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## **Criminal Background Checks on Housing Applicants**

### **Introduction**

This legal alert provides guidance on whether a housing or shelter operator can lawfully conduct a criminal background check of an applicant for housing or shelter in New York City. In general, federal, state, and local Human Rights Laws do not include persons with criminal convictions as a protected class. Therefore, an applicant cannot make a successful claim of a violation of their human rights based on a criminal background check or a question contained in an application for housing seeking information about their criminal record. Additionally, in general, criminal behavior including violent or threatening behavior that poses a threat to an individual or others, or drug-related activities, are grounds for disqualifying tenants or applicants from housing. Under federal fair housing laws, a person who poses a threat to himself or others may lawfully be denied housing.

### **Applicable Laws**

Protected classes under the New York City Human Rights Law include “actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person.”<sup>1</sup> Protected classes under the New York State Human Rights Law in the area of housing include “age, race, creed, color, national origin, sexual orientation, military status, sex, marital status, or disability.”<sup>2</sup> The Civil Rights Act of 1964 protects individuals from discrimination on the basis of “race, color, religion, or national origin.”<sup>3</sup>

Protection based on past criminal convictions is not included as a protected class in any of the human rights laws. Therefore, it is permissible to deny housing based on past criminal convictions so long as the policy is not arbitrary and is applied uniformly to all applicants and tenants.

Both the New York State Social Services Law and the Fair Housing Regulations include the ability to remove a tenant or refuse to accept a tenant that presents an immediate threat to the residents or employees of a project. There is no requirement or protection for an individual that acts or appears dangerous or violent or threatening.

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<sup>1</sup> NYC Human Rights Law <http://www.nyc.gov/html/cchr/html/law/nyc-human-rights-ch1.shtml>.

<sup>2</sup> NYS Human Rights Law <http://www.dhr.ny.gov/sites/default/files/doc/hrl.pdf>.

<sup>3</sup> Civil Rights Act <http://www.law.cornell.edu/uscode/text/42/2000a>.

The Social Services Law states in section 491.4 (b) [t]he operator shall not accept, except on an emergency basis, nor retain any person who: (1) causes danger to himself or others or interferes with the care and comfort of other residents.<sup>4</sup>

The Fair Housing Regulations state that “housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.”<sup>5</sup>

### **Shelter and Temporary Housing (DHS)**

Emergency shelter accommodation must not be denied to individuals who seek it out. However, the New York City Department of Homeless Services’ “Client Responsibility” Rules indicate that clients must not engage in “acts that endanger the health or safety of him or herself or others in the shelter, or repeatedly and substantially interfere with the orderly operation of the shelter.”<sup>6</sup> Therefore, violent or threatening behavior, or drug related activity, is sufficient to terminate shelter and temporary housing for individuals.

Always keep in mind that specific operating contracts will have their own rules and regulations. Always be sure to check your contracts and the rules of your partner organizations.

### **Permanent Housing**

An illustrative example of a policy of eligibility or exclusion based on past criminal convictions is that of the New York City Housing Authority.<sup>7</sup> NYCHA has guidelines on the amount of time required to become eligible for NYCHA housing after being convicted of various violent or drug-related offenses. Convictions for methamphetamine production on public housing grounds and sexual offenses that result in lifetime registration under a sex offender registration program will result in a permanent ban from public housing in New York City. NYCHA also imposes a “no trespass policy” for individuals that have been convicted of a felony drug offense on NYCHA properties or in adjacent properties.<sup>8</sup> Other convictions have corresponding timelines for eligibility; please see the NYCHA guidelines referenced for further information.

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<sup>4</sup> Social Services Law Part 491, Section 491.4 Admissions Standards

<sup>5</sup> HUD Fair Housing Act Guidance, <http://www.justice.gov/crt/about/hce/title8.php>.

<sup>6</sup> DHS Client Responsibility, <http://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/DHSProcedure04500.pdf>.

<sup>7</sup> NYCHA FAQs from website, [http://www.nyc.gov/html/nycha/html/residents/resident\\_questions.shtml](http://www.nyc.gov/html/nycha/html/residents/resident_questions.shtml) and New Destiny summary chart of the specific offenses and eligibility guidelines, <http://www.newdestinyhousing.org/get-help/nycha-criminal-background-ineligibility>, and Bronx Defenders Publication, *Know Your Rights: Housing and Arrests or Criminal Convictions*, <http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/>.

<sup>8</sup> Id.

The U.S. Department of Housing and Urban Development lets the local housing agencies deal with tenant applications, but the overview on eligibility on their website states that “[Housing agencies] will deny admission to any applicant whose habits and practices may be expected to have a detrimental effect on other tenants or on the project's environment.”<sup>9</sup> Section 8 housing also has similar guidelines for eligibility to NYCHA in terms of criminal convictions resulting in temporary or permanent bans.<sup>10</sup>

## **Conclusion**

Certain program guidelines and funders may impose their own guidelines and regulations with regard to criminal background checks. An important factor to keep in mind is that every tenant or applicant must be treated fairly and in compliance with federal Fair Housing Laws and federal, state and local Human Rights Laws. Otherwise, the specific restrictions on discrimination based on various classes in laws like the Civil Rights Act and the New York Human Rights Law may be implicated and you might place your organization at risk for a violation of those rights.

In dealing with a violent or disruptive resident, be sure to keep a log book and document the relevant behavior and the steps taken by or on behalf of the landlord or housing operator. For housing applications, use standardized applications for every applicant. If any instances of drug use or violent or threatening behavior occur in the housing facility, document the occurrences and the circumstances surrounding the incident. All incidents should be recorded for record-keeping and for use against any future challenges by individuals that may be evicted due to their violent or threatening behavior and/or criminal or drug-related activity.

It should be noted that laws governing criminal background checks in the employment context differ from the laws governing housing. See the prior Lawyers Alliance alert for a discussion of criminal background checks in the employment law context.<sup>11</sup>

**Always check the terms contained in any contract or operating agreement from partner agencies and governmental organizations.**

*This alert is meant to provide general information only, not legal advice. If you have questions, please contact Hedwig O’Hara at (212) 219-1800 ext. 226 or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information.*

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<sup>9</sup> HUD website, [http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/phprog](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog).

<sup>10</sup> Bronx Defenders Publication, *Know Your Rights: Housing and Arrests or Criminal Convictions*, <http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/>.

<sup>11</sup> Legal Alert on Criminal Background Provisions in Human Services Contracts, [http://lawyersalliance.org/pdfs/news\\_legal/Legal\\_Alert\\_Criminal\\_Background\\_Questions\\_11-29-12\\_Final.pdf](http://lawyersalliance.org/pdfs/news_legal/Legal_Alert_Criminal_Background_Questions_11-29-12_Final.pdf).

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