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Oregon Rental Housing Association

LAW BOOK

2020 Edition | Addendum 1

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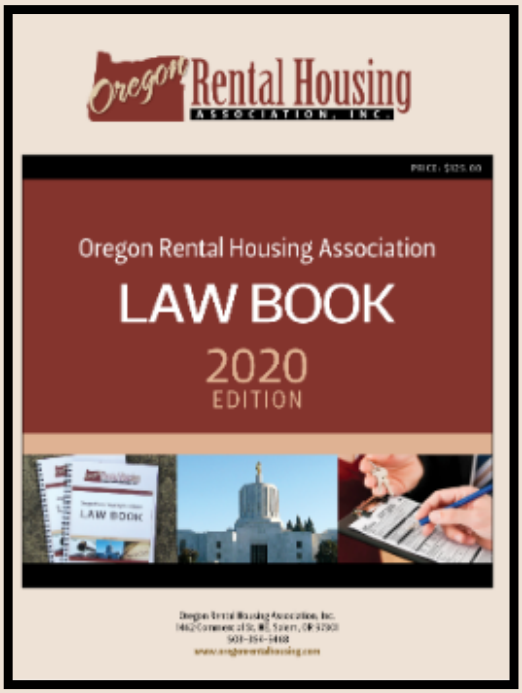
The Oregon Rental Housing Association is dedicated to keeping our members up to-date, within the best of our ability. In effort to keep our members current, we're providing Addendum 1.

Addendum 1 is a 27-page addendum that is designed to be referenced alongside your 2020 Edition Law Book!

Local Associations | Please be sure to include the link to Addendum 1 with any future law book sales.



Tenant Screening

Senate Bill 282, Senate Bill 291, and Best Practices in Screening

Published by: Tia Politi, ORHA President | December, 2021

This addendum offers general suggestions and knowledge only and is no substitute for professional legal counsel. Please consult a competent attorney for advice related to your specific situation.

If you have a decent rental property and responsible residents, there's no easier job in the world than being a housing provider, and proper screening will help you identify those responsible residents. Applicant screening is an invaluable risk assessment tool and a crucial part of your success in rental management. You are handing an asset of great value over to a virtual stranger (in most cases), so it's essential that you assess the applicant's ability to stick with the agreement, pay the rent, take care of the asset, and be a good neighbor. That's all that matters – not the type of job they have or where they rent comes from, not whether they're married or not, not whether they are from a different culture or religion, and not whether they have children. On paper, the only things that matter are income, rental history, credit history and criminal history. In person, demeanor is also important. An aggressive or bullying demeanor during the screening process is a preview of things to come and may be a reason for denial depending on the circumstances.

Underlying all aspects of housing is Fair Housing Law. Be careful to apply screening criteria equally to all applicants, without regard to race, color, national origin, religion, sex, familial status, disability, marital status, source of income, sexual orientation, and gender identity, and remember that you can't discriminate against applicants because they are or have been a victim of domestic violence, sexual assault, or stalking. There may be additional protected classes in your local area. In Eugene, for example, there are also protections for age, type of occupation, ethnicity, and domestic partnership.

Due to the COVID pandemic, housing providers need to be aware of additional screening restrictions enacted under Senate Bill 282, that while temporary, will impact how we screen through January 2, 2028. Regardless of the reason, housing providers are not allowed to consider eviction judgments rendered or cases pending during the Protected Period (April 1, 2020 – February 28, 2022). Housing providers are also prohibited from denying applicants based on debt owing from a prior tenancy that accrued during the Protected Period. These restrictions apply to any applicant through January 2, 2028.

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While an eviction judgment rendered during the Protected Period cannot be used to screen out applicants, the reasons for the eviction may be relevant, as will any negative rental history arising from the tenancy (unrelated to nonpayment during the Protected Period). So, an eviction action that came about due the applicant's noncompliance with the rental agreement is relevant, but only as it relates to the behavior of the applicant as communicated to you by the reference. If you are the one providing a rental reference for a prior renter who was evicted or owes debt from the Protected Period, proceed with caution. If asked whether the tenant left owing money, if it relates to debt incurred before or after the Protected Period, it's okay to say that. If the resident owes money from the Protected Period, they are not considered to be in default until February 28, 2022, and even if they don't pay in full or make payment arrangements by then, the debt may not be held against them for this five-year period. Challenging, eh?

In summary, while debt incurred during the Protected Period itself cannot be grounds for denial, the reason for the debt might be. For example, the reference informs you that the applicant left their property in a terrible mess or severely damaged – that's relevant, but not the money owing. In another example, if the debt is all related to nonpayment of rent during the Protected Period, then it can't be used as a basis for denial.

While the provisions of Senate Bill 282 have a sunset date, SB 291 passed last session, making a few permanent changes to screening law, and our screening forms have been changed accordingly. Most of the changes are best practices that professional managers have been compliant with for many years. Beginning January 1, 2022, to assess a screening charge to an applicant, the amount of any applicant screening charge must not be greater than the landlord's average actual cost of screening applicants or the customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening. Actual costs may include the cost of using a tenant screening company or a consumer credit reporting agency, and the reasonable value of any time spent

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by the landlord or the landlord's agents in otherwise obtaining information on applicants.

Additionally, the landlord must include written notice to the applicant of the following:

1. A right to appeal a negative determination, if any right to appeal exists;
2. Any nondiscrimination policy as required by federal, state or local law plus any non-discrimination policy of the landlord, including that a landlord may not discriminate against an applicant because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of the applicant;
3. The amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into a rental agreement; and
4. Whether the landlord requires tenants to obtain and maintain renter's liability insurance and, if so, the amount of insurance required.

A more significant change found within Senate Bill 291 is the requirement of individualized assessments related to denials based on criminal history, which closely mirrors HUD's guidance when considering an applicant's criminal history. Housing providers must now seek and allow an opportunity for the applicant to submit supplemental evidence to explain, justify or negate the relevance of potentially negative information that may result in a criminal denial. Further, landlords must also conduct an individualized assessment of the applicant that includes reviewing any supplemental evidence before denying an applicant based upon their criminal-screening results. That individualized assessment must consider factors, including:

1. The nature and severity of the incidents that would lead to a denial;
2. The number and type of incidents;
3. The time that has elapsed since the date the incidents occurred; and
4. The age of the individual at the time the incidents occurred.

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Another significant change is that you must now provide a written statement of denial within 14 days of the denial regardless of whether you assess a screening charge. That's a big change for folks like me who do not charge for screening.

Some of the biggest problems landlords create for themselves usually result from shortcutting the screening process. Some basic rules: only accept completed applications; require that all lines on the application be filled in, even if it's just an N/A because there is no information; when multiple parties are applying together, establish a policy that the applications will not be considered complete until the last one has been received; and perhaps the most important basic rule, do not pre-screen. Housing providers often get into trouble trying to weed out unqualified applicants. Provide an application to all who inquire, even if at first contact it appears that they may not qualify. Use our new combined four-page Application to Rent - ORHA form S1, now available on the forms store. The packet now consists of our Application Screening Guidelines (it's important to let applicants know your screening criteria), as well as a separate Release of Information to make it easier to send the request without compromising applicants' privacy.

When talking with applicants, absolutely don't ask illegal questions such as their line of work, whether they have children, or about their religion, marital status, or ethnicity. What can begin as a friendly attempt to get to know a potential renter can head right to a discrimination complaint on a dime. Plan your communications: if someone asks a leading question, just say something like, "I do not discriminate based on any protected class. Would you like an application?" To help you avoid discrimination claims, note on the application the date and time received, and screen applications in the order received. This is now a requirement in Portland, and the city of Eugene will likely be following suit very soon, but not the state, yet. It's just a best practice that can help you stay out of trouble. Check each application thoroughly to make sure each question has been answered yes or no. If an applicant answers a question regarding criminal history in the negative and

within one year the landlord discovers they lied about that, the tenant may be evicted on a 24-hour Notice for Harm. That won't happen to you though because you will check their history, right?

It's understandable that we would like a clear path to approval or denial, but most of life is not black and white, and in screening there's a lot of gray. Establishing reasonable criteria, evaluating an applicant's suitability, and having clearly defined processes for approval and denial will help you stay on track. You must also know the law in Oregon.

Required Disclosures:

You must disclose the following, in writing, to any applicant before taking any payments:

1. Terms of tenancy – Periodic (month-to-month, week-to-week) or fixed-term?
2. Rent amount – Subject to change prior to entering into a rental agreement.
3. Required Deposits – Which can be increased for an applicant's failure to meet criteria.
4. Due date for rent.
5. Renter's insurance requirement – You may require tenants to obtain renter's insurance if their combined household income is above 50% of the HUD median for that area. Visit www.hud.gov to determine what the income threshold is for the county where the unit is located. The requirement must be disclosed in writing during the application process, and you must also summarize the instances when it would not be legal to require it. You may require tenants to name you as an Interested Party (not an Additional Insured) on the policy for the purposes of notification of the resident's failure to maintain the policy, reduction in coverage, or removal of your status as an interested party, and may also require that residents maintain a minimum of $100,000 in liability coverage as part of that policy. Requiring renter's insurance when it would be illegal to do so may incur a penalty of the tenant's actual damages or $250, whichever is greater.

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6. Fees to be charged at the beginning, end or during the tenancy. This includes late fees, NSF fees, noncompliance fees and statutory fees such as smoke/CO alarm tampering fees.

7. Legal action – You must disclose if the property has entered foreclosure due to default under a trust deed, mortgage or contract of sale, or notice of trustee's sale under trust deed, including any pending suit to foreclose a mortgage, trust deed or vendor's lien under a contract of sale or any pending declaration of forfeiture or suit for specific performance of a contract of sale, or any pending proceeding to foreclose a tax lien – Use Foreclosure/Default Addendum - ORHA form #58. The penalty for non-disclosure: If the resident moves because of foreclosure actions that you failed to disclose, the penalty is twice the actual damages or twice the monthly rent, whichever is greater, in addition to all prepaid rent. Should the property enter legal action as described above at any time during the tenancy, the residents may, with written notice, request that any security deposits or prepaid rents be applied to their current rent or payment obligations. If the property is retrieved from legal action, you must provide proof of such to the residents and may require repayment of those funds but must give them up to three months to pay.

8. Utility or services for which tenant pays that benefit another - If, as part of renting a unit, the tenant will be absorbing the cost of something that benefits the landlord or another tenant, such as common area lighting or yard care, it must be disclosed in writing at or before the commencement of tenancy. If you will be charging a utility fee to your residents, proceed with caution. Housing providers must disclose and do many specific things, such as the method of apportionment (square footage or number of bedrooms) and provide copies of bills upon request. There's a lot more to charging utility fees, read and re-read ORS 90.315 Failure to disclose utilities or services that benefit another or improperly assessing utility fees incurs a landlord penalty of one month's rent or twice the amount wrongfully charged, whichever is greater. This penalty has been assessed by the courts for every month during which the housing provider was out of compliance, going back one full year, yikes!

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Prohibited considerations in screening:

1. Dismissed evictions.
2. Eviction judgments more than five years old (remember now, this includes any eviction judgment rendered during the Protected Period).
3. Arrests that did not result in a conviction, unless there are pending criminal charges for which the applicant would be denied, if convicted.

Should you charge a screening fee and if so, how much?:

For my business before these changes, I chose to not charge a screening fee, but I only have four units, so it's not very impactful on my budget to absorb that cost. I'm also very busy and there are a lot of things you must remember to do if you accept a fee, and if you mess up, the penalty is double refund of the fee, plus $150. Now that the screening requirements have changed in a way that removes the 'advantage' of not collecting a screening charge, we may want to reconsider this approach. If you want to pass on the costs of screening to the applicants, you must provide the following information to each applicant:

1. Written screening criteria – use your own or use our Application Screening Guidelines contained in our Application to Rent packet – ORHA form S1.
2. You must have an available unit or one that will be available soon and disclose how many units of that type you have are available or will be available.
3. The number of applications in line ahead of theirs.
4. The procedures once approved must be disclosed, outlining the steps the applicants must take if they are approved.

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Additionally, you must provide a receipt for the fee - use Application Screening Charge Receipt - ORHA form #42, and you must perform the screening or must return the fee. The charge to the applicant must represent the actual costs of the time and expense for conducting the review and cannot exceed the amount customary to the local area. Most screening services charge between $40-$50. Now that evictions and civil judgments won't be showing up on credit reports due to a credit reporting law change, it can be a good idea to use a good screening company.

If you charge a fee and deny an applicant or want to conditionally approve an applicant who doesn't quite meet your criteria with a higher deposit or co-signer, you must disclose the reasons in writing separately to each applicant and give them the opportunity to challenge the denial or adverse action. Use Application Denial and Adverse Action Letter – ORHA form #43.

Remember, credit reports are not always correct. I've had people show up as registered sex offenders only to find out it wasn't them, but someone with the same name. They provided evidence that it was an error, and we were able to reopen their application, and in many cases, enter into a rental agreement. If a denied applicant successfully proves that the reason for denial was incorrect, and you reopen it, they don't get to jump the line. Their application will go to the end of the line or if you have another available unit that meets their needs, you can place their application in line there. An applicant can also challenge an adverse action by providing evidence that the alleged deficiency is not correct in some fashion.

What are your screening criteria, and how do you apply them during the screening process?:

Do you require household income of two times the monthly rent or three? Do you allow applicants to combine income for the purposes of meeting income criteria or must they

qualify individually? What about debt-to-income ratio? How many years of verifiable rental history do you require? One year? Two? Three? What about someone who has none? How will you evaluate an applicant's creditworthiness? What types of credit problems would disqualify an applicant? What about bankruptcy? What types of criminal convictions would disqualify an applicant?

There's a lot to screening and many aspects of the process that need to be done just right to avoid claims of discrimination. To keep yourself on track, you should develop your own risk assessment tool. I suggest that you write up and use a document to help guide you through the decision-making process and regardless of whether you assess a screening charge, provide the tenants with Application Screening Guidelines – ORHA form #45. The language below in italics is taken directly from that form.

Income/Resources Criteria:

Household income shall be at least _____ times the rent (excluding utilities). Income must be verifiable through pay stubs or employer contact; award letters for Social Security, alimony, child support, welfare, utility or housing assistance; current tax records; or bank statements.

Many property management companies will allow applicants to combine income if they have shared housing for a year or more to avoid discriminating against applicants based on marital status. It's standard to require gross household income be three times the monthly rent or higher, but with rents increasing faster than wages, some like myself are only requiring 2-1/2 times the monthly rent. But what if you have a person with a very high income, but also a high debt-to-income (DTI) ratio? To calculate that ratio, simply take the total debt figure and divide it by the total income.

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For instance, if the debt costs $2,000 per month and the monthly income equals $6,000, the DTI is $2,000 ÷ $6,000, or 33 percent. In the world of mortgage lending, most lenders want to see no more than 30% debt-to-income ratio. Anything above that constitutes a higher risk in the world of lending, which I think can be extrapolated to our business as well.

Taking into consideration the amount of rent vs the amount of debt and income and your internal guidelines might look something like this:

1. Meets criteria or has only a minor lack of income, $100 or less short, good DTI. Applicant meets criteria.
2. Some lack of income – 2-1/2 times rent/income ratio, good DTI - $500 increased deposit or qualified co-signer.
3. Moderate lack of income – 2 times rent/income ratio or marginal DTI - $1000 increased deposit, double deposit, or qualified co-signer.
4. Major lack of income/poor DTI – less than 2 times rent/income ratio, high DTI, some income not claimed or documented – additional $1500 security deposit or qualified co-signer.
5. No provable income - automatic denial.

Credit history criteria:

We may require you to submit a copy of your credit report obtained within the past 30 days. Negative credit reports may result in denial of application. Negative reports include, but are not limited to: late payments, collections, judgments, total debt load, and bankruptcy.

I often hear of landlords requiring a certain credit score to qualify. This is fraught with peril, and I don't recommend it. Not all credit problems are equivalent in the screening process, so a score is not a good way to evaluate an applicant.

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What if they have no credit? To me that just shows they don't like to rack up debt. Why would that be a problem? What if the collection accounts are medical and due to a person's disability? What if the defaults are due to domestic violence, prior addiction, or mental illness that can be documented? Each of these are 'protected' reasons.

Many landlords overlook medical collections, and student loan collections. Credit cards, mail order, jewelry stores, payday loan collections are a higher risk, and money owed to utility companies, cable or satellite companies, cell phone companies and the courts are a very high risk. Money owing to a prior landlord is usually a non-starter unless the applicant is making payments, but remember, debt incurred during the Protected Period cannot be used to disqualify an applicant.

An active bankruptcy poses a potential problem for a landlord as they can be named as a creditor until the bankruptcy is closed, so it's fair to deny an applicant who is in a pending bankruptcy, but what about a past bankruptcy? While you can't discriminate against someone who has been through bankruptcy, how much you ding an applicant for having gone through one will largely depend on the reason for it, and what has happened since. Bankruptcy to clear the slate of medical bills is very different from bankruptcy to clear the slate of consumer debt because a person was irresponsible with their money and credit. Incurring more bad debt or collections after bankruptcy can also indicate someone who is at a higher risk of default.

Taking into account the varying reasons for credit problems, your guidelines might look something like this:

1. No collections or late payments, or no credit accounts at all. Applicant meets criteria.
2. Minor credit issues – one or two late payments in the past year, up to three minor collections, under $1000 total - $250 increased deposit or qualified co-signer.

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3. Moderate credit issues – some history of late payments, several collections totaling less than $2500, bankruptcy within the past 3 years – $500 increased deposit or qualified co-signer. Require written explanation.

4. Major credit issues – regular history of late payments, money owing to prior landlord, but making payments, many collection accounts totaling more than $2500, money owing to utility companies, or related to consumer debt, or collections incurred after bankruptcy – $1000 increased deposit, double deposit, or qualified co-signer. Require written explanation and copy of payment agreement with prior landlord. Verify that payments are current.

5. Open bankruptcy, money owed to prior landlord (not from the Protected Period) with no agreement to pay – automatic denial.

Prior Rental History:

Favorable rental history of years must be verifiable from unbiased and unrelated sources. No evictions within the past five years. We do not consider evictions which took place five years or more ago, not do we consider evictions which resulted in a dismissal or a general judgment for the applicant. We also do not consider eviction judgments that were rendered during the COVID-19 Protected Period (April 1, 2020 – February 28, 2022). Applicants must provide the information necessary to contact past landlords.

It's standard to require at least one year of verifiable rental history. Some companies require a minimum of two years and some as high as three years. Be sure to verify that the person you are speaking with is the owner or manager of the property by looking up the property ownership info on the county's tax website. Some sites are easy to use, others not so much, so if you are having trouble just call the county assessor's office and they will tell you who the owner of record is.

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Taking into account your criteria and the information you are able to verify, your rental history guidelines might look something like this:

1. Full positive reference(s), excellent care of property. Applicant meets criteria.
2. Minor lack of history/one or two minor issues or late pays during tenancy – additional $500 security deposit or qualified co-signer.
3. Moderate lack of history/several violations or late pays during tenancy – additional $750 security deposit or qualified co-signer.
4. Major lack of history/regular violations or repeated late pays during tenancy/money owing to prior landlord, but making payments – additional $1000 security deposit, double deposit, or qualified co-signer. Require written explanation.
5. Eviction judgment(s) in the past five years (not including the Protected Period), money owing to prior landlord and no payments being made (unless incurred during the Protected Period), uncured violations of the rental agreement, or even multiple cured violations for things like unauthorized occupants, unauthorized animals, noise/parties, smoking in the unit, harassment, assault, running a business in the unit, subletting or running an Air BNB, unsanitary conditions, or major damage resulting from tenant neglect or failure to report maintenance issues – automatic denial.

Many companies are refusing to provide full rental references anymore and will only verify dates of residency and rent amount. I can tell at least something about the quality of the tenancy by two documents: the tenant ledger and the security deposit accounting. That information could help someone at least partially document their history.

Criminal History:

Criminal convictions or pending charges which may result in an application denial include but are not limited to: drug-related crimes, person crimes, sex offenses, any crimes involving financial fraud (including identity theft or forgery), or any other crime that would adversely impact the

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health, safety or right of peaceful enjoyment of the premises of the residents, owner/agent.

Landlords should evaluate criminal history on a case-by-case basis, considering the nature of the offense(s), the length of time since the offense(s), and the rehabilitative measure taken since. Applicants with criminal history should be required to submit a written explanation of their criminal history, and may offer other supportive documents, resources, or references to attest to their rehabilitation.

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> "Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population. Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers. While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability). Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin, or other protected characteristic (i.e., disparate treatment liability)."

So, how does a landlord walk this fine line regarding the past criminal history of an applicant? It is essential to know the specifics. What was the nature of the crime? Was it a one-time thing or repeated? How long ago did the crime occur? Does this history pose a

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current danger? Were they in the throes of addiction and now they are clean and sober? Did the offender complete their debt to society and comply with the terms of release and probation? What have they been doing since? A written statement from the individual, along with documentation of any programs or classes they have completed relating to their offense(s) may help to determine whether they are taking responsibility for their previous actions and explain why they are not a risk to the landlord or others. Speaking with parole officers, counselors, and class instructors can provide insight into whether the offender is truly repentant and turning their life in a different direction.

Another section of the Memo reminds housing providers that research into criminal history shows that if a prior offender has not committed new crimes within the past six or seven years, the risk of new offenses is like that of a person with no criminal history. However, the Memo does continue to allow the denial of applicants with criminal history if that history includes crimes for the manufacture and distribution of illegal drugs (possession is a different story), many violent crimes, and sex offenses.

I once rented to a family where the dad had a history of methamphetamine use. He was three years clean and sober when he came to us. In his written explanation he accepted full responsibility for his crimes. He provided his certificates of completion for rehab, allowed me to speak to his drug treatment counselor, his parole officer, and his ex-wife. They all vouched for his changed life. His ex-wife told me in no uncertain terms that if he were still using, her children would not be in his house; his current partner said the same thing. He had paid his fines, had a good job, good credit, and three years of positive, verifiable rental history. I made the decision to move forward with a double deposit, and it went well. Within a few years, he got his journeyman's certification in welding and he and his family were able to buy their own home.

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Another great success story was a young lady whose methamphetamine addition had resulted in the loss of custody of her two children. She completed a one-year inpatient rehab program, graduated from Renters Rehab, and we placed her in a one-bedroom apartment (albeit with a double deposit and a co-signer to mitigate the risk). Within the year she was with us, she successfully paid her rent on time, kept to her lease, and regained custody of her daughters. She needed a bigger place and transitioned out. We were all so happy to be a part of helping her rebuild her life.

The question often is, how long clean is long enough? Hard to say. I think one year clean is a good start, along with having complied with the conditions of release. Less than that, or hit-and-miss compliance, and I would have misgivings, but I would call or email the Fair Housing Council of Oregon before deciding to see what they think (www.fhco.org).

In Oregon screening law, you may not consider drug-related convictions based solely on the use or possession of marijuana. When evaluating an applicant, you may not consider the possession of a medical marijuana card or status as a medical marijuana patient when deciding about the suitability of an applicant. Affordable housing providers subject to federal laws prohibiting the use or possession of marijuana (including medical marijuana) by residents on the premises may continue to enforce those rules with their residents.

So, taking all of this information into account, your criminal history guidelines might look something like this:

1. No criminal history or one or two minor violations such as traffic, one DUII, parking ticket, wildlife violation – Applicant meets criteria.
2. Moderate criminal – repeat DUII, major load of parking or traffic violations, criminal trespass, criminal mischief, contempt of court, marijuana with intent to distribute, possession of other drugs - $500 increased deposit, or qualified co-signer along with satisfactory letter of explanation and other supporting information or references to demonstrate rehabilitation.

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3. Major criminal – harassment, assault, theft, ID theft, burglary, unauthorized use of motor vehicle, unauthorized possession of firearm. $1000 increased deposit, double deposit, or qualified co-signer along with satisfactory letter of explanation and other supporting information or references to demonstrate rehabilitation.

4. Drug manufacturing, arson, patterns or history of violent crimes, sex offenses, and crimes of ID theft or forgery – automatic denial.

Co-signers:

A co-signer is someone, usually a relative or close friend, who agrees to be financially liable for damages or defaults related to the tenancy. Co-signers are most often used with young people setting out on their own who have no history to evaluate but can be used in lieu of a higher deposit if you're willing.

If you do decide to accept a co-signer, you need to have criteria for them too. Use Co-Signer Application – ORHA form #52A. It provides a good basis for qualification and allows you to fill in the multiplier regarding the amount of income you will require. If the Co-Signer meets your criteria, you will execute Co-Signer Agreement – ORHA form #52. Sometimes with groups of students renting for the first time we would have some who had co-signers and some who didn't. We had to establish something fair and reasonable, so we came to the standard that each person needed to provide either a $500 increased security deposit or a qualified co-signer.

Special Circumstances - Reasonable Accommodation (RA):

When a person who was once addicted to drugs or alcohol stops using and becomes sober, they are considered to have been disabled during the addiction period and should not be held responsible for their actions while using. The same is true for untreated mental illness that is now under control. It can also apply to victims of domestic violence.

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In cases like this, you may deny an applicant for some poor history or credit, only to have them respond with a reasonable accommodation request and verification to discount that part of their history during the time they were disabled or victimized. Like any reasonable accommodation request you are required to consider it. At a minimum, it can mean overlooking some minor lease violations, but at it's extreme, you could be required to overlook quite a lot. An applicant may apply with RA paperwork in hand, prepared to make their request at the time of application or bring a request after application denial. In this case, you must consider the request and if you are provided with appropriate verification of the disability or history of domestic violence, you must consider discounting the negative history. The applicant must be under the care of the person verifying the disability-related need, and the verifier must have direct knowledge of the disability or victimization. You can get a good idea of how that process works by looking up the publication, Moving Forward with a Past. It's a guide for residents with some amount of poor history that takes them through how to apply for a reasonable accommodation and how to write letters of explanation.

I once denied an applicant who had poor credit, negative rental history, and an eviction on his record that was a couple years old, but a few days later received a reasonable accommodation request and verification from his counselor letting us know that during the three-year span where the credit problems, eviction and poor rental history accumulated, he had been a victim of domestic violence by his intimate partner. According to his counselor, he didn't know that he had been legally evicted, or that his partner had racked up substantial debt in both their names or that he owed money to a prior landlord. We discounted that part of his history, but still charged him a higher deposit because he didn't meet our income requirement. The original property he had applied for had been leased to someone else, but we found another comparable unit and moved forward.

Victims of domestic violence are often not aware of their rights at the time the abuse is happening and sometimes lack the ability to assert any rights they are aware of, so the law takes a compassionate approach that allows victims who become aware of their rights once

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they are out of the abusive relationship, to ask a prospective landlord to overlook some or all of the poor history.

Addressing issues of disability through the RA process in screening is walking a fine line. I once had three people apply for a unit who had been clean and sober for one month. That didn't seem reasonable to me, considering their extensive criminal history with methamphetamine. In another case, a friend of mine managed an apartment complex where a mentally ill resident had twice set his unit on fire while off his meds, but now was back on his meds and receiving treatment. The manager was evicting him for the behavior, but his counselor wanted to use the RA process to stop the eviction. The manager declined and the resident and his counselor chose not to fight it. What would have happened if a complaint had been filed? I don't know, but in cases like these it's important to document the reasoning and if you have any questions, contact FHCO. They can provide guidance.

Inability to verify information:

If, after making a good faith effort, we are unable to verify information on your application, or if you fail to pass any of the screening criteria, the application process will be terminated.

The law is very clear that if you are unable to verify the information provided by the applicant, that you are not obligated to rent to them. There can, however, be reasons that some part of an applicant's history is unavailable such as the death of the landlord. Be sure to check on that, though. I did once have an applicant tell me his landlord was dead, only to find out that he was very much alive and was owed more than $5000 by the tenant for the damage done to the home. Google is very helpful in discovering whether someone is still with us.

Every day a property sits empty, is a day with no rent. It's reasonable to work an application for a couple of days, and let the applicant know if one or more of their references is not responding, but at some point, you need to move on. Just make sure you can document

your efforts to reach the person in case the applicant thinks you just went through the motions to deny them for some other reason.

Explanations/Exceptions:

All applicants may submit a written explanation with their applications if there are extenuating circumstances which require additional consideration.

In any case of deficient credit or criminal history it's important to require a written explanation. I always advise applicants to go belly up, be honest about what happened and why, and tell me why I can trust that whatever happened won't happen again. It's a bad sign if the applicant won't take responsibility, they deflect blame onto others, they demonstrate that they don't really understand what they did to create or contribute to the problem, or if they can't articulate the measures they have taken to ensure the behavior won't be repeated.

False or inaccurate information:

Falsification or misrepresentation of any part of the application will be grounds for denial.

This statement speaks for itself but do overlook unintentional errors that the applicant can explain. Some applicants may have a disability that impacts their memory. Sometimes, for example, dates may not match up perfectly based on what the applicant reports and what the reference reports, and may or may not be cause for concern.

Portland screening rules:

In the city of Portland, city regulations restrict many areas of screening. To read the full outline, visit https://www.oregonrentalhousing.com/news/12187735. ORHA has created Portland screening forms that are available on the forms store site.

Tenant Screening

Senate Bill 282, Senate Bill 291, and Best Practices in Screening

Continued . . .

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If you own a property in the city of Eugene, you need to be aware that the Renter Protection Committee is working to adopt some of the Portland rules and the city council will be voting on those soon so stay tuned.

Best practices:

Screen the applicants and screen them fully. Just because someone fills out an application, doesn't mean they were truthful. Credit reporting laws changed in 2018, and now civil judgments like evictions or small claims money awards are not showing up on credit reports. Best to hire a screening company at least to pull the eviction and civil/criminal history to be sure it's accurate. If you hit a piece of information that you would likely deny for, don't stop there, perform the full screening.

Ask the right questions. What were the dates of tenancy? Rent amount? Did they pay rent on time? Did they take care of the interior and exterior of the property? Were there any complaints related to the tenancy, or did you have to serve them any notices for noncompliance? Did you ask them to move, or did they initiate the move? Did they get any refund? Do they owe money? If so, have they made payment arrangements? Would you re-rent?

Verify the references. Applicants can set up false references, so take a few minutes to verify that you are speaking to the right person. Property ownership is a matter of public record. Before you call that landlord reference, take a few minutes to look up the owner of record either on the county website in question, or by calling that county's records department and asking. Same with employment. Don't just call whatever number you are given and take their word. Call the local or regional office and get copies of pay stubs or tax returns.

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Watch for fraud. I once had a man rent a property, and everything checked out. He provided paystubs and a solid employment reference. He didn't have rental history as he was new to the US, so we moved forward with a double deposit. A short time later, a friend of his applied for another of our available rentals. He provided similar documentation and we moved forward. The new tenant exhibited some odd behavior that the neighbors reported to the owner, and she started digging further. Turns out the address on the paystubs of both men did not exist. They had created false paystubs and had used virtually the same fake company to verify their employment. We terminated both tenancies without cause and never did find out what they were up to, but they were also on the police department's radar. The lesson there was to verify everything, even if it looks legit.

Don't be pressured. One of the most obvious things an applicant can do that should cause you concern is when they pressure you, say they're in a hurry, have all the money, can pay six months' rent in advance, anything to get you to just take their money and give them the property. No matter how tight your financial situation, I can promise you that it will blow up in your face. Don't take shortcuts, ever, in the screening process.

Statute of Limitations:

Keep denied apps or apps that for whatever reason did not result in a tenancy for a minimum of two years. Keep tenant apps for at least two years after the termination of tenancy.

The Takeaway:

Screening will often require some sort of judgment call by the screener in relation to an applicant not quite meeting criterion. Just make sure your decisions are based on an objective measure of risk, not membership in a protected class. Watch out for your internal prejudices and stick to your formula.

Tenant Screening

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Jot down notes regarding any negative determinations in case you are investigated for discrimination. Having written guidelines and processes for approval and denial will help you keep your objectivity during the screening process. It will also provide something that could help you justify your decision-making process if you are accused of discrimination.

To view the complete set of Portland screening rules, please visit our website at https://www.oregonrentalhousing.com/news/12187735

Senate Bill 1536

The Tenant Right to Cooling Bill

Published by: Jason Miller, ORHA Legislative Director | March, 2022

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Housing providers experienced some welcome relief in the 2022 long session. Because of negotiations with legislators related to Senate Bill 891, we only had one bill become law, the tenant right to cooling bill. The bill takes effect immediately.

In recent years Oregon has experienced some extremely high temperatures. Not everyone can tolerate the extreme heat, especial those of advanced age or with illnesses. Many individuals died due to extreme heat. Legislators worked with Housing Provider associations to address concerns they may have with allowing tenants to have portable cooling devices while addressing the need for cooling.

Landlords must allow portable free standing air conditioners and window mounted air conditioners under the following conditions:

- The installation cannot do damage to the property.
- The installation cannot violate building codes.
- The installation must comply with manufacturer's written safety guidelines.
- The unit does not draw more amperage than the building can accommodate.
- The installation cannot block egress from the dwelling unit, this means it cannot be installed in the only egress window of a bedroom.
- The installation cannot interfere with the ability to lock windows accessible from the outside (1st floor windows)
- The installation cannot use brackets or hardware that would void the warranty of the window.
- The installation cannot puncture the envelope of the building (no holes).
- The device must have adequate drainage to avoid damage to the building.
- The installation must be done in a way to prevent the device from falling.
- The landlord has the option to require installation by landlord.
- The installation is subject to inspection by landlord.
- Air conditioners must be uninstalled by October 1st and not re-installed before April 30.

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- Restrictions on cooling devices must be in writing and delivered to tenants or the landlord cannot enforce the restrictions.
- If you have to limit cooling devices in the building, you must prioritize tenants with disabilities that require cooling.
- If you give a notice of termination for violation of cooling restrictions you must include that the date of termination is extended by one day for every day that the county of the residence is in an "extreme heat event" as defined by NOAA, you can find information about "extreme heat events" on the website for the Oregon Department of Housing and Community Services.
- Homeowners' and condominium owners' associations must follow these same guidelines.
- The installation of portable cooling devices on historic buildings cannot require the removal of historic architectural features.

Other parts of the law:

New construction where permits are issued after April 1, 2024 must have one room that is not a bathroom serviced by a cooling system.

A landlord is immune from liability for any claim for damages, injury or death caused by a portable cooling device installed by the tenant.

To see the full law please visit:
https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1536/Enrolled