



North Carolina Housing Finance Agency
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To: All Owners and Managers of Affordable Rental Housing with an NCHFA Regulatory Agreement
From: Paul Kimball – Manager of Rental Assets
Date: February 8, 2016
Subject: Fair Housing and Tenant Selection

The NC Housing Finance Agency has a responsibility to affirmatively further fair housing within its housing programs. Additionally, a public policy objective of the Agency is to ensure access to our programs through the application of reasonable selection criteria by our partners.

The state of North Carolina has entered into an *Olmstead* settlement with the US Department of Justice (DOJ) which in part requires the state to offer housing options and move persons with disabilities improperly housed in institutional settings into integrated housing of their choice within the community.

The state's primary tools for accomplishing this are through a tenant based rental assistance program, Transitions to Community Living Initiative (TCLI) administered by DHHS for use in rental housing regardless of financing source – much like the HUD housing choice voucher program. The state's other primary resource is the Low Income Housing Tax Credit (LIHTC) program administered by the Housing Finance Agency. The tax credit program accomplishes this through the establishment of Targeting units within tax credit properties and the use of Key assistance for the Targeting units to ensure the units are affordable for persons with disabilities.

It has been brought to our attention by DOJ that Tax Credit housing developments may have screening policies that are so restrictive they deny access to an important housing option to many persons within the *Olmstead* settlement class. We have been asked to address this issue.

To that end the Agency has taken the following steps on the related issues listed below:

Credit Screening

The Agency has created financial risk mitigation tools within the Key assistance program designed to reduce or eliminate the need for a credit evaluation of Targeting Program applicants by landlords. The tools include the following:

- Rent Assistance – The Key assistance program pays rent assistance on behalf of the Targeting Program participant reducing the portion of rent paid by the tenant;
- Security Deposits - The Key assistance program will pay deposits for program participants in Targeted units at the full Key payment standard (which is often greater than the deposit required of non-Targeting Program applicants);
- Reimburse landlords for unpaid damages incurred by Targeting Program participants;
- Reimburse landlords for unpaid tenant portion of rent incurred by Targeting Program participants;
- Reimburse landlords for vacancy loss due to tenant abandonment of unit incurred by Targeting Program participants;
- Reimburse landlords for eviction costs provided DHHS is given opportunities to work with the Targeting Program participant and landlord to correct the breach of the lease before the landlord commences eviction.

With these tools in place, we ask that management agents amend their tenant selection policies and waive credit checks for Targeting Program applicants, regardless of the source of subsidy. The Key program will cover the claim, within limits, even if the Targeting Program participant has a source of rental assistance other than Key. To the extent credit checks are not waived for Targeting Program applicants, we will expect an explanation of your policy and justification of the criteria you apply.

Criminal Background Checks

The Agency, in conjunction with the NC Justice Center, has developed the attached Model Policy on Screening Applicants with Criminal Records.

Given the concerns expressed by the DOJ and the recent Supreme Court ruling on disparate impact, NCHFA, DHHS and the NC Justice Center worked to develop a model policy that we consider fair and reasonable. Unlike credit screening, where a property owner may opt, based on advice of legal counsel, to have separate policies for Targeting Program applicants who are covered by the risk mitigation tools of the Key program and a different policy for applicants who are not, there does not appear to be a justifiable reason to have more than one policy on criminal backgrounds. Further, having a criminal screening policy too restrictive could be construed to be a fair housing violation because of its disparate impact on persons protected by the Federal Fair Housing Act.

Based on this, we ask management agents to consult with a fair housing attorney and review their criminal record policies and use our model as a guide. We ask that you consider adopting our model policy in whole. To the extent your policy is less restrictive than our model, we have no objection to you retaining your current policy. However, if your policy is more restrictive, we ask that you either modify your policy, or be prepared to justify policies that are more restrictive.

Tenant Selection Policies

We will be creating updated Agency guidance on Tenant Selection Criteria in the near future and will be asking that you review your written policies and provide us with updated copies. Primarily our concern on this topic is that all criteria used in the decision making process needs to be included in the written policy. The policy needs to have enough specificity that the applicant or a third party can read the policy and reasonably determine the applicant's likelihood of acceptance to the property. The policy also needs to include a nondiscrimination statement and describe your appeals process, if any, and state the applicant's right to request a reasonable accommodation, if they are disabled.

When we receive complaints that applicants to your property have been unfairly turned down for housing, we will contact you and ask for a summary of the facts used in your decision and review them against the Tenant Selection Policy we have on file for the property.

The information above is not intended as legal advice and does not provide a legal opinion as to the matters stated. It is recommended that all property owners consult with an attorney that is well versed in fair housing law when making decisions regarding tenant selection criteria.

Model Policy on Screening Applicants with Criminal Records

Screening Process

- In an addendum to the application form, the management company will explain its policies and procedures on criminal activity and will inform the applicant of his or her right to request a reasonable accommodation. The addendum will also inform the applicant of his or her opportunity to submit with the application evidence of mitigating circumstances if the admissions criteria provides for an individualized assessment of the applicant's specific criminal activity.
- The management company will conduct a criminal background check on each adult member of an applicant household. An adult means a person 18 or older.
- If the criminal background report reveals negative information about a household member and the management company proposes to deny admission due to the negative information, the subject of the record (and the applicant, if different) will be provided notice of the proposed adverse action and an opportunity to dispute the accuracy of the record. The notice will include the name, address, and telephone number of the agency that composed the criminal record report and inform the applicant of his or her right to dispute the accuracy of the criminal record report as well as his or her right to a free copy of the criminal record report.
- If the applicant does not contact the management company to dispute the accuracy of the criminal record within 10 days, the management company will send a written notice of ineligibility to the applicant stating the specific reason for denial. If the applicant did not contact the management company within the specified time period due to a disability, the management company will provide a reasonable accommodation extending the dispute period as is reasonable. .

Admissions Criteria

- If a member of an applicant household has been convicted of a felony offense involving the sale or manufacture of a controlled substance, the management company:
 - Will deny admission if the conviction, or exit from incarceration, occurred within 5 years of application;
 - May deny admission if the conviction, or exit from incarceration, occurred more than 5 years but within 10 years of application;
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than 10 years before application.
- If a member of an applicant household has been convicted of a violent felony offense, the management company:
 - Will deny admission if the conviction, or exit from incarceration, occurred within 5 years of application; and
 - May deny admission if the conviction, or exit from incarceration, occurred more than 5 years before application.
- If a member of an applicant household has been convicted of a nonviolent felony offense, the management company:
 - May deny admission if the conviction, or exit from incarceration, occurred within 7 years of application;
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than 7 years before application.
- If a member of an applicant household has been convicted of a violent misdemeanor, the management company:
 - Will deny admission if the conviction, or exit from incarceration, occurred within 2 years of application;

- May deny admission if the conviction, or exit from incarceration, occurred more than 2 years before application.
- If a member of an applicant household has been convicted of a nonviolent misdemeanor offense, the management company:
 - May deny admission if the conviction, or exit from incarceration, occurred within 5 years of application; and
 - Will not deny admission if the conviction, or exit from incarceration, occurred more than 5 years before application.
- A violent felony is a Class A, B, C, D, E, F, or G felony or any felony requiring registration on the sex offender registry. A nonviolent felony is a Class H or I felony.
- A violent misdemeanor is a Class A1 misdemeanor or a misdemeanor requiring registration on the sex offender registry. A nonviolent misdemeanor is a Class 1, 2, or 3 misdemeanor.
- The management company will not consider an arrest or charge that was resolved without conviction. In addition, the management company will not consider expunged or sealed convictions. The management may deny admission if an applicant has pending charges at the time of application.
- Where the management company “may deny” admission to a household based on a criminal conviction or pending criminal charge, the management company will conduct an individualized assessment of the criminal record and its impact on the household’s suitability for admission. This individualized assessment will include consideration of the following factors: (1) the seriousness of the criminal offense; (2) the relationship between the criminal offense and the safety and security of residents, staff, or property; (3) the length of time since the offense, with particular weight being given to significant periods of good behavior; (4) the age of the household member at the time of the offense; (5) the number and nature of any other criminal convictions; (6) 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, social worker, or community leader; and (7) tenancy supports or other risk mitigation services the applicant will be receiving during tenancy.
- If the applicant’s criminal conviction was related to his or her disability, the management company will consider a reasonable accommodation.

Type of Conviction	Automatic Exclusion Period	Individualized Assessment Period	No Exclusion
Nonviolent Misdemeanor (Classes 1-3)	--	5 years	> 5 years
Violent Misdemeanor (Class A1 & sex offenses)	2 years	> 2 years	--
Nonviolent Felony (Classes H-I)	--	7 years	> 7 years
Violent Felony (Classes A-G & sex offenses)	5 years	> 5 years	--
Felony Involving Sale or Manufacture of a Controlled Substance	5 years	5 – 10 years	> 10 years

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