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## 9 Steps to Tenant Screening

### Introduction

All landlords want good tenants. One of the biggest costs in the landlord business is the amount of time necessary to get the property ready, advertise the rental property, arrange showings of the property, and screen applicants. Selecting good tenants usually offsets a part of those costs. In the extreme, failing to select a good tenant can cost much more than all costs of the vacancy put together.

The key to minimizing tenant problems is to recognize the importance of tenant screening and selection as the strategic elements in effective property management. Tenant screening and tenant selection are terms that are often used interchangeably and tenant screening is usually used to include both parts of the process as we have used the term in the title of this course, but we sometimes like to differentiate between the term two terms by defining some subtle differences.

The tenant screening procedures involve obtaining the information and verifications required for qualification and selection of applicants. Screening provides the means of obtaining quantifiable data that eliminates or minimizes the need to make subjective judgments in the selection of a good tenant. The procedures should be in writing and the same screening tasks should be applied equally to all applicants.

The tenant selection procedures involves analyzing the information obtained from screening and provides a way to decide if an applicant is qualified to be your tenant under your objective criteria. The criteria should be written, must be in accordance with all laws and regulations, and must be uniformly applied to all applicants.

### 1. Procedures & Criteria

Ideally, screening and selection are integrated into a single process and both screening and selection procedures are totally objective. This is important because subjective procedures and/or decisions are subject to disagreement and greatly increase the risk of being charged with violation of fair housing laws. Being objective means that the same procedures are applied equally to all prospects (those who inquire about the property, whether or not they submit applications) and applicants (those who actually submit applications). Important proof that your procedures are applied equally is that all procedures and qualifying criteria be written down and that you maintain a log detailing each use of the procedures to prospects and applicants.

Having objective screening procedures means that you require submission of all the same information from each applicant and that you do all the same verifications and obtain all the same reports on each and every applicant. For example, you cannot legally do a criminal report on one



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applicant who dresses in a certain way or wears his/her hair in a certain way and not do a criminal report on another applicant having a different appearance.

## **2. Handling Inquiries**

The majority of your initial contacts with prospective tenants will likely be by telephone, usually in response to the advertising of your vacancies. We will assume that your advertising was in full compliance with fair housing laws and herein discuss how to handle the resulting inquiries.

### **Prescreening**

A landlord can "prescreen" prospective applicants on the phone when they call to inquire about the property and/or in person when the applicants pick up the information package. If there was no phone call and the prospect did not obtain the application package from you personally, it may be possible to prescreen when the application is returned.

The initial contact offers an opportunity to help prospects learn about your property and for them to make an initial decision about whether your property might fit their needs.

Whether on the phone or in person, the prescreening interview offers the opportunity for you to make a preliminary determination of prospects' interest in the property and their ability to meet your qualifying criteria. Prescreening prospects is of benefit to both you and prospective tenants because it avoids wasting time when a prospect decides that the vacant unit is not of interest for various reasons. Perhaps the prospect doesn't want to submit to the screening reports and verifications that you will be doing or perhaps the prospect knows he/she is unqualified under your selection criteria.

During the initial contact, immediately inform prospects of your rental policies and procedures, particularly the types of screening reports that will be run and your screening criteria. Also disclose all fees and deposits that are applicable and when the funds will be due from the successful applicant. Finally, discuss time frames for data verification and the total evaluation process. A way of providing all information relevant to a prospect deciding whether to submit an application is to provide each person requesting an application form with an Information Package. Such a package is discussed in Step 3.

It is a good idea to use a prepared script to ensure that all prospects are given the same information in the same manner. By using a script, you are able to consistently inform all prospects of the rental property's features, both making sure that you haven't forgotten anything and avoiding charges of discrimination. Of course, if your initial contact is in person, you will likely want to do the script from memory rather than read it, but make sure to follow it.

It is useful to keep a log of all phone and in-person interviews, recording the prospect's responses to your presentation in your log. You can do this as you speak during the telephone interview. For in-

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person interviews, you can take notes during the interview and post them to a formal log after the prospect has left. The log provides a convenient place to record notes regarding the prospect's name, contact numbers, needs, and interests. If you and the prospect decide to set up a showing you will have background information to use for making the prospect feel more special and alerting the prospect to the property features that they are looking for. If the prospect decides he is not further interested or appears unqualified you can record that information. The log can also provide marketing information regarding the source of advertising that led the prospect to call regarding the vacancy.

Interested parties usually want to see the property before deciding whether they want to complete a rental application form and pay any fees. They may simply view it as they drive-by or they may stop, walk around, looking in the windows. This is why it saves time when the address is provided in advertising copy. The address and rent should usually have been stated in your advertising. Providing this information upfront is an effective use of the landlord's time, reducing time spent in showings for prospects that cannot meet the minimum requirements or who need a different type of property than you have available.

Callers responding to your marketing efforts should be encouraged to drive by the property and you should provide the property address if they don't already have it. If an open house is scheduled, inform the prospect of the planned date and time to encourage them to preview the property interior.

Whether the initial contact is by phone or in person, it must not be used as a means to screen out prospects by asking leading questions or stereotyping prospects by language and speech patterns or by any other characteristic that is forbidden by federal, state, or local fair housing laws. Such practices are illegal.

If you have a pet acceptance policy, inform the applicants that, as part of the screening process, you intend to also "interview" their pet. You may allow a small dog for your pet policy, but a large Saint Bernard may not be acceptable. A generic description of small dog noted on the application may not prepare you for the actual size and breed of the intended pet occupant. It is important that you determine the breed of dog if your insurance policy prohibits certain ones the company considers high risk or if you are particularly concerned about the safety of neighbors.

If it appears that the prospect may be interested in your vacancy, ask questions such as these:

- What features in a rental home are you looking for?
- Why are you moving?
- How many people will want to live at the property?
- What kind of pets do you have?
- If you like the property, when do you want to move in?
- Have you already given notice?



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You want to see if there is a match between what they are looking for and what your property can offer. This can save time and frustration for both parties rather than finding out after showing the property that it is not suited to their needs.

In any contact, your manner should be positive and professional and you should come across to the prospect as a voice with a smile. First impressions do count, giving the prospect an indication of what they could expect if they were to become your tenants.

The time spent with the applicant also provides the opportunity to set the tone for your working relationship. If you find during the interview that the interpersonal communication and behavior is conflicting with the standards you've set for reasonableness, professional courtesy, and respect for others, in short, can you get along with one another, now is the time to carefully review the situation and decide if indeed you should proceed. The reality is that the applicant will have possession of a valuable asset and care should be taken to ensure that a working trust can be established.

Landlords must understand that adequate screening and proper selection are crucial to their success. They must always thoroughly check out each applicant before carefully picking the one who will be the next tenant.

Successful landlords recognize the value of taking the time to adequately screen and properly select applicants. Following specified screening procedures and adhering to written selection criteria that utilizes objective business standards helps the landlord to avoid charges of discrimination and the expenses of evicting a bad tenant later on.

Landlords must not only select tenants who are good credit risks, but also choose people who will coexist peacefully with their neighbors and other tenants. Middle of the night calls are much more likely to be concerned with some kind of tenant disturbance than with leaky plumbing.

### **3. Information Package**

It is very useful to provide an information package with each application form that is handed out to prospective applicants. Unfortunately, few landlords provide adequate packages and most provide none at all. Providing a detailed application package to potential tenant applicants has numerous benefits, including the following:

- Puts applicants on notice regarding important issues
- Reduces chances of discrimination accusations
- Reduces chances of misunderstandings
- Eliminates a large percentage of non-qualified applicants

Although a complete detailed package will include a number of pages, the effort required to develop an adequate package is a one-time task and the cost of making copies is well worth the potential

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benefits. How many of the following items you wish to include in your application package will depend on a number of factors including (1) market conditions - supply and demand, (2) type of property - standards can usually be higher for higher end property, (3) past experience with various potential problems, and (4) how important it is for you to minimize wasted time.

All information stated in the application package should be in accordance with all applicable laws, in accordance with procedures that will actually be used, and in complete agreement with clauses found in the lease agreement.

Items that might be considered for inclusion in an information package, along with some discussion regarding each item, include the following:

### **Mention Adherence to Fair Housing Laws**

Include a statement at the beginning that you are a landlord who follows Fair Housing Laws, as this can be of benefit in avoiding or defending against claims.

### **Contact Information**

Since a prospect may be checking out a number of properties, contact information (a name, telephone number, and email address) should be shown on one or more of the sheets in the package. If you have a Web site for showing photos and details about the property, be sure to also include the Web address.

### **Application Form Instructions**

State that failure to provide the required information will result in automatic rejection of the application unless an acceptable reason is provided for missing information at the time of submission of the application. Also state that, in order to maximize applicant's chance of approval and to expedite the process, he/she should take the time to fill out the application as completely and as accurately as possible. Recommend disclosure of potentially derogatory information along with an explanation. Finally, state that, to insure readability of the application, everything should be printed except for signature.

### **Recommend Disclosure**

Advise that you will be checking credit record, criminal record, eviction record, and other sources of information, so it is important that an applicant acknowledge and explain any derogatory information at the time of submitting an application. Included in such disclosures would be specific credit problems (including judgments or bankruptcy), criminal convictions (not all conviction types will affect an applicant's consideration), and prior rental problems (including evictions). The tenant should be aware that disclosure of such matters by applicants on their application form (or attached sheet) will

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be considered in a better light than your discovery of such information without prior mention by the applicant. You might also state that you reserve the right to refuse rental of your property to persons who (1) have been convicted of a felony, (2) have been convicted of a misdemeanor of a type that might be considered a risk to safety of others, or (3) have been evicted. Accordingly, potential applicants should discuss these matters prior to submitting an application in order to avoid unnecessary payment of non-refundable application fees or deposits.

### **Fees & Deposits**

Under the Uniform Landlord-Tenant Act (ULTA), the term "deposit" can only be applied to money which can, under certain circumstances be refunded to the tenant. Landlords should also check state and local laws regarding the collection of any applicable fees or deposits.

### **Refundable Deposits**

Refundable deposits are those that remain a credit in the tenant's account and are refundable if the tenant performs in accordance with the lease agreement. If a deposit is being charged, the law of many states require that (1) the lease agreement be in writing, (2) the agreement states what each deposit is for, (3) the agreement states what the tenant must do in order to get the money back, and (4) the tenant be given a written receipt for each deposit.

### **Nonrefundable Fees**

Nonrefundable fees are those that will not be returned to the tenant under any circumstances. If a nonrefundable fee is being charged, the rental agreement must be in writing and must state that the fee will not be returned. A nonrefundable fee cannot legally be called a "deposit."

Although some states do allow nonrefundable deposits to be collected, such as for cleaning or for pets, it is usually better to call the amounts fees rather than deposits or, better still, include these charges in your rent. By doing so, you can avoid time consuming discussions with the tenant regarding deposit disputes.

A nonrefundable deposit may indicate to the tenant that they shouldn't worry about returning the property in good condition, since the landlord will probably keep all the deposit anyway. That is, the tenant sees a nonrefundable deposit as a forfeit, rather than an incentive.

### **Processing and Report Fees**

The amounts of application processing fees required and whether or not any are refundable should be stated. State that the fees must be paid by cash, money order, or cashier's check upon submission of an application.

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## **Lease Execution & Payments**

State that the lease must be executed and that all rents, deposits, and fees must be paid within a certain period (say 24 hours) after notification of acceptance unless otherwise arranged at the time of notification.

## **Other Deposits**

If deposits of any kind (not fees) are taken with applications, the amount of each deposit and its disposition in event of various possible occurrences should be clearly stated. This information should be within some document that is signed by the applicant before or when the funds are transferred to the landlord. The information can be in a document acknowledging receipt of the application package, within the application form itself, or in a separate document.

An example of a specific policy would be "Landlord does not accept deposits to "hold" a unit, but only accepts funds simultaneously with execution of the lease agreement. Accordingly, if a tenant fails to occupy the unit after execution of the lease, funds paid will be applied toward all obligations of the tenant under the terms of the lease to the full extent allowed by law."

## **Income Qualification**

State that applicants' total monthly income must be at least 3 times (or some other factor) times the monthly rent, that outstanding debts and other necessary monthly obligations will also be taken into consideration, and that a co-signer or guarantor may be required for marginally qualified applicants.

## **Pet Policy**

State whether or not you will allow pets. If no, clarify that the prohibition does not apply to animals excepted under fair housing laws or the ADA. If yes, provide information about which animals are acceptable – species, size, and breed of dogs (prohibit breeds prohibited by your insurance company). State the amount of any pet deposit (potentially refundable) or pet fee (non-refundable) and the amount of any monthly pet rent surcharge.

You should make it clear that applicants must disclose any pets that will be residing on the property and pets may result in a higher rent and/or an additional deposit. You should state that failure to disclose pets that are kept on the premises will be grounds for termination of the tenancy and/or will result in assessment of additional rent and deposit from the date of commencement of the lease. Your lease agreement must also include such a clause.

Many landlords consider allowing pets, providing that the tenant pays a pet deposit and/or fee, pays a rent surcharge, and signs a pet agreement. Deposits, fees, and surcharges vary greatly and can be



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what the landlord considers adequate for the risk unless his state is one of the few that has limits. For example, Nebraska limits the amount to 25 percent of rent.

Your policy on allowing dogs must take into account any restriction in your insurance policy. An increasing number of insurers now do not cover certain breeds that are considered higher than average risk.

### **Home Owner Associations**

Many properties are governed by a Home Owner Association (HOA). This can vary from an association that only maintains a small greenbelt area or perhaps the streets within the community to an association that is responsible for every detail of a development including even the exterior walls and roofs of the individual units.

Rental of housing that is governed by an association can be significantly affected by HOA rules and many landlords of such property are unaware of some of the issues. It is even possible that an owner cannot rent a property within the community. It is important that owners and tenants obey the rules and regulations of an association. Failure to do so can result in fines and even in liens being filed against the property. In many states the property can even be foreclosed on if the owner fails to pay such assessments. Therefore, it is important that prospective tenants be provided information about the most important association rules and regulations prior to submitting an application because they might be material to the prospects interest in renting the property.

The basic framework of an association is set up through the CC&Rs and the Bylaws. These documents usually give the board the authority to draft, implement, and enforce any other rules that will preserve the values of the units, enhance the quality of life for residents of the community, or improve their convenience or safety.

Rules and regulations usually cover a large number of issues and some might be unacceptable to a prospect. Landlords should always require that the successful applicant read and accept HOA Bylaws and Rules and should include clauses related to the HOA in the lease. Accordingly, potential problems can be avoided by providing such information in the Information Package. Rules that might most affect a tenant decision to rent a unit, include the following:

- Restrictions on occupancy and use of units - e.g., two persons per bedroom, den can't be used for bedroom, no offices or home businesses conducted.
- Parking is confined to outlined spaces, towing if improperly parked, no commercial uses and no trailers, boats, or inoperable vehicles.
- Rules regarding pool, fitness center, and other amenities.
- Pet prohibition or limitations as to number, size, and/or type.
- Overnight guests are limited and must be registered.





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- Various leasing restrictions including (1) prohibition, (2) approval by association management, (3) registration of tenants with management, and/or (4) imposition of charges for changing tenants.
- Manager or agent has the right of access to units.
- Fines are for various violations.

It should also be remembered that an association can modify rules and regulations at any time for the purpose of promoting the convenience, safety, or welfare of residents.

If prospective tenants must be approved by the Association, you need to be concerned about two issues. First, the tenant needs to be informed of the matter and the fact that it might result in delay. Second, it is not unknown for associations to violate fair housing laws in their approval criteria.

Often the types of issues covered in the above list are instead covered by the CC&Rs and Bylaws. Even though many owners may think that rules and regulations are overly dictatorial, Courts have, in general, upheld them because the CC&Rs and Bylaws were agreed to when the unit was purchased.

In view of the above, it is important that the information package include information regarding any rules and regulations that might prevent the prospective applicant from submitting an application for the vacancy and state the fact that the tenant and/or guests will be liable for any costs related to his/her violations.

### **Lead Paint Law for pre-1978 Unit**

If you are renting units built before 1978, handing out the required pamphlet and the landlord-executed disclosure form with the package can save time and trouble compared to handing the documents at the time of lease execution to successful applicants who might then change their mind. Technically, the law requires that it be provided earlier in the process anyway. Legally, all deposits and fees paid by the applicant prior to being provided the documents probably must be refunded to the applicant if the documents result in him changing his mind about wanting the unit. Accordingly, this provides an out for a tenant having "buyer's remorse" at the time of lease signing if that is when the documents are provided. Furthermore, there is even a chance that you would be found in violation of the law by waiting until signing and in violation of your state's licensing laws and/or regulations if you are a licensed property manager.

### **Clarify Funds Required**

Selecting a tenant who has insufficient cash to cover all the costs of moving in can result in wasted screening time, delays in collecting funds, and other problems. Accordingly, it is to your benefit if the applicants who submit applications for consideration fully understand the total cost of moving into your property. Remind them that they will need to pay the following prior to moving in:

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- Application processing fee and/or vendor report purchase fees (can be one number)
- A full month's rent if the lease commences after the first day of the month (or other date on which rent will be due), with the second month being the one prorated
- The security deposit and any fees or deposits allowed by state law
- Any pet deposit and/or pet fee and the amount of any pet rent surcharge
- Utility company deposits
- Any necessary appliances not provided by the landlord

The selected tenant should understand that he/she will be required to execute the lease agreement and must pay to the landlord all of the applicable deposits, fees, and rent within a short time (say 24 hours) after being notified of selection. Failure to do so should, at Landlord's option, result in rejection of application. Specify that all initial funds paid to the landlord must be in cash or by money order or cashier's check payable to "Landlord."

If commencement of the lease term is on other than first day of the month, a full month of rent should be payable upon signing the lease, with the prorated amount for the first month being payable on the first day of second month. The lease can also require that subsequent rent payments also be paid in cash, money order, or cashier's check unless otherwise agreed in writing by the Landlord.

### **Utilities**

State which utilities are the landlord's responsibility and which are the tenant's. Remind applicants that they may also have to deposit funds with utility companies.

If any utilities (water/sewer, trash, electric, and/or gas) might be in the name of landlord at the time of executing the lease, state that the new tenant will not be provided keys or possession of the unit until the landlord is provided with evidence that those utilities have been transferred into the tenant's name. Include a statement that no refund or credit will be given in the event of possession being delayed beyond the lease commencement due to failure of the tenant to have transferred the utilities.

### **Appliances**

Applicants should be made aware, prior to submitting the application, which appliances are and are not provided by the landlord, as any necessary appliances not provided will require additional funds from the tenant for purchase or rental of necessary appliances not provided. Applicants should expect that an increased rent may be required if the Landlord must purchase any of them.

### **Screenings That Will Be Performed**

List the screening items that you will do. For example,

- Identity verification

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- Employment verification
- Previous landlords checks
- Credit reports
- Eviction records checks
- Criminal checks
- Terrorist list check

You can also list the criterion for some or all of the screening items. Criteria might be as follows:

Employment: Length of employment and/or job stability will be considered.

Rental History: Frequency of moves and length of residencies at previous locations will be considered. A record of frequent late rent payment, failure adhere to material terms of a lease, unpaid damage to property, frequent disturbances, or failure to respond to notices will disqualify the applicant.

Credit reports: A minimum credit score of 600 (or desired other number) is required. Delinquent accounts or unpaid judgments will be considered. Unpaid judgments related to rental housing will disqualify the applicant. Bankruptcies will be considered on an individual basis.

Evictions: Any eviction during the past 10 years will disqualify the applicant.

Criminal Record: Convictions for violent crimes or illegal drug activities will disqualify the applicant.

**NOTE:** Information provided by the applicant that is material to the landlord's selection standards and is determined untrue shall be grounds for disqualifying the applicant.

As previously stated, all applicants should be subject to the same checks and verifications in order to avoid possible discrimination accusations.

### **Identity Verification**

State that you require two items of identification for each adult applicant at the time that the application is submitted. One must be a government-issued photo ID, for example, a current passport, a valid driver license, a state ID card for non-driver, or a military ID card. The second item should also include a photo if possible, for example, a photo credit card. If a second photo ID isn't available, the applicant should inquire as to what substitute might be acceptable. Warn that failure to provide the subject items will result in rejection of the application. This procedure may reduce your risk of being the victim of ID theft fraud.

Proof of identity should be required prior to accepting the application or fees. You should make photocopies of the applicant's identification documents for your records. If the information shown on

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the identity documents does not match the information entered on the application form, ask the applicant about the discrepancies and document the responses to your questions.

Any forms of identification requested must be requested for every applicant.

### **Previous Landlords**

Require that information regarding the last three years of applicant's residence history must be provided on the application. Information must include the complete address of each residence; the names, addresses & phone numbers of each landlord; and the dates of residence at each address. If any places of residence were owned by an applicant, then information regarding the mortgage lender, including loan number, should be substituted for landlord information.

### **Verification of Employment Form**

A "Landlord's Verification of Employment" form should be included in the package. These days, it is usually impossible to obtain employment information over the phone. Be sure that the form includes a place for the verifier to provide a phone number or email address so that you can check the legitimacy of the info if desired.

Each applicant must deliver a form to his/her employer. If more than one applicant requires verification of employment, applicants can copy the form provided in the application package or request additional copies, as needed. It should be stated that it will be the responsibility of the applicant to insure that the completed form is faxed back to Landlord by the employer in a timely manner, with a deadline being stated.

### **Electronic Rent Payment Requirement/Option**

If using an electronic rent payment service (e.g., ClearNow.com), be sure to mention it and make it clear whether use by the tenant is mandatory (if allowed by your state's law) or optional.

### **Rent History Reporting**

State that adverse rent history will be reported to credit bureaus and/or rental history databases. Making it clear that the applicant's rent history will be reported may eliminate upfront applicants who you wouldn't want and may result in the one who becomes your tenant being more likely to be a good tenant. For that reason, you might consider putting a clause to that effect in the lease agreement itself.

Application Form

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The application process collects the necessary information that, together with screening procedures, allows the landlord to review and verify the applicant's qualifications and to ultimately select a good tenant for the vacancy. The application process is more than an application form. It also presents an opportunity to provide important information to prospective applicants that may affect their decision to submit an application.

At a minimum, landlords should require that:

- each applicant be of legal age (or emancipated minor)
- each applicant complete and sign a rental application
- each applicants sign an authorization of release of personal information form for credit reports, employment, rental history, eviction report, and criminal history
- each applicant present at least two forms of personal identification, with at least one being a government-issued photo ID
- each applicant have verifiable and acceptable credit history, rental history, and criminal history (minimum acceptable standards can be listed for each category)
- applicants have sufficient verifiable income to meet or exceed rent requirements and utilities above other normal expenses
- Section 8 applicants be subject to the same screening requirements

The first line of defense against bad tenants is having an adequate application form. An adequate form is one that requires the applicant to provide information that can be used to verify his identity, obtain a credit report, verify employment and wages, verify other sources of income, contact previous landlords regarding rental history, check eviction records, perform a criminal background check, verify bank accounts, and interview personal references. The form itself and the associated collected information is also useful if it ever becomes necessary to track a tenant in order to collect a debt related to his/her tenancy. Each adult in any group should complete and sign a separate form.

Information that confirms suitability as a tenant, such as credit record, employment and rental histories, is a legitimate business purpose, as defined under the Federal Fair Credit Reporting Act. Landlords must determine the most cost effective means to obtain information needed to safeguard the income property and the safety of others.

Landlords must be very consistent and professional in their request for any kind of information, including applicant's Social Security numbers. If they ask one applicant, they must ask every one, or face a possible discrimination charge. Additionally, landlords and property managers must respect, and protect the privacy of any personal credit information they acquire.

Each adult (18 and over or emancipated minor) applicant should be required to complete an application and it is best that each should complete a separate form, even when a married couple. Forms usually are not designed to provide enough space for two applicants to provide adequate information in a readable unambiguous way for every issue listed on the form.

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The application form itself or a separate "consent to release information" form must contain statements that authorize the landlord to verify credit, employment and any other information, including that contained on the application, from a credit bureau, from the creditors directly, from employers, financial institutions, and prior landlords, and from providers of eviction and criminal records. Included should be a statement that the permission included obtaining updated reports, survives the expiration of tenancy, and can be used for any legal purpose associated with the tenancy. Each applicant should sign a separate form.

Even if you do not perform all the listed screening items, the statement will usually keep the applicants honest when completing the form, encourage them to disclose up front potential qualification problems, and weed out those applicants who, for some reasons, do not want undergo a detailed screening process. You should, however, perform the same screening on each applicant in order to avoid charges of discrimination.

We suggest that the following information be requested on an application:

- First, last, middle name of applicant, including other names previously or currently used
- Current residence address
- Telephone numbers, including current home, cell, and work
- Employment history (name, address, telephone number of current employer, supervisor's name and telephone number, dates of employment, job title)
- Monthly gross employment income and/or other income amounts applicant wants considered
- Driver license number - make a photocopy of the driver license
- Vehicle information including make, model, year, color, license plate number for each vehicle
- Social Security number
- Date of birth (for identification purposes only, so only of those filling out applications)
- Credit card accounts
- Loan obligations
- Financial institution accounts, including name, address, account numbers
- Past rental history (property address, dates at the address, landlord name, landlord telephone number, reason for leaving)
- Personal references
- List of additional occupants (include everyone who will live in the rental property)
- Emergency contact information, names, addresses, telephone numbers, relationship to applicant (can be useful for tracing a skipped tenant)
- What pets will live in the property
- Describe any water filled furniture
- Has tenant ever filed bankruptcy? If so, what chapter, when & why? If an ongoing Chapter 13, what is monthly payment amount?
- Has applicant ever been evicted? If so, when & why?
- Has applicant ever been convicted of a crime? If so, what & when?

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Avoid asking for information regarding birthplace, age (except as above), religion, marital status, relationships among occupants, physical or mental conditions, arrests that did not lead to a conviction, or any other item that might be prohibited by federal, state, or local fair housing laws.

A social security number is important for verifying identity and obtaining various tenant screening reports. It is permissible for an applicant to be asked to divulge their Social Security number as part of the application screening process and it is legal to refuse consideration of an application or to deny an applicant simply because the applicant refuses to provide the number.

An applicant can refuse to provide their Social Security number, but, if they won't complete the application form or provide other relevant information, they needn't be accepted as a tenant. Personal information security is an issue of important to everyone and social security numbers, as well as other applicant information, should be adequately safeguarded.

The application should also warn that failure to provide all items of information being requested (unless not applicable) or providing incomplete or inaccurate information is grounds for not considering the application or for denying the applicant.

If you, as the landlord, are asked to help complete the application for a prospective tenant, be careful that you do not ask leading questions. Stick to the questions as printed on your application form. Do not add helpful interpretation of the questions or guide the applicant towards an answer.

If the applicant's knowledge of English appears to be inadequate for full understanding of the legal implications of a lease or of related information, you should advise the prospect to provide a translator and include a statement related to the matter signed by the translator, along with information regarding the translator. Remember that there can be no meeting of the minds, a requirement for a valid contract, if there is no understanding.

Most verifications of qualification can usually be done within a relatively short time utilizing today's technology. Accordingly, there is little reason to collect any holding deposit until you have selected a qualified tenant who still wants the property.

In any case, landlords and agents should use good judgment and be fair in their holding deposit policy. An applicant whose holding deposit is retained without adequate justification may well have a cause of action for damages against the property owner. If so, the deposit will create more trouble than it's worth.

It is imperative that all records pertaining to each application, including all supporting documents, be kept for a sufficient length of time. Retaining the documentation will help ensure that the landlord is best able to defend against a lawsuit for any complaint charging housing discrimination or for any other disputed issue.

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The time required varies because the time allowed for filing of a suit varies among states. It can depend on a specific state statute or by the general statute of limitations laws applicable to the potential cause of action by a disgruntled applicant. The length of time typically varies from 2 to 5 years among the states.

For property managers, who are regulated by a state licensing agency, the records which must be retained and the period of time for which various records must be retained are defined by state statutes and/or regulatory agency regulations. Penalties for licensees are almost always significantly greater than for non-licensees, particularly as it can affect their continuing in the business. Licensed managers must know the laws and regulations for their states and follow them closely in order to avoid potentially serious penalties including license suspension or revocation.

#### Application Fees/Deposits

Landlords can charge a fee for processing each application and for the specific verifying information that they had to purchase from vendors. How much can be charged depends upon several factors.

First, whether your state is one that regulates the amount by statute and, if so, what the law says.

Second, what amount do you think you could convince a Judge was "reasonable" if your state's statutes either use that term in its law or if the state does not cover the issue at all.

Third, how much time will be spent on processing and verification? Both the amount of time and the amount paid to vendors will vary greatly, depending on how much verification you do. Obtaining more reports means more paid to vendors and more time spent on analysis. Verifying employment, references, and previous landlords takes a significant amount of time.

Finally, you must consider that the amount of non-refundable fees required up front will affect the number of potential tenants who apply. Running all possible reports on two adults in an applicant family will require an unacceptable expenditure unless the costs-per-applicant is kept fairly low. Even if your state doesn't regulate fees and you're not worried about whether a Judge calls them reasonable, you won't get nearly as many application submissions if you charge \$40 for processing and try to make an additional \$5 profit on each of four \$5 vendor reports, a total of \$160 per family. Although a realistic total fee will vary greatly, depending on the location and type of property, in most cases, you will have to be satisfied with a relatively small processing fee plus only the actual cost of vendor reports in order to avoid the fees seriously reducing the number of applicants.

Typical total fees might consist of a payment of a non-refundable application fee of \$20 plus a non-refundable charge of \$15 for credit report and eviction record check on each adult applicant. This probably means that you would be absorbing some costs if you also do eviction or criminal record checks. The total of \$35 is, of course, required at the time that the application is submitted. This still



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totals \$70 for two adults, a significant amount when they may also have to apply for other vacancies if not selected for yours.

Fees collected to run credit reports and other screening reports should be used only for those reports, including the time required to process them, and the fee should be returned to the applicant if reports are not run. It should be made clear to applicants that the fees are not to be considered a holding deposit.

Many landlords with high-end property and many property management companies hire a tenant screening service to check evictions, credit, employment, and/or references. Those costs usually range from \$25 to \$100 per person, depending mostly on what reports will be included. Low-income landlords must also find a way to cover those costs, or do much of the work themselves.

### **Holding Deposits**

Sometimes, when the rental market is tight, applicants may offer a holding deposit to take the rental unit off the market until the applicant screening and verification is complete. Other times, a holding deposit is appropriate when an applicant has committed to the rental, but must make arrangements for the move-in funds.

In any case, the landlord should restrict the length of time he/she is willing to hold the rental, taking into account the size of the deposit and other qualifying information.

If the landlord chooses to use a holding deposit arrangement, it is recommended to draw up a written agreement detailing what each party understands.

Some landlords routinely require that multiple applicants each provide a deposit to hold a rental unit until their application and credit is approved. As it should be, in most cases the deposit is returned if the applicant is denied and the deposit is applied against rent and security deposit if the applicant is successful. There is no legitimate reason for a landlord to keep the deposits from unsuccessful applicants and a Judge would not likely allow such a thing to stand. Whatever the policy, be sure that it is clearly stated in the application form or other document that is signed by each applicant.

When the landlord holds the rental unit for a deposit from only one applicant, it is off the market and unavailable to other qualified prospective tenants who may have to be turned away. If the applicant later changes his/her mind, the property owner may have suffered financial harm in the form of a lost business opportunity. In such a case, the landlord is justified in retaining all or part of the holding deposit. However, be sure that this scenario is discussed in a signed agreement.

## **6. Screening – Landlord Verifications**

### **Screening Tasks**

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Today most screening tasks can be done via the Internet or fax, with the remainder requiring the telephone. According, adequate screening information for good screening can be obtained relatively quickly and effortlessly. Furthermore, competition for providers of many of the services has driven costs down to relatively low levels. Accordingly, there is no excuse for failing to perform screening tasks that require outside vendors.

### **Verify Identity**

Because of the rapidly increasing occurrences of identity theft, identity verification is of utmost importance. Obtaining a satisfactory credit report, finding no eviction or criminal records, or getting other good reports on the wrong person can be worse than not obtaining the reports at all. To avoid wasting time, verify identity before proceeding with any other screening tasks.

You may legally ask for proof of identity and eligibility to work under U.S. immigration laws, but make sure you do not selectively request such information. If you ask one applicant for such proof, you must ask all applicants for such proof. Remember that it is illegal to discriminate on the basis of natural origin.

Make photocopies of the applicant's identification documents for your records. If the information shown on the identity documents does not match the information entered on the application form, ask the applicant about the discrepancies and document the responses to your questions.

If there is the need for additional identifying information, utility bills from previous residences is often useful. A review of the bills should provide additional verification of the applicant's name and property address and can be compared with the information presented on the application and shown on the credit report.

Any forms of identification requested must be requested for every applicant.

Finally, even when you have reliably verified the identity of the applicant, care should be taken to verify that the information shown does belong to the applicant in question, in particular with common names and commonly used spelling variations.

As a part of identity verification, confirm that the applicants are legal adults, either because of being at least 18 years of age or due to having been legally emancipated even those of minor age. If an applicant claims to be an emancipated minor, he/she should be required to provide proof that he/she had met the requirements of the state for emancipation. You may not be able to pursue any legal action against a minor who is not legally emancipated. There can be an exception to that rule when one provides certain "necessary" services, but that will depend on the whim of a Judge. If there is any doubt about emancipation, you should require that an adult co-sign for the minor.

### **Employment Verification**

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Don't hesitate to check the legitimacy of the returned "Verification of Employment" form if you have any reason for suspicion. Verification of non-employment income must be considered on a case-by-case basis.

In recent years it has become more difficult to get information from employers because of the fear of lawsuits. Some employers will not even admit over the phone to knowing their own employee. Many will not give out any information without written authorization from the employee and will only respond to a written request. The best approach is to have a separate form for completion by the employer regarding dates of employment and income that has been signed by the applicant employee.

As a landlord, you want to determine whether or not the applicant has sufficient income to afford the rental property. In general, a landlord can request whatever financial information is desired in order to confirm the applicant's ability to pay under whatever legal, reasonable, and logical criteria the landlord uses, so long as the same requirements are demanded of all applicants.

Employment and income documentation can consist of requiring the applicant to produce the last several paycheck stubs. Note that last year's W-2 provides no certain information regarding current income, although it might be useful as additional verification if other items are questionable.

Pay stubs are useful for confirming employment, if not otherwise confirmed, and sometimes even to verify the applicant's Social Security number. Review the pay stubs to verify that the applicant's name, address and Social Security number are the same as shown on the application. The pay stub may also show the pay period, monthly, bi-weekly, or weekly. Make copies of the stubs.

If another source of income will be used for rent payment, a verifiable document, appropriate to the source of income, should be requested.

Self employed individuals can be asked to provide copies of their tax returns. Last year's 1099s mean little, as it is net profit shown on the Schedule C rather than gross revenues that counts, except that they can be useful for verification of gross income. However, you must remember that self-employed individuals often do not receive 1099s for all gross income and, in fact the percent received may be very low. In other words, the total of 1099s is a minimum income and may be substantially less than actual income.

It is legal to require that all applicants provide evidence by showing his last income tax return. Keep in mind that the return will usually not be providing current information, depending on the time of year, possibly as much as about 15 months old. However the bigger problem is that, with today's computer software, it is possible to generate a tax return within minutes that is in no related to the one filed with the IRS. It is possible to obtain a copy of an applicant's Form 1040, as well as attached forms and schedules, directly from the IRS with the permission of the applicant. However, the typical screening and selection process time would not usually allow doing so. Additionally, the cost of the copies, particularly if multiple attachments are necessary, may be prohibitive.

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Verification of non-earned income, including interest, dividends, and other investment cash flow and entitlement items, including disability, social security, and private retirement, are all relatively easily verified because the recipients are provided official statements of the amounts.

### **Social Security Number Verification**

Although SSN verification can be obtained as a separate product from some screening service vendors (including this site), it is automatically included in certain credit report packages from others (including this site).

### **Previous Landlords**

What you are trying to find out is whether the applicant paid the rent on time, kept the rental property in good condition, was considered a good neighbor, and otherwise materially adhered to the lease agreement.

Some applicants may try to use friends as a landlord reference. Make sure that you are speaking with a valid and appropriate party to verify past rental history. Verifying the name of the owner from County records and comparing phone numbers with those found in public directories can be of value in verification.

Again, it is a good idea to use a prepared script in contacting previous landlords regarding rental history. It allows accomplishment of the task in a professional, efficient manner, and ensures all questions are asked of each reference. You should also record the landlord's responses to your inquiry.

Some landlords will be forthcoming about giving out information, some will be reluctant. Some current landlords may be upset enough with the tenant to say nothing bad about them to allow them to move to your vacant property. For this reason, you should contact the tenant's landlords prior to the current one rather than depending solely on a current one.

Other possible questions might include:

- Did he habitually pay the rent on time?
- Did he abide by the property rules?
- Did he get along with his neighbors?
- When did he move in and when did he move out and why?
- Did he give the landlord adequate advance notice he was moving?
- When he moved, did he leave the unit in good condition?
- If he applied today, would the landlord accept him?





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If only one question could be answered, it would be "would you rent to this applicant again?" This question only calls for a yes or no answer; although the silence before the answer could provide guidance without actually giving details

If you allow pets, ask if the applicant had pets during his tenancy, If so, ask the landlord for references on the pet. Was the pet well-behaved? Were any complaints received regarding the pet? Finally, make sure that the pet is not a dog breed that is prohibited by your insurance policy or creates additional risk for you or others.

### **Personal References**

Although personal references can certainly be worthless - few would provide a bad one - occasionally, certain references can be helpful. If a personal reference is one of the items that you wish to accept with a prospect's application, it should also be checked and documented as to the response. More often, these references are family members or personal friends and as such, hesitate to say anything negative about the applicant. However, occasionally, a reference from a pastor, employer, or other special person can be of benefit to an applicant or, in a slow market, even to the landlord. If a letter of recommendation was presented during the application process, the letter and its contents should be verified and discussed with that writer. As for inquiries made of previous landlords, it is best to use a prepared script and keep a written record of responses.

### 7. Screening – Third Party Reports

#### **Credit Report**

A credit report is the single most valuable item in your screening procedure. A separate credit report should always be run on each adult applicant, no matter what other screening might be done. The recommendation is to run a credit report as soon as possible after receiving the application. Although a credit report is one of the more important screening tools, it should not be the only one.

There are many criminals, some potentially dangerous, who have good credit, have never been evicted, and can provide excellent verifiable personal references. There are many very nice people who have never been evicted and pose no physical danger to society, but have, for one reason or another, caused significant financial losses to previous landlords and other creditors. Suffice it to say here that it is extremely foolish to rent without obtaining credit reports on all prospective adult tenants.

The credit report will provide the landlord with information regarding the applicant's credit history and also provide other valuable information. A prospective tenant that pays the majority of his or her bills late will likely pay the rent late. Past behavior tends to be indicative of future behavior, which is why the landlord must do adequate tenant screening.



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The Fair Credit Reporting Act (FCRA), enforced by the [Federal Trade Commission](#), is designed to promote accuracy and ensure the privacy of the information used in consumer reports. Enacted in 1970 and substantially amended in the late 1990s and again in 2003, the FCRA regulates how credit reporting agencies use credit information, restricts access to that information, and regulated the manner in which that information can be used. The amended Fair and Accurate Credit Transactions Act (FACTA), passed in December 2003, added new regulations for identity theft protection, credit report access, and data privacy.

The term "consumer report" as used in the FCRA means any written, oral, or other communication about one's personal credit worthiness, character, and general reputation.

If your prospect has ever applied for a charge account, a personal loan, insurance, or a job, there's a file about him/her. This file contains information on where he/she works and lives, how he/she pays bills. It also shows whether judgments have been obtained against him/her, the federal or state taxing agencies have filed liens against him/her, or he/she has filed for bankruptcy.

Companies that gather and sell this information are called Consumer Reporting Agencies (CRAs). The most common type of CRA is the credit bureau. The information about individuals that CRAs sell to creditors, employers, insurers, and other businesses is called a consumer report.

Information about the individual's bill paying history, the number and types of credit accounts, late payments, collection actions, outstanding debt, the age of the accounts, judgments, and liens can be found in the individual's credit report.

Landlords may obtain credit reports under the guidelines of the Fair Credit Reporting Act (FCRA). Permissible purpose is a prerequisite to request credit reports. Permissible purpose guidelines are defined in the FCRA.

The cost of a credit report is minimal compared to the wealth of information obtained from the report. Furthermore, applicants may be charged a fee to run credit checks but if so, the caution is that such fees are not selectively charged but applicable to all applicants. Also, check state laws regarding such fees and return of such fees if a report is not run.

The three major credit-reporting agencies in the United States are Equifax, Experian, and TransUnion. Each bureau is a separate company and may have differing schedules of updating credit files. Credit reports may be ordered from any one or all three of these bureaus. It is possible that if a credit report was requested from each of the three bureaus, that each credit report would have variations in credit data.

Although reports can be pulled from each of the bureaus to obtain a broader view of credit history, most landlords pull reports from only one bureau. This not only reduces costs, but also allows them to become familiar with how to read that particular bureau's report. The key element is to pull a credit

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report on each and every applicant whose application indicates possible qualification under your selection criteria.

### **Where to Obtain Credit Reports**

Credit reports can be obtained directly from a credit reporting agency (CRA) by becoming a member of that bureau. However, the cost of this is prohibitive for landlords with only one or even a dozen units.

Local landlord associations often have an arrangement with a credit bureau to provide credit report services for association members.

The best choice for landlords for whom the first two options are not available is to obtain credit reports from a company that has a relationship with credit bureaus. Landlord411.com provides credit reports to members at a very competitive price. Landlord411 also provides its members with access to other types of reports including eviction checks, criminal record checks, registered sex offender checks, and terrorist checks. Landlord411 can also provide services such as prior address locator (PAL), debt collection help, and social security number verification. All Landlord411 reports are provided via the Internet within seconds of the request.

### **Criminal Record Check**

Due diligence on the landlord's part should also include background checks, in particular, a search for any criminal records. While credit records are, by their nature, national, such is not the case for criminal checks. While there is a national database that pulls records from multiple sources, not every state or county database may be included in that network. Some states and counties provide criminal records online that you may be able to search yourself. Some counties may only provide access to such data by a personal visit to the courthouse.

Criminal records, including convicted sex offender records, usually provide state level information. However, some matters only appear at the county level. Unfortunately, absence of a record in the county of previous residence doesn't mean there wasn't a conviction in an adjacent county or some other county in that state or in any other state. Landlords must choose which jurisdictions are important to investigate by considering information available to them. Sources of information include application forms, credit reports, driver licenses, vehicle license plate, and comments made by applicant.

Megan's Law is a federal law passed in 1996 as an amendment to the Jacob Wetterling Crimes Against Children's Act that authorizes local law enforcement agencies to notify the public when a sex offender is released into their community. Different states have different procedures regarding how the public is notified about convicted sex offenders living, working, or visiting in their communities.

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## Eviction Records

Search of eviction records is another screening tool that can help with your selection of qualified applications. Eviction records are not national or even state level records, but are available from the Courts of jurisdiction. Evictions take place in county level Courts. The county in which the eviction notice was obtained and served may have eviction records available online. Many rental housing associations maintain databases or lists of evictions.

Obviously, it is also important to know that the applicant was actually a tenant on a lease in the county, as living in a county under other circumstances doesn't mean anything. Accordingly, while a previous eviction is a very important piece of information when evaluating a potential tenant, you must be sure that you are checking counties where the tenant actually rented out of the hundreds of counties in the United States or you are wasting your money. This is another reason why correct previous addresses are important. The same sources as mentioned for criminal checks should be considered.

## Terrorist Check

Many screening service providers, including ours, offer a "terrorist report." This is obviously in response to the 9/11 attack. There is currently no law that requires landlords to perform a terrorist check on applicants. Although those who wish to perform wide range of screening items may also want to include the terrorist check, this should be the lowest priority after all other screening checks discussed above.

Applying good screening procedures such as adequately verifying identity, running a credit report, checking employment, and checking with previous landlords will go a long way toward eliminating the possibility of doing so.

If you do choose to do a terrorist check or the report is included as part of a package you ordered, be sure that you run the same check for all applicants, not just those with a certain type of name or appearance, and be careful how you use the information. Rejecting an applicant because of a name indicating a particular race, religion, or national origin would be a violation of fair housing laws. The rejection would be defensible only if the applicant really did turn out to be a terrorist.

The bottom line is that landlords should first worry about whether the applicant is qualified based on the other screening issues before being concerned about doing a terrorist check.

## 8. Analyze Information

Now that you've done the screening, you must analyze the information prior to selecting the one applicant who will be your tenant. Analyses of documentation acquired during the application and screening processes should verify whether or not each applicant qualifies for consideration under

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your criteria. Your goal is to rent your vacancies as quickly as possible so as to generate revenue from the income property. However, being in a hurry to fill a vacancy and not doing it correctly often results in very serious problems for both landlords and neighborhoods. Before selecting a tenant, take the time to adequately analyze all the screening information.

In verifying applicant information read through the reports carefully and completely so as to understand the data being presented. Read each word. Don't just skim over the words and "read" something that isn't there or fail to read something that is there. Analyze all data thoroughly, objectively, consistently, and without discrimination.

Don't allow emotion or the vacancy itself to cloud sound business judgment in doing the amount of analysis necessary to making a good selection. The prospective tenant may be in a rush to find a new home, but his/her planning or lack of planning is no reason to deviate from your established practices. There may be underlying reasons for such a hurry on his part that can cause you problems later on, including lost money, property damage, and legal fees. Invest your time wisely to prevent problems when possible and minimize damages if problems do occur.

Analyses of documentation acquired during the application and screening processes should verify whether or not each applicant qualifies for consideration under your selection criteria. Documentation regarding all aspects of screening and selection should be retained for the necessary number of years.

### **The Application**

Review the complete application carefully to determine if there are missing fields or missing signatures. Is the handwriting legible? Consider asking applicants to print information. You should be able to clearly read information entered. If you can't read it, you can't verify it. If necessary, require that an applicant complete and submit a new application form.

In view of ever-growing identity theft issues, verify identity when the application is submitted and compare information on other documentation with information entered on the application form.

### **Social Security Numbers**

The Social Security number is the second most important piece of information. According to the Internal Revenue Service, any U.S. citizen who receives income must have an SSN. Employers are required to use that SSN to report the individual's income to the IRS.

Be sure to check and cross-check the Social Security number in as many ways as possible. If available, ask for the prospective applicant's social security card and compare it to the number provided on the application. Be careful to check transposition of numbers or inconsistencies with the name. Keep in mind that a fake social security card can be purchased for as little as \$40. Also the

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credit bureaus do virtually nothing to verify data in a credit report. Therefore, if the prospective tenant has applied for and obtained credit under a fake Social Security number—it may go unnoticed for a long time. Determine whether the Social Security number on the application consistent with:

1. the tenant screening report?
2. a pay stub?
3. a W-2 form or tax return?
4. a Social Security card?

Social Security numbers (SSN) are not assigned consecutively. The first number assigned was not the lowest number and the most recent Social Security number assigned is not the highest. Social Security Numbers are assigned regionally and in batches. The nine-digit SSN, which has been issued in more than 400 million different sequences, is divided into three parts – area numbers, group numbers, and serial numbers. Although SSNs are issued in some order, there is no simple way to tell a person's age based on his Social Security number.

Obvious invalid SSNs would be a beginning or ending sequence of zeros or a leading number of 9 which is used in the assignment of tax identification numbers.

Rather than make up a totally imaginary SSN, it is far more likely that SSNs used for fraudulent purposes are SSNs of children or family members, particular if names are similar, in the hope that the landlord will not require documentation and verification. The credit report information will help verify a SSN provided by the applicant.

For more about the Social Security Number assignment process, see the Social Security Administration's official website at [www.ssa.gov](http://www.ssa.gov).

## **Bank Accounts**

Bank references can confirm that an account is held at that particular institution and that the account is in good standing with no negative or outstanding items.

If applicants prefer to pay in cash only and do not have a account established at a financial institution it may indicate that the individual cannot qualify for an account due to a history of negative items or that income sources may not be verifiable.

## **Credit Reports**

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Understanding and interpreting credit reports is a subject unto itself and beyond the scope of this course. More detailed discussion about credit reports is provided elsewhere on this site.

Remember to look at the data objectively and consider the overall picture of the applicant's credit history. While credit scoring provides a numerical ranking, that ranking may be only part of your complete tenant selection criteria. You may want to flag any items listed in this section and ask the applicant for explanation. It could be that the applicant has incurred extensive medical bills or gone through a bankruptcy or divorce. The landlord must decide based upon his criteria and the applicant's responses to directed questions whether any public items will be a consideration issue.

A credit report is a very valuable tool. Because of the broad scope of opportunities for fraud on the application, the credit report acts as an objective source of data to which the stated information on the application can be compared. The credit history will also show a pattern of responsibility or irresponsibility. This does not mean that a negative item is automatically a disqualifier, or the lack of such shows that the applicant will pay his rent on time in the future indefinitely. Look for the following items:

1. Utility collection accounts – If an individual gets to the point where they had their utilities turned off or the bills went to collection, it is usually a strong indicator that they do not have the money or the ability to pay their bills on time. Utilities is usually the first thing a person pays, so be wary of someone who has defaulted on these bills.
2. Medical Bills – Medical bills in collection can be misleading. Often those come from an individual that had a medical emergency and went to the hospital, resulting in a pile of unpaid bills. Many property owners do not consider medical collections when evaluating a credit report.
3. Previous residences – Some credit reports will list what they have on file; they will give the applicant's current and two prior residences. This information can be used for the landlord screening step described earlier.

Upfront disclosure by the applicant of problem issues is usually considered a positive factor in evaluating the applicant's history and background.

Leasing to a person who has recently filed bankruptcy is not necessarily more risky than leasing to someone who has not. Under the old law (pre 10/17/05) a person could not file another Chapter 7 (liquidation) for 7 years after a discharge under Chapter 7. There were no limits for Chapter 13 (reorganization). The new law provides that, under Chapter 7, eight years must elapse before you can re-file. If you go for Chapter 13 after a Chapter 7, you must wait four years. Going from one Chapter 13 to another, two years must elapse.

Accordingly, a tenant who has never filed bankruptcy can file at any time, whereas, one who has recently filed can be prohibited or at least restricted from doing for some period of years.

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Bankruptcies should be considered on a case by case basis because bankruptcies are sometimes required due to events beyond one's control. As examples, a divorce or serious medical problems can make filing necessary. One must also consider which Chapter was filed and, if 13, how well the person performed under the filing. It is usually possible to determine whether a bankruptcy of a particular applicant makes him/her more risky.

Collection or eviction records noted on credit reports will require further discussion with applicant regarding history of such items.

### **Eviction Record**

It is recommended that a landlord never rent to a person who has previously been evicted unless either there was some important extenuating circumstance or unless protected by a personal guaranty from a financially qualified individual.

### **Criminal Record Checks**

If you engage a third party service to provide criminal background checks, make sure you understand the source of the information provided in your report.

A sample national Criminal Report may contain:

- Source and type of record (State Court/Department of Corrections, County Court, etc.)
- Offense description
- Various dates (offense, conviction, prison admission and release)
- Additional identifying information (height, weight, race, hair color and eye color)
- Case reference codes for further research

**Even though the federal housing law does not specifically mention "criminal history," you will want to ensure that there is no question that your screening procedures are legal and fair if you choose to deny tenancy based on the applicant's past criminal record.**

### **In order to minimize the risk of discrimination charges, ALWAYS**

- make an "independent and objective" evaluation of the actual threat that the tenancy of the applicant would pose on the other tenants and their property, and base the decision to accept or deny tenancy on that investigation;
- contact the police department where the applicant was convicted, the applicant's parole officer; the prosecutor's office, the prison or jail where the applicant served their sentence for details of the applicant's full criminal history; and

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- make sure that the crime that the applicant has committed is one that fits within the protective framework of the Fair Housing Act. Keep in mind that the crime must be recent for it to affect your decision. Examples of crimes that will, most often, allow you to deny tenancy are murder, assault, robbery, arson, rape, and sale of drugs.

### **In order to minimize the risk of discrimination charges, NEVER**

- automatically deny tenancy just because you discover that the applicant may have a criminal record;
- confine your screening investigation to just the interview where you just ask the applicant for the details of the crime they have been convicted of; or
- deny an applicant housing based on just any kind of crime they may have committed. Several crimes do not fall within the requirements of the Fair Housing Act, including most misdemeanors, simple possession of drugs or other controlled substances, fraud, bad checks, vehicular homicide (in most cases), and DWI.

As with all other selection criteria issues, the most important thing you can do to protect yourself when making these decisions is to establish a written set of criteria for use with every tenant applicant and always make the necessary investigations.

Finally, if you reject everyone that has a criminal record of any kind, you may pass a lot of very good potential tenants and will certainly reduce the pool of prospects. Accordingly, you should consider the "whole picture" including the nature of the crime, when it was committed, and what kind of citizen the person has been since.

Registered Sex Offenders (RSO) should probably be considered as a separate category. In most states there is no requirement that a landlord do RSO checks and no liability for renting to a RSO when that fact was not known to the landlord. There is disagreement among some experts as to whether renting to a known RSO puts a landlord at risk.

### **Income Qualification**

Income documentation furnished should indicate sufficient income to meet rental obligations in addition to other necessary expenditures. Most landlords use rules of thumb rather than attempt to generate an after-tax income expense statement for each applicant. The simplest determination is made by requiring a gross income of a certain multiplier times the rent. Most landlords probably use a multiplier in the range of 2.5 to 3.0. It is important that you use the same multiplier for all applicants for the vacancy. However, you are not necessarily prohibited from using a different multiplier for future vacancies in the same building or at other locations.

### **9. Make the Selection**

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Screening and analyses of the results has provided objective measurements for each applicant and now your selection criteria can validate qualifications for selection. Now you need to select the one right applicant to be your tenant is the next most important step in assuring that your income property is a profitable and relatively trouble-free investment. Your goal is to rent your vacancies as quickly as possible so as to generate revenue from the income property.

However, being in a hurry to fill a vacancy and not adequately analyzing screening information or not otherwise properly making the selection often results in very serious problems for both landlords and neighborhoods. Remember that this is a business decision and treat it accordingly.

You must evaluate your applicants using the written criteria and standards that you established. The decision must be made as to which applicant is chosen.

The most important rule for landlords is to document everything. Everything means just that ... everything. Make notes of all your phone calls including those calls from prospects. Use your prepared scripts (in writing) to convey the same information to all callers. Do not make the mistake that certain things don't matter, that you do not need to document your rental ad copy or that brief conversation with a prospect at the open house. Landlords will be well advised to consider Murphy's Law as a universal truth and take care accordingly.

Documentation includes writing it down, with the date, time, and subject of any landlord tenant interaction, whether it be a prospect, an applicant, a new tenant, or a current tenant. Documentation provides protection against memory loss - you may remember it now, but will you remember it several months from now? Documentation is for protection in the "he said, you said" game. Perhaps you didn't say it at all, but you may still have to defend against it.

When selecting a tenant, take the time to adequately consider all results of your analysis of all the application and screening information and properly follow your selection procedures.

What traits are you looking for? Most landlords consider a good tenant to be someone who has (1) a good credit record, (2) a good rental history, (3) has adequate stable income to pay the rent on time, (4) will take good care of the rental property, and (5) doesn't cause trouble (is a good neighbor). Good tenants respect the responsibility placed in their hands: asset management of income property. Good landlords respect the landlord tenant relationship with fair, objective, legal policies and procedures.

As the landlord, you can set your selection criteria to include any factors based on valid business principles. For example, you might include the following:

- Employment record, either current job or most recent previous job must show at least 2 years of continuous steady employment.



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- Total monthly gross income must equal or exceed some number (2.5 to 3.0 is often used) times the monthly rent plus utilities.
- Prospective tenants must have a minimum credit score.
- No tenant may have an eviction record.
- No tenant may have unpaid judgments.
- No tenant may have a criminal history that might be consider a risk to neighbors.
- No tenant may have a history of property damage.

Screening, followed by good analysis of the information at hand, has provided objective measurements for each applicant and now your selection criteria can validate qualifications for selection. As the landlord, you can set your selection criteria to include any factors based on valid business principles. For example, you might include the following:

- Employment record, either current job or most recent previous job must show at least 2 years of continuous steady employment.
- Total monthly gross income must equal or exceed some number (2.5 to 3.0 is often used) times the monthly rent plus utilities.
- Prospective tenants must have a minimum credit score.
- No tenant may have an eviction record.
- No tenant may have unpaid judgments.
- No tenant may have a criminal history that might be consider a risk to neighbors.
- No tenant may have a history of property damage.

Some landlords take the position that they cannot exercise any selectivity in selecting tenants that they have to take the first applicant that applies. This is not so.

There are many good reasons for accepting or rejecting an applicant that are not discriminatory if they are applied equally and fairly for all applicants. Use written selection criteria to evaluate everyone who wants to rent a property in exactly the same manner. The criteria should include all qualifying items, including identity verification, credit report, employment verification, criminal record check, income, length of employment, interview, etc.

The landlord can be selective based upon behavior and performance standards that are relevant to the prospective tenant's performance as a tenant. Included are credit history, eviction record, criminal background, previous landlord references, and income. In fact, tenant screening standards help the landlord "hire" a tenant just as employment screening standards hire an employee. A tenant gives a promise to pay in exchange for possession of a valuable asset. Care should be taken that your criteria standards safeguard this exchange.

You are free to choose to use almost any criteria as long as legitimate business criteria have been applied, consistently, without discrimination, and in full compliance with all applicable laws.



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You can make the qualifying requirements as high as desired regarding financial criteria and certain other items. You can require a certain length of employment, a certain income, a certain net worth, and a certain credit record standard. You can require that the applicant have no criminal record (within guidelines discussed elsewhere) and/or no eviction record, that the tenant not smoke (at least inside the unit), and that the tenant have no pets (in all except a few states). The important issue is that you absolutely must apply the same standards to every applicant.

In practice, however, you should not set standards so high that you never find anyone meeting those standards because those who do meet those very high standards will probably be looking for bigger or newer housing in a better neighborhood to begin with.

### **Fair Housing Laws**

In selecting tenants, property owners and managers may use any criteria or guidelines that do not discriminate against the seven federal protected classes of race, color, religion, gender, national origin, familial status, and disability (mental or physical handicap). Landlords must also be fully aware of additional restrictions imposed by some states, counties, or cities for other protected classes.

Finally, when making the choice among qualified prospects, you may want to try one of the following methods:

1. Select the qualified applicant that submitted his application first
2. Use a random method
3. Select the most qualified

Most landlords probably use Method 1, selecting the first qualified applicant and this is likely the safest one to use for avoidance of discrimination charges. The problem with Method 2 is that it would be impractical, if not impossible, to prove that the choice was really random. Many experts feel that Method 3 could potentially subject the landlord to discrimination charges.

Landlords are often surprised to learn that they might be at risk for violation of fair housing laws by selecting the most qualified applicant among two or more applicants who meet the minimum qualification criteria that should have been defined ahead of time. The safest procedure is to select the first applicant who meets the criteria.

### **Americans with Disabilities Act (ADA)**

Disabled Americans are protected by both the federal Fair Housing Act and the American's with Disabilities Act. Again, there may additional restrictions imposed by states, counties, or cities for other protected classes.





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Individuals with disabilities have a right to equal housing opportunities under both the Fair Housing Act (FHA), which made them a protected class, and the Americans with Disabilities Act (ADA) of 1990, which requires that a landlord make **economically feasible "reasonable accommodations" and "reasonable modifications"** for disabled tenants. Fair Housing requires that a landlord not discriminate based on a tenant applicant's mental or physical handicap. The American's with Disabilities Act goes much further. Those covered by the Act include: any physical, mental, and emotional impairment that limits one or more of life's major activities.

### **Co-Signer or Guarantor**

If none of applicants in hand meet your selection criteria, you may allow an applicant to have a qualified friend or relative act as co-signer or guarantor for your lease. If they expect to do this, they should have the person submit a completed application. The same fees required from tenant applicants should also be required of the guarantor for a credit report and all other screening reports that the landlord performs.

The terms co-signor and guarantor are often used interchangeably and they can mean the same thing. However, there can be a significant difference between a co-signer and a guarantor if the co-signer becomes a co-tenant due to an absence of important clauses in the agreement.

Whatever the title of the agreement, it is important that the language makes it clear that the co-signor or guarantor is only guaranteeing all financial aspects of the tenant's lease and is not occupying the premises pursuant to the lease - that is, does not become a tenant. The agreement should also state that the co-signer or guarantor is not entitled to service of any notices that might be served on the tenant or have any other rights of a tenant.

### **Non-Smoking**

Smokers are not a protected class under fair housing laws. However, you will need to apply the rules identically to all applicants in order to avoid possible claims of discrimination. It is usually best to prohibit rather than prohibit smokers. While it is possible to determine that a smoking prohibition is being obeyed, it is impossible to always know that a particular applicant is a smoker.

Since you will be unable to continuously monitor tenants, your best protection against violations of no smoking policy is to include detailed discussion of the penalties for damages caused by smoking. Make it clear that smoking in the unit will result in charges for removing odors and correcting smoke damage (including possible repainting and/or window covering replacement at tenants' expense), cigarette burns. The lease should provide for termination of the lease if an inspection shows that smoking has occurred.

### **Adverse Action (Rejection) Letter**

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If an applicant is denied based in whole or in part on information contained in the credit report, the applicant has the right under the Fair Credit Reporting Act to obtain a free copy of the credit report from the credit reporting agency if requested within 60 days of written notice of denial by the landlord. The applicant also has the right to dispute the accuracy or completeness of the credit report and add a statement of up to 100 words to be added to the report.

Known as adverse action, the landlord must supply written notification of the adverse action, identify the reporting agency from which the report was obtained, and give a summary explanation of the information in the credit file, (i.e. late payments, charge off, repossession, inadequate credit history, etc) that resulted in the denial. Failure to provide this written documentation is a violation of the Fair Credit Reporting Act and/or the Equal Credit Opportunity Act.

#### Summary & Conclusions

Nowhere is the old adage "an ounce of prevention is worth a pound of cure" more true than in which applicant will be the tenant for your rental property vacancy. An adequate rental application form, adequate screening procedures, good analysis, and proper selection criteria will go a long way toward avoiding the need to evict a tenant and/or pursue collections in Court. However, if you do find yourself in the position of doing so, you will find that having utilized proper procedures in the total process will give you an edge in collecting.

Adequate screening is critical to finding qualified tenants and to avoiding problems and financial loss. A credit report is the most valuable of all screening tools and should always be run on all adult applicants.

Deposits must be collected and held in accordance with the laws of your state. If your state has no statute on related issues, fairness should be your goal.

Equally critical is selecting the right applicant to be your next tenant. Doing so will maximize your chances that your income property is a profitable and relatively trouble-free investment.

Always following adequate written procedures for tenant screening and selection will both increase your chance of ending up with a good tenant and provide protection in the event of charges of discrimination.