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***FAIR HOUSING:  
IT'S THE LAW!***

*A nonprofit organization protecting and advancing the legal rights of people with mental disabilities.*

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## ***Fair Housing Tip of the Month***

### **Tip #5 – Reasonable Accommodation for an Applicant with a Criminal History**

***LANDLORD: “My tenant application process includes checking for criminal history. Recently, I denied an applicant because of a criminal assault conviction in his past. He asked me to make an exception for him because the incident was a while ago and happened only because he had stopped taking his medication, and now, he is back on his medication and working with a therapist. I have no problem renting to people with disabilities, but can’t I have set standards where criminal convictions are concerned?”***

**The law says:** If a landlord’s policy to deny applicants with criminal convictions has a disparate impact on individuals within a protected class, that policy is unlawful unless it is necessary to serve a landlord’s substantial, legitimate, nondiscriminatory interest, and a less discriminatory alternative is not available. Additionally, if an applicant’s criminal history is related to disability, a landlord must consider a reasonable accommodation request by the applicant to consider others ways to evaluate tenant-worthiness. Therefore, a policy against all or certain types of convictions that fails to consider mitigating factors, like the nature, severity, and recency of the criminal conduct in question, will very likely be unlawful.

For more information, see U.S. Department of Housing and Urban Development’s April 2016 Guidance on the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions at [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

**What to do:** If the interest behind the policy for considering criminal history is to reduce risk to resident safety and property, landlords should ensure their policies are targeted to criminal conduct that indicates a demonstrable risk to resident safety or property, and should also consider mitigating factors. Here, the applicant’s criminal history is related to a disability and the applicant had asked, as a reasonable accommodation, for the landlord to consider mitigating factors. The landlord’s individualized and fact-specific evaluation of this applicant’s tenant-worthiness taking into account mitigating factors, including but not limited to, changed circumstances, evidence of good tenant history before and/or after that incident, and treatment and/or rehabilitation, help reduce the landlord’s risk that the policy results in a discriminatory effect on one or more protected classes.

If a landlord denies an individual a reasonable accommodation or refuses to engage in the interactive process, that individual may file a complaint with a local fair housing agency, the California Department of Fair Employment and Housing (DFEH), or the U.S. Department of Housing and Urban Development (HUD).

To file a complaint with HUD, call 800-669-9777, or visit [www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://www.hud.gov/program_offices/fair_housing_equal_opp/complaint-process)

To file a complaint with DFEH, call 800-884-1684, or visit [www.dfeh.ca.gov/complaint-process/file-a-complaint/](http://www.dfeh.ca.gov/complaint-process/file-a-complaint/)

Fair housing laws prohibit discrimination in housing based on the following characteristics: Race, religion, national origin, color, sex, marital status\*, ancestry\*, familial status, disability, sexual orientation\*, source of income.\*

\*Indicates a prohibited basis for discrimination in California, but not under federal law.

***Disclaimer: The Fair Housing Tip of the Month is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS, your local fair housing council or another attorney of your choice.***

The Fair Housing Tip of the Month is funded by a grant from HUD’s Fair Housing Initiatives Program (Grant #FEOI180041-01-00).