

What Is an Adverse Action Notice?

An Adverse Action Notice is a letter that is required by federal law through the FCRA (Fair Credit Reporting Act) which tells someone that they are being denied or conditionally accepted for something (in this case residence) based on the contents of a credit report or background check.

You must provide the letter to any rental applicant on whom you have run a consumer report and intend to either deny or alter the terms of the lease agreement for in order to accept them as your tenant.

When and Why You Would Need to Supply an Adverse Action Notice

The Adverse Action Notice is not limited strictly to applicants you are denying the tenancy to.

While applicants that you have turned down for the rental should receive this notice, you will also be required to provide an Adverse Action Notice to an applicant that you are accepting, but have set additional conditions for that acceptance that you may not have set for other applicants.

A few instances that could require an Adverse Action Notice would be:

- If you are turning the applicant down for the rental
- If you are charging a higher deposit due to something found on the screening
- If you require a co-signer due to something found on the screening

As a rule, if you require anything of one applicant that you may not require of someone that met all of your usual standards, you will need to provide them with this letter to explain why. In many cases, they will be eligible to receive a copy of their credit report directly from the credit agency that the report has been run through, and part of what you will provide to them will be the contact information so that they may easily do this.

What Can Happen If You Do Not Provide What is Required?

You will want to make sure that you follow the letter of the law, both federal and local. This may take some extra work, but it's worth it.

- If you miss a step or are found acting contrary to the law, you may open yourself up to a lawsuit, which will cost you in time, money, and stress.
- If you lose that lawsuit, you may be on the hook for the tenant's legal fees as well.

CLC Screenings provides clients with Adverse Action Notices that meet all federal requirements. For more information, please contact us at clcscreenings.com or 1-866-639-0581.



What is considered a consumer 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

What are some examples of a consumer report?

- A credit report
- A criminal, and/or eviction report prepared by a consumer report agency such as TransUnion, Equifax, or Experian
- A tenant screening with rental history and/or records attached to it
- A reference check done by a third party hired by the landlord/property manager *(reference checks performed by a landlord or their direct employee may not be considered a consumer report)*

What Goes Into an Adverse Action Notice?

It's a good practice to have a standard Adverse Action Notice that you will send out to every applicant that needs one. This will help to make sure that you are keeping things fair to each applicant and that you are providing all of the information legally required of you.

While you should always check local and federal laws to make sure that you are providing correct and up-to-date information, a few things to make sure are noted on an Adverse Action Notice can be found here:

- The landlord/property manager's name
- The property that was being applied for
- The date that the notice is being given
- The applicant's name
- Information about why they are receiving the Adverse Action Notice
- If they are being denied or if additional conditions may be set for acceptance
- Contact information for the CRA (such as Trans Union, Experian or Equifax) that the report was run through (including a toll free number for that CRA)
 - An explanation that the applicant has a right to dispute the information with the CRA if they believe they have inaccurate information on file
 - An explanation that the applicant has a right to a free credit report within 60 days
- A note stating that the CRA did not make the final decision.



What You May Use & Should Not Use For an Adverse Action Notice

You will likely have many pieces of information that you look at during the screening process.

Between the credit report, criminal report, eviction report, references that you follow up on, and any other number of documents you may choose to check, there can be an overload of information. The fair housing laws dictate what you as a landlord and/or property manager may and may not use to influence your final decision when you are choosing a new tenant. The laws are set up to protect your rental applicants from discrimination.

What you may use to turn down a rental applicant:

- **Information found in their credit report** - You are allowed to set minimum requirements for credit scores, negative tradelines, or anything else found within their credit history.
- **Information found in their criminal report** - If your applicant's criminal report returns with information showing that they may pose a threat to your rental, neighbors, or anyone else, you may turn them down as long as you use the same qualifiers for everyone.
- **Rent versus income ratio** - If your applicant does not make enough money at their current employment position to adequately cover the debts they owe and rent every month, they are not a good choice for you. Many landlords require that the applicant make at least three times the monthly rent.
- **Prior evictions** - A rental applicant that has been evicted before may not be someone you want to immediately welcome into your rental.
- **Too many people wanting to move in** - You are allowed to put reasonable limits on how many people may live in the rental unit as long as those limits don't cause you to discriminate against families.

What you should not use to turn down a rental applicant:

- **Anything that discriminates against an individual that is part of a protected class** - The Fair Housing Act (FHA) prohibits a landlord or property manager from discriminating against an applicant or tenant on the basis of race, color, religion, national origin, sex, disability, and family status. Local laws may add additional groups to this list.
- **Strictly based on an applicant's criminal history, without proof that the individual is a danger to others** - The US Department of Housing and Urban Development (HUD) released a set of guidelines in early 2016 that said that while individuals with criminal records are not necessarily considered a federally protected class, blanket denial of any applicants for having a criminal record of any kind may lead to discrimination based on race or color.
- **Having a service animal in a no-pet rental** - Many landlords have valid concerns over pets being in their rentals, but a service animal is not considered a pet. You may not charge a new tenant more for allowing their service animal to reside with them, nor may you deny their service animal access to the rental. If the pet damages the property, you will be allowed to deduct that from their security deposit at the end of their stay.

