

CREDIT REPORTS

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USING CONSUMER REPORTS: WHAT LANDLORDS NEED TO KNOW

*(This article, on certain aspects of the **Federal Credit Reporting Act**, is based on information from the Federal Trade Commission's website www.ftc.gov.)*

What is a Consumer (Credit) Report?

A consumer report contains information about a person's credit characteristics, character, general reputation, and lifestyle. A report also may include information about someone's rental history, such as information from previous landlords or from public records like housing court or eviction files. To be covered by the FCRA, a report must be prepared by a CRA – a business that assembles such reports for other businesses. The most common type of CRA is the credit bureau.

Landlords often use consumer reports to help them evaluate rental applications. These reports include:

- A credit report from a credit bureau, such as Trans Union, Experian, and Equifax or an affiliate company;
- A report from a tenant-screening service that describes the applicant's rental history based on reports from previous landlords or housing court records;
- A report from a tenant-screening service that describes the applicant's rental history, and also includes a credit report the service got from a credit bureau;
- A report from a tenant-screening service that is limited to a credit report the service got from a credit bureau; and
- A report from a reference-checking service that contacts previous landlords or other parties listed on the rental application on behalf of the rental property owner.

Landlords often ask applicants to give personal, employment and previous landlord references on their rental applications. Whether verifying such references is covered by the FCRA depends on who does the verification. A reference verified by the landlord's employee is not covered by the Act; a reference verified by an agency hired by the landlord to do the verification is covered.

As Landlords and Property Managers, we are permitted to use consumer reports to evaluate rental applications – as long as we follow the provisions of the Fair Credit Reporting Act (FCRA). The FCRA is designed to protect the privacy of consumer report information and to guarantee that the information supplied by consumer reporting agencies (CRAs) is as accurate as possible.

Before requesting a credit report on an individual, the FCRA requires that we have that person's written permission. If we reject an applicant or take any other type of adverse action (such as requesting a larger security deposit) based on information in the applicant's consumer report, The FCRA requires that we provide the applicant with an "Adverse Action Notice".

The FCRA requires landlords who deny a lease or who take any other adverse action based on information in the applicant's consumer report to provide the applicant with an "adverse action notice."

What is an Adverse Action?

An adverse action is any action by a landlord that is unfavorable to the interests of a rental applicant. Common adverse actions by landlords include:

- Denying the application;
- Requiring a co-signer on the lease;
- Requiring a deposit that would not be required for another applicant;
- Requiring a larger deposit than might be required for another applicant; and
- Raising the rent to a higher amount than for another applicant.

The Adverse Action Notice

When an adverse action is taken that is based solely or partly on information in a consumer report, the FCRA requires you to provide a notice of the adverse action to the consumer. The notice must include:

- The name, address and telephone number of the CRA that supplied the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide;
- A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and
- A notice of the individual's right to dispute the accuracy or completeness of any information the CRA furnished, and the consumer's right to a free report from the CRA upon request within 60 days.

Disclosure of this information is important because some consumer reports contain errors.

The adverse action notice is required even if information in the consumer report was not the main reason for the denial, the increase in security deposit or rent or other adverse action. In fact, even if the information in the report plays only a small part in the overall decision, the applicant still must be notified.

The adverse action notice must name the CRA that provided the report to the landlord, even if the information came from another CRA. For example, a report from XYZ-TenantScreen includes a credit report from ABC Credit Bureau. The credit report includes negative

information that prompts the landlord to turn down the rental application. The adverse action notice should name XYZ-TenantScreen as the CRA because XYZ-TenantScreen actually provided the report to the landlord. The notice also can explain that XYZ-TenantScreen got the credit information from ABC Credit Bureau, but that is not required under the FCRA.

While oral adverse action notices are allowed, written notices (with a suggested "Proof of Mailing" certificate from the post office) **provide proof of FCRA compliance.**

Take the Case of...

1. A landlord who orders a consumer report from a CRA. Information contained in the report leads to further investigation of the applicant. The rental application is denied because of that investigation.

Since the information in the report prompted the adverse action in this case, an adverse action notice must be sent to the consumer.

2. An applicant with an unfavorable credit history, like past-due credit accounts, who is denied an apartment. Although the credit history was considered in the decision, the applicant's poor reputation as a tenant in his current location played a more important role.

The applicant is entitled to an adverse action notice because the credit report played a part, however minor, in the denial.

3. A person with an unfavorable credit history, like a bankruptcy, but no other negative indicators, who applies for an apartment. Rather than deny the application, the landlord offers to rent the apartment, requiring a security deposit that is double the normal amount.

The applicant is entitled to an adverse action notice because the credit report influenced the landlord's decision to require a higher security deposit from the applicant.

4. A landlord who hires a reference-checking service to verify information included on a rental application. Because the service reports that the applicant does not work for the employer listed on the application, the rental application is denied.

The applicant is entitled to an adverse action notice. The report is a consumer report from a CRA (the agency checking the references provided by the consumer on the application), and its report influenced the landlord's decision to deny the application.

5. A landlord who makes it a practice to approve an application if the prospective tenant shows an adequate income or has a favorable credit report, is dealing with an applicant who has an inadequate income and a bad credit report.

The applicant is entitled to an adverse action notice because the credit report influenced the denial, even though income was another factor.

Non-Compliance with the FCRA

Landlords who fail to provide required disclosure notices face legal consequences. The FCRA allows individuals to sue landlords for damages in federal court. A

person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations of the FCRA. In addition, the Federal Trade Commission (FTC), other federal agencies and the states may sue landlords for non-compliance and get civil penalties.

However, a landlord who inadvertently fails to provide a required notice in an isolated case has legal protections, so long as he or she can demonstrate "that at the time of the ... violation he maintained reasonable procedures to assure compliance" with the FCRA.

For More Information

If you have questions about the FCRA or would like a copy of the Act, call toll-free, 1-877-FTC-HELP (1-877-382-4357). You also can find the Act online at www.ftc.gov. Click on Business Guidance. A sample Adverse Action Notice follows.



(When an adverse action is taken that is based solely or partly on information in a consumer report, the FCRA requires you to provide a notice of the adverse action to the consumer. The following sample ADVERSE ACTION NOTICE, together with a suggested "Proof of Mailing" certificate from the post office, provides proof of FCRA compliance.)

ADVERSE ACTION NOTICE

Name: _____

Street: _____

City: _____ State: _____ Zip: _____

Denial: We regret to advise you that your request for a tenancy (apartment or rental unit) has been declined. We have received information from _____, the CRA that provided the report, of a type described below that causes us to decline your application.

____ Rental history
____ Employment data or records
____ Financial data or records
____ Other information: _____

Source of Information: Information concerning you has been received from the following agencies:

(CRA name, address, phone number and toll free phone number, if the CRA maintains files nationwide)

(CRA name, address, phone number and toll free phone number, if the CRA maintains files nationwide)

YOUR RIGHTS: The Consumer Reporting Agency (CRA) that supplied the report, _____, did not make the decision to take the adverse action and cannot give the specific reasons for it. However, you have the right to obtain within sixty (60) days a copy of any consumer reports provided by the consumer reporting agencies indicated above. You also have the right to dispute the accuracy or completeness of any information in those reports. The CRA that supplied us with the report, _____, will provide a free copy of your file for review upon request. Please contact them at the above address or phone number for further information. The other CRA's will also provide a free copy of your report. Please contact them at the above address or phone number to inquire further.

(name of your apartment rental company)

(your signature)

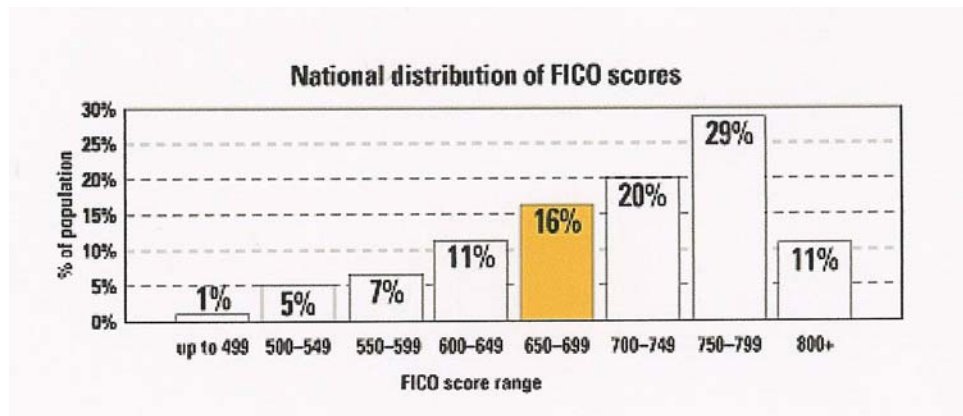
(print your name)

FAIR CREDIT REPORTING: Protect your rights under law. For further information, please consult these statutes, or an attorney. (15 U.S.C. 1681) and 10 M.R.S.A Section 1311 et seq.

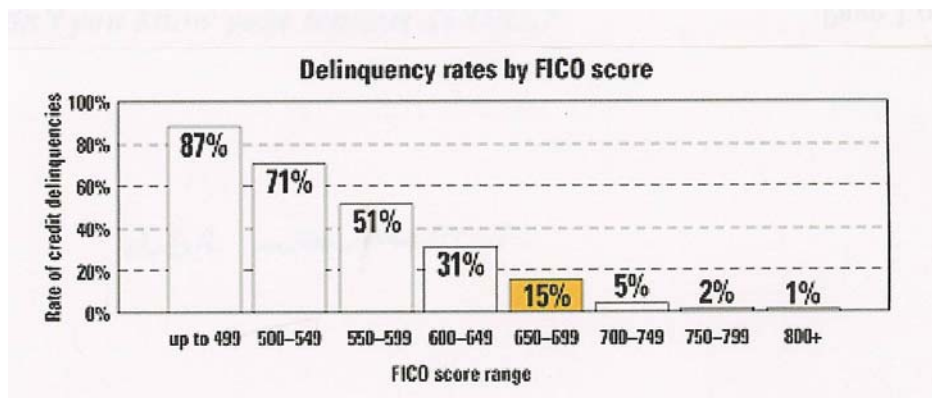
ADDITIONAL CREDIT REPORT INFORMATION

A credit report provides essential information that can help you to avoid a big loss. It will give you the length of the applicant's credit history, the last time the applicant applied for credit, accounts open, accounts closed, late or missing payments, etc. Credit reports usually include a credit score, commonly called a FICO score. The score is based on information from the credit report. The majority of personal credit scores are between 350 and 850. Higher scores indicate there is a better chance that the applicant will pay his/her rent.

The following table shows the national distribution of FICO scores.



The table below shows delinquency rates by FICO score.



Credit Report Information Must Be Maintained In Strict Confidence And Not Misused.

Under FCRA, those who request credit reports must maintain all such information in strict confidence and only disclose it to employees whose duties reasonably relate to the legitimate business purposes for which the information was requested. If the property owner and/or his agents or employees misuse the information in any reports, the property owner can be held responsible for financial losses, fees or monetary charges that may be incurred. Under FCRA, the information requester may not sell or otherwise distribute any information from the report(s) to any consumers, or directly or indirectly to any third parties. Users of consumer reports must have

a permissible purpose as defined by the FCRA. Property owners must restrict the ability to obtain credit information to a few key personnel. Credit reports must be stored securely and disposed of securely, such as by shredding, to prevent unauthorized use.

As keepers of private information, we have a duty to guard access to files and to shred or otherwise securely dispose of files once they are no longer needed.

It is important to keep the credit application and report for a reasonable period of time. This will help to facilitate the investigative process if a consumer claims that your company inappropriately accessed their credit report. (Note: The Federal Equal Credit Opportunity Act states that a creditor must preserve all written or recorded information connected with an application for 25 months.)

“Under Section 621(a)(2)(A) of the FCRA, any person who violates any of the provisions of the FCRA may be liable for a civil penalty of not more than \$2,500 per violation.”



COMPANIES OFFERING APPLICANT SCREENING SERVICES

Following is a list of just a few of the companies that provide credit reports. Some also provide criminal, eviction and tenant history records. MAOMA neither endorses these companies nor benefits from including them in this list. Prices and services vary.

<p>Tenant Net, Inc. P.O. Box 420 37 Beach Street Saco, Maine 04072 1-800-883-2074 or 1-207-282-2074 Fax: 1-800-200-7005 www.goodtenants.net E-mail: info@goodtenants.net</p>	<p>Kroll Factual Data Residential Qualifier/Tenant Screening 1-800-929-3400 and select option 3 www.krollfactualdata.com/services/ E-mail: sales@krollactualdata.com</p>
<p>Mrlandlord.com Fax: 818-756-0986 www.mrlandlord.com/onlinechecks.html</p>	<p>Tenant Tracker Lubbock, TX 1-800-658-9369, Ext. 507 Fax: 1-800-658-9358 www.resultmatrix.com/tt/client</p>
<p>Real Page, Inc 4000 International Pkwy. Carrollton, TX 75007 877-325-7243, ext. 3700 www.realpage.com</p>	<p>TheCreditBureau.com P.O. Box 4898 Clifton Park, NY 12065 1-800-374-6055 or 1-800-897-8054 Fax: 518-581-2666 www.thecreditbureau.com</p>
<p>Resident Data 1210 E. Campbell Road, Ste. 118 Richardson, TX 75081 1-972-952-1480 www.residentdata.com</p>	<p>Rent Port, Inc. 9800 Mt. Pyramid Ct., Ste. 150 Englewood, CO 80112 1-888-387-1750 www.rentport.com</p>
<p>RentGrow, Inc. 275 Wyman Waltham, MA 02451 800-736-8476 www.rentgrow.com E-mail: sales@rentgrow.com</p>	<p>U.S. Investigations Services 6169 N. Ponderosa Way Parker, Colorado 80134 303-841-9396 www.usis.com</p>