Screening Your Applicants Without Being Too Restrictive

About the Presenter

Ms. Staggs brings knowledge from both sides of the aisle. Formerly with the Colorado Housing and Finance Authority (CHFA) and, prior to that, the U.S. Department of Housing and Urban Development, she is an expert in compliance with low-income housing laws and regulations. As a long-time property manager, Ms. Staggs possesses the real-world, hands-on knowledge of applying the rules of the trade. Her experience includes:

- More than 20 years of property management experience with deep knowledge of multifamily programs and regulations, including: Project Based Section 8, Low Income Housing Tax Credit, FDIC Affordable Housing Program, and FHA and Non-FHA Loan Products
- Former Manager of Section 8, and Multifamily Program Compliance and Asset Management Officer with Colorado Housing and Finance Authority (CHFA)
- Former Project Manager with the U.S. Department of Housing and Urban Development
- Former Sr. Director of Property Management
- Former Community Manager/Assistant Manager with Windsor Communities / General Investment and Development
- Former District Manager with McCormack Baron Management Services and Wilhoit Properties
- Former Special Task Assignment Response Team Specialist with Property Asset Management / AIMCO
- Attended the University of Denver’s Executive Leadership Program 2010-2011
- Rocky AHMA’s Contract Administration Special Recognition Award for Commitment to Excellence in Affordable Housing in 2011
- Recipient of a Special Recognition Award from the Denver HUD Office 2012

Heather Staggs, AHM, CPO™, FHC™
Before We Begin...

**To Do:**
- S.T.A.R. Momentum does not endorse or recommend any products or services
- WHAT'S MOST RESTRICTIVE
- Seek Legal Advice
- DO NOT IMPLEMENT ANYTHING YOU HEAR TODAY WITHOUT APPROVAL

Introduction

Screening Your Applicants Without Being Too Restrictive
Balance

End Goal

- Reduce Evictions
- Increase Occupancy
- Protect Staff and Current Residents
- Make Property More Attractive to Potential Residents
Agenda

- Different Types of Screening
- What to Consider When Doing Screenings
- Different Types of Credit Reports
- Reasonable Accommodations for Applicants
- Fair Housing

Different Types of Screening
Tenant Selection Plan

- Owners must create written screening criteria that prohibits the admission of certain individuals who have engaged in drug-related criminal behavior, or are subject to a State lifetime sex offender registration program, or are individuals whose abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Tenant Selection Plan

- Be sure to define:
  - Arrest
  - Conviction
  - Felony
  - Misdemeanor
  - Reasonable time before admission
Required By HUD

- Criminal
- Drug Related Screening
- Lifetime State Sex Offender Registration
- Eviction From Federally Assisted Housing
- Abuse or Pattern of Abuse of Alcohol
- EIV Existing Tenant Search

Recommended

- Drug Related Criminal History
- Terrorist
- Rental History
- Credit
False Information

• If the applicant provides false information it can be grounds for denying the application
• If it is discovered after move-in that the resident provided false information during the screening process, the resident may be evicted

Criminal Screening
Reason for Criminal Checks

• Ensure safety of the staff, residents and the property

Considerations

• How long ago did the crime occur
• Was it:
  – Drug Related
  – Violent
  – Other Criminal Activity
• Felony
• Misdemeanor
Drug Related Screening

HUD Definition

• Drug-related Criminal Activity
  – “The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug. [24 CFR 5.100]”
Mandatory Screening

• Anyone evicted from federally assisted housing within the last three years for drug related criminal activity
  – Two exceptions
    • Completed a supervised drug rehab program
    • Circumstances leading to the eviction no longer exist

Mandatory Screening

• A household member that is currently engaged in the use of illegal drugs
• The use or pattern of drug use could interfere with the rights of others to the peaceful enjoyment of the property or that would endanger the health or safety of other residents
Mandatory Screening

• If there is reasonable cause to believe an applicant’s behavior, from abuse or pattern of abuse of alcohol, may interfere with the health, safety, and right to peaceful enjoyment by other residents.

• It’s important to remember that the screening standards must be based on behavior, not the condition of alcoholism or alcohol abuse.

Lifetime Sex Offender Registry
Registered Sex Offender Screening

• The State of South Dakota
  – South Dakota State Legislature revised the sex offender registry laws in 2006 to permit internet based searches that allow the general public access the list of all offenders registered in the State.

Registered Sex Offender Screening

• The State of South Dakota
National Sex Offender Registry

- Recommended website
  - http://www.nsopw.gov

- HUD requirements
  - Must run all states the resident has resided in or use the above database
  - Must ask if the applicant or any member of the applicant’s family is subject to State lifetime sex offender registration

Dru Sjodin National Sex Offender Registry

![Image of the Dru Sjodin National Sex Offender Registry website](image-url)
Terrorist Searches

- Conducted by resident screening companies or your property management software vendor.
- Follow policies from the screening company. They may require that you contact the authorities.

Recommended Screening
Drug Related

- The owner may implement screening for drug related criminal activity or evictions for non-federally assisted properties

Terrorist Screening

- Owners may do terrorist watch list screening on applicants
- This must be done through a screening service
Rental Checks

• Used to determine if the applicant can meet the terms of the lease and make timely rental payments
• HUD states that owners must not deny applicants for lack of rental history; however, they may deny for poor rental history
• Do your best to rely on past rental vs. current rental history

Credit Checks

• Used to determine if the applicant has public records, collections, past due utilities
• HUD states that owners must not deny applicants for lack of credit history; however, they may deny for poor credit history
What to Consider When Doing Screenings

Credit
Credit That Is A “No Go”

- **Public Records**
  Bankruptcies, tax liens, evictions, large financial lawsuits

- **Past Due Utilities**
  History of past due bills or utility bills that have gone to collections

- **Collections**
  Large amount of collections, with high balances

Credit That Is A “Maybe”

- **Past Due Bills**
  Past due medical bills or student loans may need to be overlooked, especially if the applicant is applying for an apartment in a Section 8 community.

- **Past Due Utilities**
  Has the resident paid the past due balance. If not, can the resident pay it before move-in as a condition of approval?

- **Loss of Job**
  Are there past due or slow pays on the applicant’s credit report. Can they be tied to a job loss? Have they shown improvement recently?
Credit That Is A “Go”

No Negative Public Records
Such as bankruptcies, tax liens, large financial lawsuits

One-time Late Payments
Does the applicant have a credit tradeline that has 5 years worth of credit history with a late payment or two?

Paid Collections or Utilities
Did the applicant have collection(s) or past due utilities that have since been paid in full, with no recent collections?

Rental History
Rental History That Is A “No Go”

Eviction
Eviction from any rental. Eviction from federally assisted housing within the last 3 years for drug related criminal history.

Late Rental Payments
Habitual late rental payments more than one or two in a 12 month period.

Damages
Left damages in the prior unit. If the applicant had a large amount owing and paid in full, it may still be acceptable to deny. Verify the extent of the damages.

False Information
Applicant provided incorrect information on previous address or landlord. Public Record shows different owner of the rental property than was provided for you to contact.

Rental History That Is A “Maybe”

Lease Violation
Member of the household that had the violation is no longer part of the household

Owed Small Amount at Move Out
Applicant left owing a balance; however, it was small and they paid it off as soon as they found out about it.

Foreclosure
Applicant lost their job and therefore lost their home. The applicant has solid employment and rental history for the last year.
Rental History That Is A “Go”

No Rental History
The applicant has never had any rental history.

Positive Long-term Rental History
Applicant has verifiable long-term positive rental history.

Positive Mortgage History
The applicant has owned their home for the last 10 years and had no late mortgage payments.

Criminal
Criminal That Is A “No Go”

Violent Criminal History
Criminal Homicide, Robbery, Sexual Assault, Other Assault, Burglary, Arson, Motor Vehicle Theft and Larceny.

Felony Convictions
Determine reasonable time before application (3-5 years).

Drugs, Domestic Violence
Convictions within 3-5 years of application.

Criminal That Is A “Maybe”

Non-violent Crime Older than 5 Years
Serious crime conviction over 5 years ago.
Criminal That Is A “Go”

Drug Possession Years Ago
Marijuana possession 25 years ago, no new or recent criminal history.

Misdemeanor
Misdemeanor conviction for traffic offences.

Drug Abuse or Related Criminal Activity
Drug Abuse or Related Criminal Activity That Is A “No Go”

- **Felony Drug Charges**
  Current or pattern use or distribution of drugs.

- **Drug related Criminal Activity That Resulted In an Eviction**
  Eviction from Federally Assisted housing.

- **Sale or Manufacturing of Drugs**
  Any recent history or pattern of drug sales or manufacturing.

Drug Abuse or Related Criminal Activity That Is A “Maybe”

- **Drug Use or Pattern Of Drug Use**
  Person has completed a supervised rehabilitation program.
Terrorist Search

That Is A “No Go”

Resident is a Suspected Terrorist
Ensure that you do not disclose that they are on the Terrorist Watch List. Contact the authorities.

Convicted of Terrorist Activity
Any conviction related to terrorist activities.
Registered Sex Offender

Registered Sex Offender That Is A “No Go”

Life-time Registry
Applicant or any member of the household is subject to a Lifetime State Sex Offender Registry
Registered Sex Offender That Is A “Maybe”

Sex Offender not Subject to Lifetime Registration

Tier I or Tier II offences that are non-violent

Things To Be Cautious Of

- Living with friend or relative
- Shows up in a moving truck
- Leaving blanks on the application
- Giving false owner of the previous rental property
- Has a “story” for everything
The Types of Credit Reports

National Credit Bureaus

- Equifax
- Transunion
- Experian
Sample Equifax

Sample TransUnion Report
Sample Experian

Property Management Software

- Yardi

Key Features

- Integrated with the entire Voyager leasing cycle, including generation of lease documents
- Screening and operational data are combined for smarter business decisions
- Customizable rules automate consistent decisions and improve compliance
- Strategic analytics and executive reports provide insight into portfolio-wide traffic and screening activity
- Integration with Voyager and Orion combines for an unprecedented 360° business intelligence view across your entire portfolio
- Business profile reports available
Pay Per Background Check

- Can purchase for $25.00 to $50.00
- Should go with a company that requires a site check
- Most companies offer
  - Full Credit Report
  - Eviction Records Search
  - Criminal Records Search
  - Registered Sex Offender Search
  - Terrorist Database Search
  - Rental References
  - Current Employment Verification

Items You Want on a Report

- Credit Score With:
  - Bankruptcies
  - Foreclosures
  - Medical Collections
- Nationwide Criminal Search
- National Sex Offender Search
- Terrorist Watch List Check
- Employment Report
- Any Known Aliases Used
- Past Address History With Eviction Records
Deciding the Importance of Selection Criteria

- **Rental History**: 30%
- **Credit**: 40%
- **Ability to Pay**: 20%
- **Criminal History**: 10%

Fair Credit Reporting Act (FCRA)

- Anyone using credit report information (including background checks) to make a determination of acceptance or denial of rental housing have the following responsibilities under the FCRA:
  - You must notify the applicant when an adverse action is taken on the basis of such reports.
  - You must identify the company that you obtained the credit report from, so that the accuracy of the report may be verified or contested by the applicant.
Release

• THIS APPLICATION HAS BEEN FILLED OUT COMPLETELY AND TRUTHFULLY. (Initial)
• HAVE YOU EVER BEEN CONVICTED OF A FELONY? _______________.
  – IF YES, WHEN? WHAT CHARGE(S)? ___________________________________________
• HAVE YOU OWNED A HOME IN THE PAST? _______________.
  – IF YES, HOW LONG? HOW MANY? ___________________________________________
• HAVE YOU EVER FILED A PETITION FOR BANKRUPTCY? _______________.
  – IF YES, WHEN? ___________________________________________
• HAVE YOU EVER BEEN EVICTED FROM ANY TENANCY? _______________.
• HAVE YOU EVER WILLFULLY AND INTENTIONALLY REFUSED TO PAY RENT WHEN DUE?
  – IF YES, WHEN AND WHY ___________________________________________
• I HEREBY AUTHORIZE THE OWNER/AGENT TO VERIFY THE VALIDITY OF ALL THE INFORMATION
  PROVIDED IN THIS APPLICATION, AND TO INQUIRE NOW OR PERIODICALLY WITH MY EMPLOYERS,
  FINANCIAL INSTITUTIONS, AND ANY OF THE CREDIT REPORTING BUREAUS, AND CRIMINAL SEARCH
  DATABASES AND LIFETIME SEX OFFENDER REGISTRIES AVAILABLE TO THEM.
• I AGREE TO SUPPLY ANY ADDITIONAL INFORMATION NEEDED BY OWNER/AGENT TO PROCESS THIS
  APPLICATION.
• I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS APPLICATION AGREEMENT. I AGREE THAT THE
  OWNER/AGENT MAY TERMINATE ANY AGREEMENT ENTERED INTO IN RELIANCE ON ANY
  MISSTATEMENT MADE ABOVE. I DECLARE, UNDER PENALTY OF PERJURY, ALL OF THE ABOVE
  INFORMATION TO BE TRUE AND CORRECT, TO THE BEST OF MY KNOWLEDGE.

Applicant’s Signature: ______________________ Date: ______________________

Record Retention

• The Federal Equal Credit Opportunity Act requires a creditor to preserve all written or recorded
  information connected with an application for 25 months.
• Under federal fair housing law, claims must be filed within 2 years of the claimed discriminatory action.
  Some states may have longer filing periods, so it is important to keep records for a period of at least the
  greater of the federal or the state requirements.
Programmatic Record Retention

• Tax Credit –
  – First year files kept for 21 years
  – All other resident files are kept for 6 years

• Section 8
  – Application if denied, 3-years from the date of denial
  – After move-in, 3 years from the termination of tenancy

Rejecting Applicants
Application Rejection Notice

• Required rejection notice must:
  – Be in writing
  – Give the reason for the denial
  – Give the applicant the right to respond to the owner in writing or request a meeting within 14 days to dispute the rejection
  – Give persons with disabilities the right to request reasonable accommodations to participate in the informal hearing process

Meeting With the Denied Applicant

• “Any meeting with the applicant to discuss the applicant’s rejection must be conducted by a member of the owner’s staff who was not involved in the initial decision to deny admission or assistance.
• Within 5 business days of the owner response or meeting, the owner must advise the applicant in writing of the final decision on eligibility.”
Rejection Letter Should State

We are hereby informing you of your rights under the Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq, as amended by the Consumer Credit Reporting Reform Act of 1996 (Public Law 104-208, the Omnibus Consolidated Appropriations Act for the Fiscal Year 1997, Title II, Subtitle D, Chapter 1).

You have the right to a free copy of this same report from (credit bureau used), if you make a written request to them within 60 days after you receive this notice. Under the Fair Credit Reporting Act you have a right to obtain a copy of your credit report, dispute its accuracy or completeness, and provide a consumer statement describing your position if you dispute the credit report. If you believe your report is inaccurate or incomplete, you may call the consumer reporting agency at its toll free number listed below, or write to them at the listed address.

Any questions regarding your credit report should be directed to (credit bureau used).

We do not have the ability or authority to make changes to a consumer's credit report, only (credit bureau used) has that ability. The consumer reporting agency can be contacted at:

(credit bureau used)
P.O. Box XXXXX
City, State Zip
Phone: (XXX)-XXXX-XXXX

Reasonable Accommodations for Applicants

[Image of people with disabilities]
Informal Hearing

- Persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process.

Fair Housing
Resident Selection Plans - Rejection

- You need to have procedures for rejecting ineligible applicants.
- The plan must describe the circumstances under which the owner may reject an applicant for occupancy or assistance.

Resident Selection Plans - Rejection

- If the owner or agent establishes a policy to consider extenuating circumstances in cases where applicants would normally have been rejected, and those circumstances indicate the applicant might be an acceptable resident, a policy must be made and be described in the plan.
Review

Who is screened?
What is screened?
When is screening completed?

Who Is Screened

- Everyone over the age of 18
- Live-in Aides
- Any new adult or Live-in Aides added to the household
What Is Screened

- Criminal History
- Drug Related Criminal Activity
- Lifetime Sex Offender Registry
- Evictions
  - Federally Assisted Housing for Drug Related Criminal History
- Credit
- Rental History
- Terrorist Watch List
- EIV Existing Tenant Search

When Must Screening Take Place

- Before Move-in
  - Mandatory
    - Criminal, Eviction - Drug Related Criminal History, Drug/Alcohol Abuse and Sex Offender, EIV-ETS
  - Optional
    - Credit, Rental, Terrorist Watch List,
When Must Screening Take Place

- Recertification
  - Mandatory
    - For Any New Adult or Live-in Aides Added to the Household
  - Optional
    - Criminal
    - Sex Offender

The Best Practice Would Be To Use A Screening Service
You Are Throwing Away Money If You Are Being Too Restrictive
Questions?
heather@star-momentum.com

More Information?
www.star-momentum.com