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*FAIR HOUSING:
IT'S THE LAW!*

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

Fair Housing Tip of the Month – August 2021

Denial of Housing Applications Based on Past Criminal Record Due to Disability

TENANT: “I have schizoaffective disorder and, prior to receiving treatment, I self-medicated with drugs and alcohol. A few years ago, during a particularly bad psychotic episode, I self-medicated with drugs that heightened my paranoia, and I stole a car to escape from the people I incorrectly believed were trying to kill me. I was convicted of a felony, sentenced to limited jail time because it was my first conviction, and entered a sober living facility. In the sober living facility, I was finally diagnosed with a mental health disability and began receiving treatment. I’ve stabilized now, and I’ve been clean and sober for nearly a year. I’m ready to leave the sober living facility and find my own place to live, but I was denied several apartments after they did a criminal background check, even though I explained the circumstances that led to my conviction. One landlord wouldn’t even run the check after I told him about my situation. They just told me they don’t accept applications from anyone with a prior criminal conviction. Are landlords allowed to refuse to rent to me because I have a criminal record?”

The law says: Fair housing laws prohibit blanket bans on renting to people with criminal records. Housing providers may advertise or state that they will run a lawful criminal background check, but they may not enact screening policies, post rental advertisements, or make statements with blanket bans such as, “No felons,” or “No criminals.” The landlord who stated to you that they do not accept applications from anyone with a criminal record is clearly in violation of the law.

Housing providers can conduct criminal history checks on prospective tenants, but they cannot reject an applicant based on just any criminal conviction. Federal law requires consideration of individuals on a case-by-case basis, and that housing providers take into account factors such as nature and severity of the crime and length of time since the crime was committed. Housing providers must make a determination based on actual facts and evidence, and cannot reject applicants due to a perceived threat based on general criminal history. A nonviolent crime committed several years ago may not justify rejection of your rental application. In California, a housing provider cannot reject an applicant based on a criminal conviction unless the conviction has a direct and specific negative bearing on a substantial, legitimate, and nondiscriminatory interest of the housing provider. For example, a housing provider may reject an applicant if the conviction raises a legitimate concern about the safety of other residents, the housing provider’s employees, or the property. A conviction for stealing a car should not raise concerns about the safety of residents or employees, but may lead to some concern regarding theft of property. Even if this is considered a legitimate concern, under both federal and state fair housing laws, you can request that prospective landlords provide a reasonable accommodation to consider your mental health disability and history of rehabilitation when considering your application.

Landlords are required to make reasonable accommodations for people with disabilities in order to allow them equal opportunity to use and enjoy housing. An accommodation is reasonable if it is necessary due to the disability, does not impose an undue burden to the landlord, and does not pose a direct threat. In your circumstance, you may have more than one basis to request a reasonable accommodation, because your conviction was a direct result of multiple disabilities.



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First, the fact that you were experiencing a psychotic episode when you committed the crime ties the conviction directly to your mental health disability. Second, in the state of California, former illegal drug use is also considered a disability. There is no strict time period for what constitutes “former” versus “current” illegal drug use, but the fact that you have not used drugs in nearly a year means you likely would not be considered a current illegal drug user. Since your former drug use was also directly linked to the car theft, you could request a reasonable accommodation based on that disability as well. Since your record has been clean since then, this is your only criminal conviction, and you are in behavioral health treatment, providing an accommodation to allow you to become a tenant would not pose a direct threat to any property.

What to do: First, obtain a letter from your treating professional that explains that your criminal conviction was a direct result of your disabilities. This letter does not need to specify what your disabilities are, just that they were the cause of your criminal conviction. The letter can also communicate to the landlord that you are actively engaged in behavioral health treatment. If you have a probation officer with whom you have a positive relationship, you might also consider getting a letter from that person that highlights the progress you’ve made since your conviction.

Once you have these letters, you can provide them to the landlords at the properties where you already applied, or have them ready for future applications. It is your choice whether you provide the letters and accommodation request up front with your application or only if you are rejected. You are entitled to request a reasonable accommodation at any point in the application and rental process.

If the landlord denies any of these reasonable accommodation requests, you 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). You may also file a complaint with these agencies regarding the landlord who stated he did not accept applicants with criminal histories.

To file a complaint with HUD, call 800-669-9777, or visit 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/

Fair housing laws prohibit discrimination in housing based on the following characteristics: race, religion, national origin, color, sex, familial status, disability, marital status,* ancestry,* sexual orientation,* gender identity,* gender expression,* genetic information,* and source of income.*

*Covered under California law, but not federal law. (For most housing, California laws also prohibit discrimination on the basis of citizenship, immigration status and primary language.)

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.

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