

## Greensboro Landlords Association

Meeting Minutes

May 8th, 2018

### Opening:

The monthly meeting of the Greensboro Landlords Association was called to order at 6:35 on May 8th, 2018 at the Greensboro Regional Realtors Association by President, Mike Walker.

### Attendance:

42 Members and 2 Guests were recorded by Jennifer Dille with TESS, LLC, 3<sup>rd</sup> Party Vendor.

### General Announcements by Mike Walker:

- **Recognized our guests** and thanked everyone for coming out tonight.
- **Tornado Relief**: CHALLENGE TO OUR MEMBERS: If you have the ability to provide a property RENT FREE or at a REDUCED RENTAL RATE, please contact Donna Gray, the City's Community Relations Manager at (336)373-2723 or via email at [Donna.Gray@greensboro-nc.gov](mailto:Donna.Gray@greensboro-nc.gov). Let Us be our community's heroes!!
- **Social is next month! Looking for new sponsors. Cost is \$200.** See Jennifer for a Sponsorship form if interested yourself or know of a good Sponsor. The social is at PorterHouse Burger Co. on West Market St. There will be appetizers provided. The bar is a Cash Bar this year so we will NOT be handing out drink tickets.
- **Coffee Chat!** Will be next Tuesday the 15<sup>th</sup> from 4:15-5:00 at Amoroso's Bakery off Guilford College Rd.
- **Starting in August: Any guest other than a spouse or child, will need to pay \$10 cash or check to attend the meeting.** Sorry, but this is a part of being a non-profit. We still have to cover our expenses!
- **Before we get started, does anyone have any questions or announcements** for the group before we get started? OK, no questions or comments.

I will now turn the meeting over to our very special guest speaker, Bill Gallagher with Superior School of Real Estate.

**Meeting Topic: Disparate Leasing: Use of Criminal Records in Residential Leasing**

**Speaker: Bill Gallagher**

Thank you Mike and thank you all for inviting me to join you all tonight. I remember this was a very active group from the last time I meet with you all in the basement of the Baptist Church. This is a much nicer meeting space! I am at the GRRRA often conducting Continuing Ed classes.

Before I get into our subject for tonight, I wanted to clue you all in on a new initiative the NC Real Estate Commission has started. It is called “Mail-In Trust Account Audits”.

Yes, instead of doing surprise visits to property managers around the State of North Carolina, they are sending out letters to property managers asking them to send in the statements from their Trust accounts. Now remember, these must be called Trust Accounts – not “separate account”, “special account” or “security deposit account”. It is very important to make sure these accounts are reconciled before turning in your paperwork to the Commission. Also, if you receive this letter, do NOT call and asks if you really have to do this! They frown on questions like that and you put a blinking red light on top of your head for them to investigate into other items like how you handle your applications – especially if the applicant has or had a criminal record.

So with that said, let’s jump into tonight’s subject. Does everyone have the 2 handouts? If not, please raise your hand.

As I am sure everyone in here is well aware of, you can not discriminate against an applicant if they have a criminal record. The only time you can deny someone is if they were convicted of a possession with intent to sell or manufacturing of drugs or meth. And a criminal record, does not mean an arrest record. Just because Billy Bob has arrested five times for possession of an illegal drug, if he has not been convicted, it is not a criminal record.

Did everyone get that?! If he only been arrested, that is not a conviction and is not considered a criminal record.

And it does not make any difference if the arrest was made in Ballantyne in Charlotte (big snooty area of Charlotte) or by the railroad tracks in a seedy part of town, if the arrest is not turned into a conviction, it basically does not exist in your world. You do not want to be caught turning someone down because of an arrest record, nor do you want to be caught turning down someone because of a conviction that did not include the possession of drugs with the intent to sell or the manufacturing of drugs or meth!

Now if you will turn to our first stapled handout will go over how this came about.

## **Disparate Impact: Use of Criminal Records in Residential Leasing**

### **Research and Statistics**

HUD's Office of General Counsel issued *Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions\** on April 4, 2016.

The document states the following statistics:

- The United States' population represents only five percent of the world's population, yet nearly 25% of the world's prisoners are incarcerated in U.S. prisons (roughly 2.2 million).
- An average of 650,000 individuals have been released annually from prison since 2004, and 95% of current inmates will be released at some point.
- Studies indicate that after six or seven years with no offenses, the risk that a former convict may commit a new offense begins to approximate the risk that a person with no prior record will commit a new offense.
- In 2013, African-Americans represented approximately 12-12.4% of the U.S. population, but comprised 28.3% of all arrests and 36% of the prison population in 2014.
- Hispanics comprise 17% of the population but 22% of the prison population while Caucasians comprise roughly 62% of the population but only 34% of the prison population.

HUD found that nationally, "across all age groups, the imprisonment rates for African American males is almost six times greater than for White males, and for Hispanic males, it is over twice that for non-Hispanic White males."

### **Conclusion: Criminal records-based barriers to housing are likely to have a disparate impact on minority home seekers.**

HUD concluded:

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).

**HUD specifically acknowledges that housing providers have a significant interest in protecting the safety and property of others and a prospective tenant's previous criminal convictions may be one factor in that evaluation, but it shouldn't be the lone factor.**

According to HUD's *Guidance*:

...where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, **such policy or practice is unlawful under the Fair Housing Act** if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect. [Emphasis added.]

The one conviction recognized by the Fair Housing Act as justification for denial of housing is a conviction of illegally manufacturing or distributing a controlled substance as defined under federal law. [21 United State Code 802.] Note that it must be a *conviction*, not merely an arrest, for the *manufacture or distribution* of a controlled substance, not use or possession of a controlled or illegal substance.

\* To read *Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* in its entirety, go to: [https://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf).



**FOR DISCUSSION**

1. What are some legal tenant-screening criteria? \_\_\_\_\_  
\_\_\_\_\_
2. May a prospective tenant's arrest record be used to screen tenant applications? \_\_\_\_\_  
Why or why not? \_\_\_\_\_
3. True or False? Consistently refusing to rent to anyone that has any criminal conviction would remove the possibility of discrimination since the criterion is the same for everyone. \_\_\_\_\_  
Explain your answer. \_\_\_\_\_
4. What factors might be used to determine if previous criminal convictions will affect tenant approval? \_\_\_\_\_
5. Would it be okay to deny tenancy to anyone convicted of the manufacture of crystal meth? \_\_\_\_\_
6. What procedures might a PM/landlord put in place to assure non-discriminatory use of criminal records in tenant screening? \_\_\_\_\_

## HUD's Recommended Practices for Use of Criminal History

- When evaluating a prior conviction, also consider:
  - What was the nature of the crime (violent/nonviolent, intentional/negligent) and how serious was it (misdemeanor/felony)?
  - How long ago did it occur?
  - How old was the individual?
  - Was the individual incarcerated or given probation?
  - What were the circumstances surrounding the event? Were there mitigating factors?
  - What has been the applicant's conduct since release?

Also: Consider giving the applicant an opportunity to explain any convictions that appear.

- Apply the policy uniformly to all applicants.
- Avoid blanket exclusions that deny housing to anyone with a criminal conviction.
- Never exclude prospective tenants based on arrests only. Arrests aren't proof of past criminal conduct and are often incomplete. Convictions are the proof of actual past criminal conduct.

## Page 25 For Discussion

1. What are some legal tenant-screening criteria?

*Answers will include credit-based criteria, first-come/first-served, employment history, etc.*

2. May a prospective tenant's arrest record be used to screen tenant applications? Why or why not?

*Answer: No. Arrests are not a reliable indicator of past criminal activity.*

3. True or False? Consistently refusing to rent to anyone that has any criminal conviction would remove the possibility of discrimination since the criterion is the same for everyone. Explain your answer.

*Answer: False. HUD Guidelines caution against blanket exclusions. Studies on criminal convictions support claims of disparate impact on some protected classes such as race or ethnic background.*

4. What factors might be legally used to determine if previous criminal convictions will affect tenant approval?

*Answers may include: nature and severity of the crime, how long ago the conviction occurred, the age of the person at the time of conviction, whether there were mitigating circumstances, and the person's conduct since the conviction.*

5. Would it be okay to deny tenancy to anyone convicted of the manufacture of crystal meth?

*Answer: Yes. Conviction (not arrest) for the illegal manufacture and/or distribution of a controlled substance can be a blanket exclusion per HUD Guidelines (but not mere possession of a controlled substance).*

6. What procedures might a PM/landlord put in place to assure non-discriminatory use of criminal records in tenant screening?

*Answers may include: use of clear, specific reasoning for the criminal history-based policy/practice that can be supported by evidence; consideration of the nature and severity of an individual's conviction before excluding the individual based on the conviction; use of individualized assessments that take into account mitigating factors, such as facts and circumstances surrounding the criminal conduct, age at the time of the conduct, evidence of good tenancy before/after conduct, and rehabilitative efforts.*

**Following is a list of Do's and Don'ts provided by the  
National Association of REALTORS® in an April 7, 2016, article titled  
*Fair Housing Act: Criminal History-Based Practices and Policies:***

<b>Criminal History-Based Housing Policies and Practices</b>	
<b>Do's</b>	<b>Don'ts</b>
Create tailored criminal history-based policies/practices.	Don't create arbitrary or overly-broad criminal history-based policies/practices.
Be sure to have clear, specific reasoning for the criminal history-based policy/practice that can be supported by evidence.	Don't maintain a policy/practice, or any portion thereof, that does not serve a substantial, legitimate, nondiscriminatory interest.
Exclude individuals only based on criminal convictions that present a demonstrable risk to resident safety or property.	Don't create exclusions based on arrest records alone.
Consider the nature and severity of an individual's conviction before excluding the individual based on the conviction.	Don't create a blanket exclusion of any person with any conviction record.
Consider the amount of time that has passed since the criminal conduct occurred.	Don't provide inconsistent explanations for the denial of a housing application.
Consider criminal history uniformly, regardless of an individual's inclusion in a protected class.	Don't use criminal history as a pretext for unequal treatment of individuals of a protected class.
Treat all applicants for housing equally, regardless of protected characteristics.	Don't use comparable criminal history differently for individuals of protected classes.
Conduct individualized assessments that take into account mitigating factors, such as facts and circumstances surrounding the criminal conduct, age at the time of the conduct, evidence of good tenancy before/after conduct, and rehabilitative efforts.	Don't make exceptions to a policy or practice for some individuals, but not make the same exception for another individual based on the individual's inclusion in a protected class.
Housing providers may exclude persons convicted of the illegal <u>manufacture</u> or <u>distribution</u> of a controlled substance. <sup>2</sup>	Don't include a blanket prohibition against individuals convicted of drug <u>possession</u> .

To read the *Fair Housing Act: Criminal History-Based Practices and Policies* article in its entirety, go to:  
<https://www.nar.realtor/articles/fair-housing-act-criminal-history-based-practices-and-policies>

At the end of this Section is a "Model Policy on Screening Applicants with Criminal Records" developed by the North Carolina Housing Finance Agency (NCHFA), the Department of Health and Human Services, and the North Carolina Justice Center for use by property managers participating in NCHFA programs. It is reprinted with the permission of the NCHFA.

**Closing:**

**Bill** – Thank you so much for your time and if you have any questions, please feel free to pick up a business card from the back table and give me a call, 877-944-4260.

Mike - Thank you Bill. That was very informative and thanks for making it fun as well. You are one of our favorite speakers and we hope to have you back again soon!

Remember everyone about the Coffee Chat at Amoroso's Bakery on Tuesday the 15<sup>th</sup> at 4:15 and about our Social next month at Porterhouse Burger.

**Adjournment:** "Thank you all for coming!" Meeting was adjourned at 7:30 by President, Mike Walker.

**Minutes submitted by: Jennifer Dille with TESS, LLC Approved by: Andrea Neese, Secretary**