil penalties.

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