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Landlord News

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DO THE NEW FCRA ADVERSE ACTION LETTER REQUIREMENTS APPLY TO YOU?

Recent changes to the Fair Credit Reporting Act ("FCRA") have resulted in numerous client inquiries. FCRA was originally enacted in 1996 to ensure that consumers were informed of the information utilized to make adverse credit decisions and required

users of credit reports

to notify the consumer of the adverse action.

Legislation amending FCRA (the Dodd-Frank Act) was enacted in 2010 and became effective July 21, 2011.

The Dodd-Frank Act



may or may not affect the adverse action notice requirements you must follow when you take adverse action against an applicant or resident.

As originally enacted, FCRA required you to provide notification of adverse action to any applicant when you denied their application based on a "consumer report", more commonly known as a credit report, that was provided by a "consumer credit reporting agency". What is a credit report? A credit report is simply a compilation of information regarding an individual's credit history, character, or lifestyle. A consumer credit reporting agency is a company that specializes in providing credit reports to third parties for a fee. Many companies that provide credit reports for tenant screening purposes do not compile the reports themselves. Regardless, even if a company does not compile the information itself, or simply resells information provided by another consumer credit reporting agency, they meet the definition of a consumer credit reporting agency under FCRA.

Obviously, you must take adverse action to

CONTINUED ON PAGE 2

A Collection Coach Tip THE CONFUSION OF NORMAL WEAR AND TEAR

Normal wear and tear is an illusive concept.

One person's wear and tear is another person's damage. Colorado statute defines normal wear and tear as "deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests." Unfortunately, the statute does very little to clarify a landlord's dilemma, and there is very little case law interpreting this definition. So if there is no hard and fast rule, how can a landlord avoid court challenges and tenant disputes about normal wear and tear?



The best way to make sure that both the landlord and the tenant know what constitutes normal wear and tear is to define the concept as specifically as reasonable in a lease clause or a charge list addendum. For example, a lease could state that normal wear and tear does not include general cleaning, professional carpet cleaning, or hauling away items left in the property after move-out. Further, a lease may state that all cleaning necessary to return the property to its premove-in condition will be charged at \$15/hour whether the landlord completes the cleaning or contracts with a third-party vendor. Additionally, a charge list addendum may include cleaning and hauling charges such as: clean toilet \$10, clean sink \$5, clean refrigerator \$25, dispose of small furniture items \$10 per piece, dispose of large furniture items \$35 per piece, dispose of miscellaneous trash items \$25 per bag, etc.

CONTINUED ON PAGE 2

DO THE NEW FCRA ADVERSE ACTION LETTER REQUIREMENTS APPLY TO YOU?

CONTINUED FROM PAGE 1

trigger FCRA adverse action notice requirements. Denying an application is adverse action. However, adverse action covers additional scenarios as well, because



it is defined broadly under FCRA to include all actions adverse to the interests of the applicant (the consumer) in connection with an application. Imposing

higher rents, requiring a cosigner or a guarantor, and requiring higher security deposits, are all examples of adverse action. In the multifamily industry, there are usually three possible application outcomes. Approved, approved with conditions, and denied. Approved with conditions is adverse action. Regardless of the recent changes in the law, are you (your third party credit verification service) sending out adverse action notices when a resident is "approved with conditions"? Prior to the Dodd-Frank enactment, FCRA required an adverse action notice to inform the applicant that the decision was made in connection with a consumer credit report, identify the consumer credit reporting agency that provided the report, and a statement that the consumer credit reporting agency did not take the adverse action. Additionally, the adverse action notice set forth applicable rights of the consumer (applicant or resident), including their right to obtain a free copy of the credit report resulting in the adverse action, and to contest the information in the report.



The Dodd-Frank changes to FCRA's adverse action requirements may or may not affect you. FCRA, as amended by Dodd-Frank, requires additional adverse action notifications only if the adverse action is 1) based on a consumer report provided by a consumer credit reporting agency, and 2) is based on a credit score.

When the new law is evaluated against industry standard practice, the key issue becomes clear. Current industry resident screening models for resident applications are almost certain to involve credit reports

CONTINUED ON PAGE 3

**A Collection Coach Tip
THE CONFUSION OF NORMAL WEAR AND TEAR
CONTINUED FROM PAGE 1**

Another way to avoid disputes about charges is to make sure you have a proration schedule for normal wear and tear items such as painting charges and carpet, which are often disputed. On average rental carpet has a life of 5-6 years and paint 1-2 years. An important factor to consider when deciding whether to charge the tenant for damages is to look at the length of the tenancy. If a tenant resides in a property for 10 years, other than physical destruction, missing items and past due rents, there are very few charges that are appropriate to deduct from the tenant's deposit. After 10 years, the carpet and paint need to be replaced in the normal course of business, and many appliances have outlasted their life as well. Several independent groups provide life expectancy lists for home components available online if you need guidance.



Many county court judges hate landlord tenant disputes, also known as dirty oven cases, because they have to wade through each line item and determine whether the charge is really normal wear and tear. The best thing for a landlord to do is have a list of cleaning and repair charges, be consistent how fees are charged to tenants, prorate replacement costs based on a set schedule, and consider the length of the tenancy.



DO THE NEW FCRA ADVERSE ACTION LETTER REQUIREMENTS APPLY TO YOU?

CONTINUED FROM PAGE 2

provided by credit agencies. Thus, the key issue governing whether the new law applies to you, is whether your screening process utilizes a “credit score” as part



of the application process. If your application utilizes a credit score (based on the definitions set forth in FCRA), you must comply with the law by making the new adverse action disclosures. If a credit score

is not utilized in an adverse action, FCRA’s original requirements still apply even though the Dodd-Frank adverse action requirements are not triggered.

Unfortunately, the definition of a credit score under FCRA is not clear or easily understandable. In simple terms, FCRA defines a credit score as a numerical value based on a statistical model. However, the full definition, including limitations and exceptions, is imprecise. For example, some resident screening models may use “scores”, but such scores are not “FICO” scores used to make lending decisions and therefore wouldn’t be considered “credit scores” under FCRA, and wouldn’t trigger compliance with the Dodd-Frank adverse action requirements.

The Dodd-Frank Act did not change how the adverse action notice is delivered to applicants. FCRA allows for delivery of adverse action either orally or in writing. The best business practice is to always make the adverse action notice in writing.

If you fall under the new adverse action notice requirements, you must inform the applicant of the score used to make the adverse decision, the range of possible scores, and key factors (not to exceed 4 key factors) that adversely affect the score. If the number of credit inquiries is a key factor that negatively affects the applicant’s score, you must always disclose this as a key factor, plus four other key factors.



Determining whether you must comply with the amended FCRA can be a complicated and time-consuming proposition. Fortunately, you have an easy solution. You can shift responsibility for both the compliance determination, and compliance to your third party credit verification company (the consumer credit reporting agency you pay to provide credit reports in connection with applications). Industry best

practices dictate utilization of a third party credit verification company in connection resident applications. These companies provide credit reports, and should automatically generate legally compliant adverse action notices for you in connection with the application process.



These consumer credit reporting agencies are or should be experts in Fair Credit Reporting Act issues. You should contact your provider, in writing, to address the key issues, and request a written response from them. Does your screening model utilize a “credit score”? In their opinion, are the new adverse notice requirements applicable? Are they making them when they generate adverse action notices for you? Are they willing to indemnify you for non-compliance? You should also verify that the actual adverse action notices prepared by your provider track their representations. If your current third party credit verification company isn’t willing to address these issues, you should take your business elsewhere.

IMPORTANT THS SEPTEMBER DATES

Sept 2nd	DENVER COURT CLOSED FURLOUGH DAY
Sept 5th	THS AND COURTS CLOSED LABOR DAY HOLIDAY
Sept 12th & 14th	DOUGLAS COURT CLOSED JUDICIAL CONFERENCES
Sept 14th	Evictions Workshop THS Lower Conference Center 3600 S. Yosemite Street Denver, CO 8:30 a.m. - 11:30 a.m.
Sept 23rd	North Client Lunch Dave & Buster’s 10667 Westminster Blvd. Westminster, CO 11:30 a.m. - 1:00 p.m.



The Procrastinator's Creed

- *I believe that if anything is worth doing, it would have been done already.*
- *I shall never move quickly, except to avoid more work or find excuses.*
- *I will never rush into a job without a lifetime of consideration.*
- *I shall meet all of my deadlines directly in proportion to the amount of bodily injury I could expect to receive from missing them.*
- *I firmly believe that tomorrow holds the possibility for new technologies, astounding discoveries, and a reprieve from my obligations.*
- *I truly believe that all deadlines are unreasonable regardless of the amount of time given.*
- *I shall never forget that the probability of a miracle, though infinitesimally small, is not exactly zero.*
- *If at first I don't succeed, there is always next year.*
- *I shall always decide not to decide, unless of course I decide to change my mind.*
- *I shall always begin, start, initiate, take the first step, and/or write the first word, when I get around to it.*
- *I obey the law of inverse excuses which demands that the greater the task to be done, the more insignificant the work that must be done prior to beginning the greater task.*
- *I know that the work cycle is not plan-start-finish, but is wait-plan-plan.*
- *I will never put off until tomorrow, what I can forget about forever.*
- *I will become a member of the ancient Order of Two-Headed Turtles (the Procrastinator's Society) if they ever get it organized.*



**“Attitude is a little thing
that makes a big difference”**

Winston Churchill