



THE FAIR CHANCE IN HOUSING ACT: *BAN THE BOX*

People with prior criminal legal system involvement disproportionately experience discrimination in the housing application process, leading to greater housing instability. Racial disparities within New Jersey's criminal legal system leave Black and Brown communities disproportionately impacted by housing discrimination. The Fair Chance in Housing Act (2022), protects individuals with prior criminal legal system involvement from housing discrimination in the rental market.

Under the FCHA, housing providers can no longer consider arrests or charges not resulting in a conviction, expunged convictions, executively pardoned convictions, vacated or nullified convictions, juvenile adjudications of delinquency, or sealed records.

Landlords cannot ask about or consider a potential tenant's criminal history – including on their initial application materials, in interviews, or in any other way– before making a conditional offer of housing.

There are two exceptions for when a landlord may inquire about criminal histories without making a conditional offer:

1. A conviction for the manufacture or production of methamphetamine on the premises of federally assisted housing; and
2. A conviction that requires the applicant to register as a sex offender for life.

After a Conditional Offer of Housing, Providers May Only Consider:

1. Convictions for murder, aggravated sexual assault, sexual assault, kidnapping, arson, human trafficking, or endangering the welfare of a child in violation of N.J.S.2C:24-4(b)(3);
2. Any conviction that requires lifetime state sex offender registration;
3. Any conviction for a 1st degree indictable offense, or release from prison for that offense, in the last 6 years;
4. Any conviction for a 2nd or 3rd degree indictable offense, or release from prison for that offense, in the last 4 years; or
5. Any conviction for 4th degree indictable offense, or release from prison for that offense, in the last year.

Individualized Assessment

After a housing provider reviews the permissible convictions, they must conduct an individualized assessment that considers the nature and severity of an offense, the applicant's age at the time of the offense, how recently the offense occurred, any information an applicant provides in their favor since the offense, whether a repeat offense would impact the safety and well-being of other tenants on the property, and whether the offense was connected to the applicant's formerly leased or rented property.

Withdrawal of a Conditional Offer

If a housing provider decides to withdraw a conditional offer of housing after performing an individualized assessment because of a permissible conviction, they must provide an applicant with a **Notice of Withdrawal** that explains the specific reasons for their denial and notifies the applicant of their right to appeal.

Within 30 days of denial, an applicant may request all of the information used by the housing provider, including the background check their housing provider relied upon, when making a decision about the applicant. The housing provider must send that information to the applicant free of charge within 10 days of the applicant's request.

An applicant can appeal the landlord's decision by submitting evidence of their rehabilitation or evidence of inaccuracies in the information relied upon by the housing provider, for example, an inaccurate background check. The housing provider must then issue a new decision within 30 days of the applicant's appeal.

Enforcement

The Fair Chance in Housing Act (FCHA) has a robust enforcement framework that is implemented by the Division on Civil Rights (DCR) within the Office of the Attorney General. If you believe you have experienced discrimination or you have witnessed a housing provider violate the FCHA, you may file a complaint at NJCivilRights.gov or call 1-866-405-3050.

The DCR protects anyone seeking housing from discrimination regardless of immigration or citizenship status.

Fair Share Housing Center played an integral role in securing the passage of the FCHA. We believe that everyone, regardless of prior criminal legal system involvement, deserves a safe, healthy, and affordable place to call home. Since the passage of the FCHA, we have continued to advocate for strict enforcement of the law, and are working to end other forms of discrimination in the housing application process.