



SEATTLE CITY COUNCIL

Legislative Summary

Res 31669

Record No.: Res 31669

Type: Resolution (Res)

Status: Adopted

Version: 3

Ord. no:

In Control: City Clerk

File Created: 05/25/2016

Final Action: 06/17/2016

Title: A RESOLUTION encouraging as a best practice the use of an individualized tenant assessment using the Fair Housing Act's discriminatory effects standard to avoid Fair Housing Act violations when criminal history is used as a screening criterion in the landlord screening process.

Notes:	Filed with City Clerk:	<u>Date</u> 6/17/2016
	Mayor's Signature:	6/17/2016
Sponsors: Herbold	Vetoed by Mayor:	
	Veto Overridden:	
	Veto Sustained:	

Attachments: Att A - HALA Recommendations, Att B - Selecting a Tenant Screening Agency V1, Att C - Engrossed Senate Bill 6413 V1, Att D - Recommended Best Practices To Do and Not Do in Drafting and Implementing a Criminal Conviction Screening Policy V1

Drafter: patrick.wigren@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: Yes No

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	05/25/2016	sent for review	Council President's Office			
	Action Text: The Resolution (Res) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	05/26/2016	sent for review	Civil Rights, Utilities, Economic Development, and Arts Committee			
	Action Text: The Resolution (Res) was sent for review. to the Civil Rights, Utilities, Economic Development, and Arts Committee						
	Notes:						
1	Full Council	05/31/2016	referred	Civil Rights, Utilities, Economic Development, and Arts Committee			

- 1 Civil Rights, Utilities, 06/03/2016 adopt as amended Pass
Economic Development,
and Arts Committee
Action Text: The Committee recommends that Full Council adopt as amended the Resolution (Res).
In Favor: 3 Chair Herbold, Vice Chair Sawant, Member O'Brien
Opposed: 0

- 2 Full Council 06/13/2016 adopted as amended Pass
Action Text: The Motion carried, the Resolution (Res) was adopted as amended by the following vote, and the
President signed the Resolution:
Notes: ACTION 1:

Motion was made by Councilmember Herbold, duly seconded and carried, to amend Resolution 31669, by substituting version D4 for version D3, which includes a new Attachment A.

ACTION 2:

Motion was made by Councilmember Bagshaw, and duly seconded, to amend Resolution 31669, by adding a new 12th recital, as shown in the language below:

WHEREAS, the Washington State Legislature passed House Bill 1553, an Act relating to certificates of restoration of opportunity, that states, "certificates of restoration of opportunity offer potential public and private employers or housing providers concrete and objective information about an individual under consideration for an opportunity. These certificates can facilitate the successful societal reintegration of individuals with a criminal history whose behavior demonstrates that they are taking responsibility for their past criminal conduct pursuing a positive law-abiding future."

ACTION 3:

Motion was made, duly seconded and carried, to suspend Council Rule III.A.6, relating to the presentation of Full Council amendments at least two hours before the Full Council meeting.

ACTION 4:

The Amendment in Action 2 was restated and unanimously passed.

ACTION 5:

Motion was made and duly seconded to adopt Resolution 31669 as amended.

In Favor: 6 Councilmember Bagshaw, Councilmember Burgess, Councilmember González, Councilmember Herbold, Councilmember Johnson, Councilmember O'Brien
Opposed: 0

Legislative Summary Continued (Res 31669)

- 3 City Clerk 06/14/2016 submitted for Mayor
Mayor's signature
Action Text: The Resolution (Res) was submitted for Mayor's signature. to the Mayor
Notes:
- 3 Mayor 06/17/2016 Signed
Action Text: The Resolution (Res) was Signed.
Notes:
- 3 Mayor 06/17/2016 returned City Clerk
Action Text: The Resolution (Res) was returned. to the City Clerk
Notes:
- 3 City Clerk 06/17/2016 attested by City
Clerk
-

CITY OF SEATTLE

RESOLUTION 31669

A RESOLUTION encouraging as a best practice the use of an individualized tenant assessment using the Fair Housing Act’s discriminatory effects standard to avoid Fair Housing Act violations when criminal history is used as a screening criterion in the landlord screening process.

WHEREAS, the United States Department of Housing and Urban Development (HUD) has issued guidance in determining whether the use of criminal history by a housing provider to deny housing opportunities results in unjustified discriminatory effects, affirming that restrictions based on a characteristic not protected under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C. 3601, *et seq.*, such as criminal history, could still violate the Act if the burden of the restriction fell more often on members of one protected class over another, and stating that “[housing providers’] selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act”; and

WHEREAS, in September 2014 the City Council adopted Resolution 31546, in which the Mayor and Council jointly convened the Seattle Housing Affordability and Livability Agenda (HALA) Advisory Committee, resulting in the July 2015 Final Advisory Committee Recommendations and the Mayor’s *Housing Seattle: A Roadmap to an Affordable and Livable City*, which outline solutions to address Seattle’s housing affordability crisis; and

WHEREAS, in October 2015 the City Council adopted Resolution 31622, which declared the City Council’s intent to expeditiously consider strategies recommended by the HALA Advisory Committee, including fair access to housing for people with criminal records because they face significant barriers to securing housing; and

1 WHEREAS, nearly 1/3 of the U.S. population has a criminal record, with an average of 650,000
2 persons released annually since 2004 from federal and state prisons; and

3 WHEREAS, African Americans are four percent of Washington's population but account for 18
4 percent of the state's prison and jail population¹; and Native Americans are two percent
5 of the state population but account for five percent of the state's prison and jail
6 population²; and

7 WHEREAS, the Fair Housing Act prohibits intentional discrimination in housing practices as
8 well as housing practices resulting in unjustified discriminatory effects without regard to
9 the intent to discriminate (Disparate Impact Rule), 24 CFR Part 100, and in 2014, fair
10 housing testing conducted by the Seattle Office for Civil Rights found that African
11 American and Latino/a testers, who posed as prospective renters, were told about
12 criminal background and credit history checks more frequently than white testers; and

13 WHEREAS, the Disparate Impact Rule creates a burden-shifting paradigm to determine
14 unjustified discriminatory effects: (1) The charging party must establish a prima facie
15 case of disparate impact by showing a policy or practice causes a discriminatory effect on
16 a group of persons on the basis of a protected class in the Fair Housing Act (which is
17 substantially equivalent to Seattle's Open Housing Ordinance, Seattle Municipal Code
18 Chapter 14.08); (2) the burden shifts to the respondent, who must prove that the
19 challenged practice is necessary to achieve one or more substantial, legitimate, non-
20 discriminatory interests; and (3) the charging party can still establish liability if those
21 interests could be served by a practice with less discriminatory effect; and

¹ http://www.prisonpolicy.org/graphs/2010percent/WA_Blacks_2010.html

² http://www.prisonpolicy.org/graphs/2010percent/WA_American_Indian_2010.html

1 WHEREAS, the City Council recognizes that landlords are responsible for providing resident
2 safety and protection of property, but screening and eligibility policies and practices that
3 categorically exclude any person with a record of arrest or conviction from obtaining or
4 even applying for housing does not accurately distinguish criminal conduct that
5 demonstrates a risk to resident safety and property from conduct that does not pose such a
6 risk; and

7 WHEREAS, the HUD guidance states that in order to show that a criminal history screening
8 policy is necessary to serve a “substantial, legitimate, nondiscriminatory interest,” a
9 housing provider “must show that its policy accurately distinguishes between criminal
10 conduct that indicates a demonstrable risk to resident safety and/or property and criminal
11 conduct that does not” and that “A policy or practice that fails to take into account the
12 nature and severity of an individual’s conviction is unlikely to satisfy this standard.”

13 WHEREAS, the HUD guidance further states that a housing provider must “be able to prove
14 through reliable evidence that its policy or practice of making housing decisions based on
15 criminal history actually assists in protecting resident safety and/or property. Bald
16 assertions based on generalizations or stereotypes that any individual with an arrest or
17 conviction record poses a greater risk than any individual without such a record are not
18 sufficient to satisfy this burden;” and

19 WHEREAS, the City Council supports the principles of the Seattle Fair Chance Employment
20 Ordinance, commonly referred to as “ban the box,” as a method to increase the
21 employment opportunities for people with criminal records by, among other things,
22 requiring individualized assessments and prohibiting questions on initial job applications
23 regarding an applicant’s criminal record; and

1 WHEREAS, The Washington State Legislature passed House Bill 1553 in March 2016, an Act
2 relating to certificates of restoration of opportunity, that states “certificates of restoration
3 of opportunity offer potential public and private employers or housing providers concrete
4 and objective information about an individual under consideration for an opportunity.
5 These certificates can facilitate the successful societal reintegration of individuals with a
6 criminal history whose behavior demonstrates that they are taking responsibility for their
7 past criminal conduct pursuing a positive law-abiding future.”

8 WHEREAS, the Seattle Office of Civil Rights, as a part of the July 2015 Final Advisory
9 Committee Recommendations and the Mayor’s *Housing Seattle: A Roadmap to an*
10 *Affordable and Livable City*, has convened the Fair Chance Housing committee to
11 provide input on legislation to ensure a fair chance in housing for those facing barriers
12 due to an arrest and conviction record; NOW, THEREFORE,

13 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE**
14 **MAYOR CONCURRING, THAT:**

15 Section 1. The City Council is committed to passing an ordinance, consistent with HALA
16 recommendations (See Attachment A), as soon as practicable that ensures that people with
17 criminal history have fair and equitable access to housing while protecting the rights and
18 interests of property owners.

19 Section 2. The City Council intends to work with those most impacted by the use of
20 criminal history in screening criteria as well as property owners to help guide the content of such
21 an ordinance.

22 Section 3. The City Council recognizes that landlord screening criteria related to criminal
23 history used to determine a tenant’s eligibility or suitability to obtain housing can result in

1 disparate impacts on racial minorities. The City Council prioritizes policies leading to racial
2 equity outcomes in housing, which include promotion of the United States Department of
3 Housing and Urban Development (HUD) guidance cautioning against a landlord's policy or
4 practice of categorically excluding individuals from housing based on criminal history.

5 Section 4. The City Council endorses practices that are consistent with HUD's guidance;
6 namely, that landlords should not exclude individuals from housing on the basis of prior arrests
7 not resulting in conviction, because an arrest alone does not constitute proof of the commission
8 of any crime and does not provide a reliable metric to determine potential risk to resident safety
9 and protections of property.

10 Section 5. The City Council urges that consistent with HUD's guidance, landlords should
11 only implement practices excluding persons from housing based on criminal conviction history
12 when those practices are based upon reliable evidence that the policy is necessary to achieve a
13 substantial, legitimate, nondiscriminatory interest (for example, by distinguishing between
14 criminal conduct that indicates a demonstrable risk to resident safety and/or property and
15 criminal conduct that does not), and that such an interest could not be served by another practice
16 that has a less discriminatory effect, which may include, among other things, conducting an
17 individualized tenant assessment and allowing an applicant who has been denied tenancy
18 because of conviction history to provide additional information that a landlord could consider in
19 reevaluating the screening decision, including but not limited to:

- 20 A. The nature and severity of the crime;
- 21 B. The conduct underlying the conviction;
- 22 C. The length of time since conviction and/or release from incarceration;
- 23 D. The age of the individual at the time of conviction;

1 E. What the convicted person has done since the conviction; and

2 F. Evidence of rehabilitation.

3 Section 6. The City Council endorses *Selecting a Tenant Screening Agency: Guideline*
4 *for Property Management in Affordable Housing*, the tenant screening agency guidance issued
5 by the Seattle Office of Housing in 2015 (Attachment B) to ensure that landlords are using
6 accurate and consistent criminal record information; unlawful detainer information consistent
7 with Engrossed Senate Bill 6413, passed by the Washington State Legislature in March 2016
8 (Attachment C); and *Recommended Best Practices to Do and Not Do in Drafting and*
9 *Implementing a Criminal Conviction Screening Policy* (Attachment D), adapted from the
10 National Multifamily Housing Council's white paper *Best Practices to Avoid Disparate Impact*
11 *Liability*.

12 Section 7. The City Council recommends that a landlord should not rely on records that
13 cannot be reported by consumer reporting agencies under State law.

14 Section 8. The City Council commends the Seattle Office for Civil Rights' efforts to
15 proactively identify instances of housing discrimination and to enforce fair housing laws through
16 testing, investigation of charges, and other means. The City Council supports a continued effort
17 to prevent and investigate housing discrimination through landlord and applicant education, and
18 intends to pursue innovative enforcement measures.

19 Section 9. The City Council requests that, when investigating any complaint of housing
20 discrimination based on the use of criminal history, the Seattle Office for Civil Rights should
21 seek to determine whether there is disparate impact, an intent to discriminate, or unjustified
22 discriminatory effects from the use of criminal history.

1 Adopted by the City Council the 13th day of June, 2016,
2 and signed by me in open session in authentication of its adoption this 13th day of
3 June, 2016.

4 

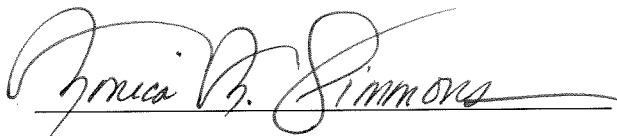
5 President Pro Tem of the City Council

6 The Mayor concurred the 17th day of June, 2016.

7 

8 Edward B. Murray, Mayor

9 Filed by me this 17th day of JUNE, 2016.

10 

11 Monica Martinez Simmons, City Clerk

12 (Seal)

13
14 Attachments:

15 Attachment A: HALA Recommendations

16 Attachment B: Selecting a Tenant Screening Agency: Guideline for Property
17 Management in Affordable Housing

18 Attachment C: Engrossed Senate Bill 6413

19 Attachment D: Recommended Best Practices to Do and Not Do in Drafting and
20 Implementing a Criminal Conviction Screening Policy

Seattle Housing Affordability and Livability Agenda

ISSUE: An estimated 25-33% of US adults have a criminal record and face significant, and often lifelong, barriers to housing. They are disproportionately people of color. Housing helps them access job programs and maintain employment, reunite with families, and comply with terms of release. Stable housing also has broad community benefits. It is a key strategy for ending homelessness, helps address racial disparities, and improves public safety by reducing recidivism.

1. Pursue a combination of local legislation, education, technical assistance, and fair housing enforcement to reduce barriers to housing for people with criminal records.

- 1a. Develop legislation to reduce barriers for people with criminal records.

- 1a(i) Prohibit advertisements for rental housing that make people with criminal records ineligible to apply.

- 1a(ii) Prohibit screen criteria that include an absolute exclusion of anyone with a criminal record or a broad category of criminal record, such as a felony.

- 1a(iii) Require consideration, prior to denial, of additional, verifiable information provided by the applicant regarding the criminal record and/or changed circumstances or good conduct since the time of conviction.

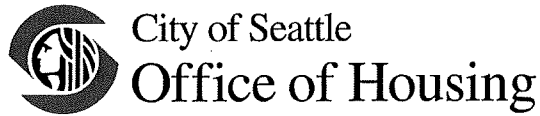
- 1a(iv) Prohibit denials based on records that cannot be reported under state law, such as crimes greater than seven (7) years since disposition or release, or juvenile records if the applicant is twenty-one (21) years old or older.

- 1a(v) Prohibit denials based on arrests older than one (1) year, except when currently pending charges are under active prosecution.

- 1a(vi) Prohibit denials based on warrants attached to a case where a final disposition has been entered. Allow exclusion of people with active warrants, either pending or adjudicated.

- 1a(vii) Require screening criteria to be based on a business justification related to the requirements of tenancy.

- 1a(viii) Provide for the enforcement of the above provisions.



Selecting a Tenant Screening Agency Guideline for Property Management in Affordable Housing May 2015

This guideline is intended to assist housing owners to contract for criminal records screening reports that are accurate, timely, understandable, and consistent with state and federal law and best practices. The guideline was developed by the Seattle Office of Housing with the assistance of affordable housing providers and tenant advocates. In addition to using high quality reports, housing providers should establish screening criteria that are related to business necessity and provide an opportunity for applicants to submit supplemental information about their record and their conduct since release.

Standard	Importance	Requirement
1. Accurate Sources of Data	Some tenant screening agencies use private database records, rather than official court records. Many of these databases are not regularly updated and might not contain all relevant documents. This practice can lead to reporting outdated or inaccurate information as well as criminal records that have been vacated or sealed and should not be reported.	(1) Screener accesses official sources of record, such as Washington State Patrol, or (2) if Screener uses private databases then it must either: (a) check the information against official sources; or (b) report that it does not use official sources and must update its private sources four times per year and indicate the source of the information provided. A screening company must have procedures in place to ensure the maximum possible accuracy of the information it provides.
2. Applicant Identification	More errors can occur when only a name is used to search for a criminal or eviction record. Using more than one match criteria minimizes errors.	Information should match the full name (first, last, and middle name or initial if any) and date of birth. Screening agency should also match race, gender, physical description or driver's license number where possible. It is preferable to not use name matching only. If a company provides information based on name matching only, it must be flagged as such and must provide additional time for correcting inaccuracies.
3. Easy to Understand Report Format	Screening reports can sometimes be difficult to read and understand. Multiple reports of a single incident are especially problematic. The report can be easier to use if all the information about a single incident is reported together as a single entry.	Do not report the same case or event multiple times. Define any abbreviations or court codes used in the report.

4. Sufficient Opportunity to Correct Information	Some studies indicate that material errors in screening reports can occur 30%-40% of the time. The process for correcting errors should be clear and accessible with a reasonable response time. Corrections should be sent to the source of the inaccurate information.	Provide a timely, efficient and accessible process for applicants to correct inaccurate screening reports. If an applicant disputes the accuracy of information contained in the report, investigate and respond within five business days. If an inaccuracy is found, send a corrected report to the housing provider, and send corrections to the source of inaccurate information.
5. Pending Charges	Reports should generally follow State law: There is a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered." RCW 10.97.030(2).	Report only if one year old or less and no disposition has been entered. If requested by the owner, pending charges for deniable offenses may be reported if three years old or less, but should be flagged if greater than one year old. <i>(See also Section 9, Warrants)</i>
6. Convictions	Screening report cannot report convictions older than seven years under state law. RCW 19.182.040	Report only if seven years or less since disposition or release
7. Vacated Convictions	Reports should follow State law: For all purposes, including responding to questions, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime. RCW 9.06.060(5) (misdemeanors); RCW 9.94A.640(3) (felonies)	Do not report vacated or dismissed convictions.
8. Juvenile Records	Reports should follow State law: Juvenile records must not be reported if an applicant is 21 years old or older. RCW 19.182.040	Report only if the applicant is less than 21 years old.
9. Warrants	Warrants issued for cases in which a final disposition has been entered are frequently issued for failure to pay legal financial obligations. This differs greatly from warrants issued based on probable cause that an individual committed the offense charged.	Report only warrants issued for charges that do not have a final disposition and are seven years or less from the date of issue. Do not report warrants attached to a case for which a final disposition has been entered.

10. Participation in a Deferral Program	Includes drug court, deferral of sentence, and stipulated judgment.	Report only if two years or less from completion of participation in the deferral program.
11. Registered Sex Offenders	Some affordable housing developments use federal fund sources that mandate denial of applicants who are lifetime registered sex offenders.	Report sex offenders who are required to register for an indefinite period of time.
12. Evictions	State law prohibits reporting negative information more than seven years old.	Report only if seven years or less since entry of judgment.
13. Eviction Filings	Information that an eviction has been filed is an allegation against the tenant. Similar to arrest information, it should not be considered "pending" if it is more than a year old and there is not a negative outcome in the case, such as an eviction or a default judgment.	Report only if one year or less since filing and no outcome is listed.
14. Dismissed Evictions	In a dismissed case, there is no negative finding against the tenant. This type of eviction record is distinct from a default judgment where the tenant does not appear in court.	Do not report any dismissed eviction case with no negative finding against the tenant.

Note: Some of the content in this guideline was adapted from employment screening recommendations in the National Consumer Law Center report "Broken Records" and the National HIRE Network's report "Best Practice Standards: The Proper Use of Criminal Records."

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6413

Chapter 66, Laws of 2016

64th Legislature
2016 Regular Session

LANDLORD-TENANT--SCREENING REPORTS AND DEPOSIT REFUNDS

EFFECTIVE DATE: 6/9/2016

Passed by the Senate March 9, 2016
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Passed by the House March 2, 2016
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 29, 2016 4:21 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 6413** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

March 30, 2016

Secretary of State
State of Washington

ENGROSSED SENATE BILL 6413

AS AMENDED BY THE HOUSE

Passed Legislature - 2016 Regular Session

State of Washington 64th Legislature 2016 Regular Session

By Senators Mullet, Benton, Pedersen, and Frockt

Read first time 01/20/16. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to tenant screening, evictions, and refunds under
2 the residential landlord-tenant act; amending RCW 59.18.257 and
3 59.18.280; reenacting and amending RCW 59.18.030; and adding a new
4 section to chapter 59.18 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 59.18.030 and 2015 c 264 s 1 are each reenacted and
7 amended to read as follows:

8 As used in this chapter:

9 (1) "Certificate of inspection" means an unsworn statement,
10 declaration, verification, or certificate made in accordance with the
11 requirements of RCW 9A.72.085 by a qualified inspector that states
12 that the landlord has not failed to fulfill any substantial
13 obligation imposed under RCW 59.18.060 that endangers or impairs the
14 health or safety of a tenant, including (a) structural members that
15 are of insufficient size or strength to carry imposed loads with
16 safety, (b) exposure of the occupants to the weather, (c) plumbing
17 and sanitation defects that directly expose the occupants to the risk
18 of illness or injury, (d) not providing facilities adequate to supply
19 heat and water and hot water as reasonably required by the tenant,
20 (e) providing heating or ventilation systems that are not functional
21 or are hazardous, (f) defective, hazardous, or missing electrical

1 wiring or electrical service, (g) defective or hazardous exits that
2 increase the risk of injury to occupants, and (h) conditions that
3 increase the risk of fire.

4 (2) "Commercially reasonable manner," with respect to a sale of a
5 deceased tenant's personal property, means a sale where every aspect
6 of the sale, including the method, manner, time, place, and other
7 terms, must be commercially reasonable. If commercially reasonable, a
8 landlord may sell the tenant's property by public or private
9 proceedings, by one or more contracts, as a unit or in parcels, and
10 at any time and place and on any terms.

11 (3) "Designated person" means a person designated by the tenant
12 under RCW 59.18.590.

13 (4) "Distressed home" has the same meaning as in RCW 61.34.020.

14 (5) "Distressed home conveyance" has the same meaning as in RCW
15 61.34.020.

16 (6) "Distressed home purchaser" has the same meaning as in RCW
17 61.34.020.

18 (7) "Dwelling unit" is a structure or that part of a structure
19 which is used as a home, residence, or sleeping place by one person
20 or by two or more persons maintaining a common household, including
21 but not limited to single-family residences and units of multiplexes,
22 apartment buildings, and mobile homes.

23 (8) "Gang" means a group that: (a) Consists of three or more
24 persons; (b) has identifiable leadership or an identifiable name,
25 sign, or symbol; and (c) on an ongoing basis, regularly conspires and
26 acts in concert mainly for criminal purposes.

27 (9) "Gang-related activity" means any activity that occurs within
28 the gang or advances a gang purpose.

29 (10) "In danger of foreclosure" means any of the following:

30 (a) The homeowner has defaulted on the mortgage and, under the
31 terms of the mortgage, the mortgagee has the right to accelerate full
32 payment of the mortgage and repossess, sell, or cause to be sold the
33 property;

34 (b) The homeowner is at least thirty days delinquent on any loan
35 that is secured by the property; or

36 (c) The homeowner has a good faith belief that he or she is
37 likely to default on the mortgage within the upcoming four months due
38 to a lack of funds, and the homeowner has reported this belief to:

39 (i) The mortgagee;

1 (ii) A person licensed or required to be licensed under chapter
2 19.134 RCW;

3 (iii) A person licensed or required to be licensed under chapter
4 19.146 RCW;

5 (iv) A person licensed or required to be licensed under chapter
6 18.85 RCW;

7 (v) An attorney-at-law;

8 (vi) A mortgage counselor or other credit counselor licensed or
9 certified by any federal, state, or local agency; or

10 (vii) Any other party to a distressed property conveyance.

11 (11) "Landlord" means the owner, lessor, or sublessor of the
12 dwelling unit or the property of which it is a part, and in addition
13 means any person designated as representative of the owner, lessor,
14 or sublessor including, but not limited to, an agent, a resident
15 manager, or a designated property manager.

16 (12) "Mortgage" is used in the general sense and includes all
17 instruments, including deeds of trust, that are used to secure an
18 obligation by an interest in real property.

19 (13) "Owner" means one or more persons, jointly or severally, in
20 whom is vested:

21 (a) All or any part of the legal title to property; or

22 (b) All or part of the beneficial ownership, and a right to
23 present use and enjoyment of the property.

24 (14) "Person" means an individual, group of individuals,
25 corporation, government, or governmental agency, business trust,
26 estate, trust, partnership, or association, two or more persons
27 having a joint or common interest, or any other legal or commercial
28 entity.

29 (15) "Premises" means a dwelling unit, appurtenances thereto,
30 grounds, and facilities held out for the use of tenants generally and
31 any other area or facility which is held out for use by the tenant.

32 (16) "Property" or "rental property" means all dwelling units on
33 a contiguous quantity of land managed by the same landlord as a
34 single, rental complex.

35 (17) "Prospective landlord" means a landlord or a person who
36 advertises, solicits, offers, or otherwise holds a dwelling unit out
37 as available for rent.

38 (18) "Prospective tenant" means a tenant or a person who has
39 applied for residential housing that is governed under this chapter.

1 (19) "Qualified inspector" means a United States department of
2 housing and urban development certified inspector; a Washington state
3 licensed home inspector; an American society of home inspectors
4 certified inspector; a private inspector certified by the national
5 association of housing and redevelopment officials, the American
6 association of code enforcement, or other comparable professional
7 association as approved by the local municipality; a municipal code
8 enforcement officer; a Washington licensed structural engineer; or a
9 Washington licensed architect.

10 (20) "Reasonable attorneys' fees," where authorized in this
11 chapter, means an amount to be determined including the following
12 factors: The time and labor required, the novelty and difficulty of
13 the questions involved, the skill requisite to perform the legal
14 service properly, the fee customarily charged in the locality for
15 similar legal services, the amount involved and the results obtained,
16 and the experience, reputation and ability of the lawyer or lawyers
17 performing the services.

18 (21) "Reasonable manner," with respect to disposing of a deceased
19 tenant's personal property, means to dispose of the property by
20 donation to a not-for-profit charitable organization, by removal of
21 the property by a trash hauler or recycler, or by any other method
22 that is reasonable under the circumstances.

23 (22) "Rental agreement" means all agreements which establish or
24 modify the terms, conditions, rules, regulations, or any other
25 provisions concerning the use and occupancy of a dwelling unit.

26 (23) A "single-family residence" is a structure maintained and
27 used as a single dwelling unit. Notwithstanding that a dwelling unit
28 shares one or more walls with another dwelling unit, it shall be
29 deemed a single-family residence if it has direct access to a street
30 and shares neither heating facilities nor hot water equipment, nor
31 any other essential facility or service, with any other dwelling
32 unit.

33 (24) A "tenant" is any person who is entitled to occupy a
34 dwelling unit primarily for living or dwelling purposes under a
35 rental agreement.

36 (25) "Tenant representative" means:

37 (a) A personal representative of a deceased tenant's estate if
38 known to the landlord;

39 (b) If the landlord has no knowledge that a personal
40 representative has been appointed for the deceased tenant's estate, a

1 person claiming to be a successor of the deceased tenant who has
2 provided the landlord with proof of death and an affidavit made by
3 the person that meets the requirements of RCW 11.62.010(2);

4 (c) In the absence of a personal representative under (a) of this
5 subsection or a person claiming to be a successor under (b) of this
6 subsection, a designated person; or

7 (d) In the absence of a personal representative under (a) of this
8 subsection, a person claiming to be a successor under (b) of this
9 subsection, or a designated person under (c) of this subsection, any
10 person who provides the landlord with reasonable evidence that he or
11 she is a successor of the deceased tenant as defined in RCW
12 11.62.005. The landlord has no obligation to identify all of the
13 deceased tenant's successors.

14 (26) "Tenant screening" means using a consumer report or other
15 information about a prospective tenant in deciding whether to make or
16 accept an offer for residential rental property to or from a
17 prospective tenant.

18 (27) "Tenant screening report" means a consumer report as defined
19 in RCW 19.182.010 and any other information collected by a tenant
20 screening service.

21 (28) "Comprehensive reusable tenant screening report" means a
22 tenant screening report prepared by a consumer reporting agency at
23 the direction of and paid for by the prospective tenant and made
24 available directly to a prospective landlord at no charge, which
25 contains all of the following: (a) A consumer credit report prepared
26 by a consumer reporting agency within the past thirty days; (b) the
27 prospective tenant's criminal history; (c) the prospective tenant's
28 eviction history; (d) an employment verification; and (e) the
29 prospective tenant's address and rental history.

30 (29) "Criminal history" means a report containing or summarizing
31 (a) the prospective tenant's criminal convictions and pending cases,
32 the final disposition of which antedates the report by no more than
33 seven years, and (b) the results of a sex offender registry and
34 United States department of the treasury's office of foreign assets
35 control search, all based on at least seven years of address history
36 and alias information provided by the prospective tenant or available
37 in the consumer credit report.

38 (30) "Eviction history" means a report containing or summarizing
39 the contents of any records of unlawful detainer actions concerning
40 the prospective tenant that are reportable in accordance with state

1 law, are lawful for landlords to consider, and are obtained after a
2 search based on at least seven years of address history and alias
3 information provided by the prospective tenant or available in the
4 consumer credit report.

5 **Sec. 2.** RCW 59.18.257 and 2012 c 41 s 3 are each amended to read
6 as follows:

7 (1)(a) Prior to obtaining any information about a prospective
8 tenant, the prospective landlord shall first notify the prospective
9 tenant in writing, or by posting, of the following:

10 (i) What types of information will be accessed to conduct the
11 tenant screening;

12 (ii) What criteria may result in denial of the application;
13 (~~and~~)

14 (iii) If a consumer report is used, the name and address of the
15 consumer reporting agency and the prospective tenant's rights to
16 obtain a free copy of the consumer report in the event of a denial or
17 other adverse action, and to dispute the accuracy of information
18 appearing in the consumer report; and

19 (iv) Whether or not the landlord will accept a comprehensive
20 reusable tenant screening report made available to the landlord by a
21 consumer reporting agency. If the landlord indicates its willingness
22 to accept a comprehensive reusable tenant screening report, the
23 landlord may access the landlord's own tenant screening report
24 regarding a prospective tenant as long as the prospective tenant is
25 not charged for the landlord's own tenant screening report.

26 (b)(i) The landlord may charge a prospective tenant for costs
27 incurred in obtaining a tenant screening report only if the
28 prospective landlord provides the information as required in (a) of
29 this subsection.

30 (ii) If a prospective landlord conducts his or her own screening
31 of tenants, the prospective landlord may charge his or her actual
32 costs in obtaining the background information only if the prospective
33 landlord provides the information as required in (a) of this
34 subsection. The amount charged may not exceed the customary costs
35 charged by a screening service in the general area. The prospective
36 landlord's actual costs include costs incurred for long distance
37 phone calls and for time spent calling landlords, employers, and
38 financial institutions.

1 (c) If a prospective landlord takes an adverse action, the
2 prospective landlord shall provide a written notice of the adverse
3 action to the prospective tenant that states the reasons for the
4 adverse action. The adverse action notice must contain the following
5 information in a substantially similar format, including additional
6 information as may be required under chapter 19.182 RCW:

7 "ADVERSE ACTION NOTICE

- 8 Name
- 9 Address
- 10 City/State/Zip Code

11 This notice is to inform you that your application has been:
12 Rejected
13 Approved with conditions:
14 Residency requires an increased deposit
15 Residency requires a qualified guarantor
16 Residency requires last month's rent
17 Residency requires an increased monthly rent of \$.....
18 Other:

19 Adverse action on your application was based on the following:
20 Information contained in a consumer report (The prospective
21 landlord must include the name, address, and phone number of the
22 consumer reporting agency that furnished the consumer report that
23 contributed to the adverse action.)
24 The consumer credit report did not contain sufficient
25 information
26 Information received from previous rental history or reference
27 Information received in a criminal record
28 Information received in a civil record
29 Information received from an employment verification

30 Dated this day of, ((20))....(year)

31 Agent/Owner Signature"

32 (2) Any landlord who maintains a web site advertising the rental
33 of a dwelling unit or as a source of information for current or
34 prospective tenants must include a statement on the property's home
35 page stating whether or not the landlord will accept a comprehensive
36 reusable tenant screening report made available to the landlord by a
37 consumer reporting agency. If the landlord indicates its willingness

1 to accept a comprehensive reusable tenant screening report, the
2 landlord may access the landlord's own tenant screening report
3 regarding a prospective tenant as long as the prospective tenant is
4 not charged for the landlord's own tenant screening report.

5 (3) Any landlord or prospective landlord who violates subsection
6 (1) of this section may be liable to the prospective tenant for an
7 amount not to exceed one hundred dollars. The prevailing party may
8 also recover court costs and reasonable attorneys' fees.

9 ~~((3) A stakeholder work group comprised of landlords, tenant~~
10 ~~advocates, and representatives of consumer reporting and tenant~~
11 ~~screening companies shall convene for the purposes of addressing the~~
12 ~~issues of tenant screening including, but not limited to: A tenant's~~
13 ~~cost of obtaining a tenant screening report; the portability of~~
14 ~~tenant screening reports; criteria used to evaluate a prospective~~
15 ~~tenant's background, including which court records may or may not be~~
16 ~~considered; and the regulation of tenant screening services. Specific~~
17 ~~recommendations on these issues are due to the legislature by~~
18 ~~December 1, 2012.))~~

19 (4) This section does not limit a prospective tenant's rights or
20 the duties of a screening service as otherwise provided in chapter
21 19.182 RCW.

22 NEW SECTION. Sec. 3. A new section is added to chapter 59.18
23 RCW to read as follows:

24 (1) A court may order an unlawful detainer action to be of
25 limited dissemination for one or more persons if: (a) The court finds
26 that the plaintiff's case was sufficiently without basis in fact or
27 law; (b) the tenancy was reinstated under RCW 59.18.410 or other law;
28 or (c) other good cause exists for limiting dissemination of the
29 unlawful detainer action.

30 (2) An order to limit dissemination of an unlawful detainer
31 action must be in writing.

32 (3) When an order for limited dissemination of an unlawful
33 detainer action has been entered with respect to a person, a tenant
34 screening service provider must not: (a) Disclose the existence of
35 that unlawful detainer action in a tenant screening report pertaining
36 to the person for whom dissemination has been limited, or (b) use the
37 unlawful detainer action as a factor in determining any score or
38 recommendation to be included in a tenant screening report pertaining
39 to the person for whom dissemination has been limited.

1 **Sec. 4.** RCW 59.18.280 and 2010 c 8 s 19027 are each amended to
2 read as follows:

3 (1) Within (~~fourteen~~) twenty-one days after the termination of
4 the rental agreement and vacation of the premises or, if the tenant
5 abandons the premises as defined in RCW 59.18.310, within
6 (~~fourteen~~) twenty-one days after the landlord learns of the
7 abandonment, the landlord shall give a full and specific statement of
8 the basis for retaining any of the deposit together with the payment
9 of any refund due the tenant under the terms and conditions of the
10 rental agreement.

11 (a) No portion of any deposit shall be withheld on account of
12 wear resulting from ordinary use of the premises.

13 (b) The landlord complies with this section if the required
14 statement or payment, or both, are delivered to the tenant personally
15 or deposited in the United States mail properly addressed to the
16 tenant's last known address with first-class postage prepaid within
17 the (~~fourteen~~) twenty-one days.

18 (~~The notice shall be delivered to the tenant personally or by~~
19 ~~mail to his or her last known address.)) (2) If the landlord fails to
20 give such statement together with any refund due the tenant within
21 the time limits specified above he or she shall be liable to the
22 tenant for the full amount of the deposit. The landlord is also
23 barred in any action brought by the tenant to recover the deposit
24 from asserting any claim or raising any defense for retaining any of
25 the deposit unless the landlord shows that circumstances beyond the
26 landlord's control prevented the landlord from providing the
27 statement within the (~~fourteen~~) twenty-one days or that the tenant
28 abandoned the premises as defined in RCW 59.18.310. The court may in
29 its discretion award up to two times the amount of the deposit for
30 the intentional refusal of the landlord to give the statement or
31 refund due. In any action brought by the tenant to recover the
32 deposit, the prevailing party shall additionally be entitled to the
33 cost of suit or arbitration including a reasonable attorneys' fee.~~

34 (3) Nothing in this chapter shall preclude the landlord from
35 proceeding against, and the landlord shall have the right to proceed
36 against a tenant to recover sums exceeding the amount of the tenant's
37 damage or security deposit for damage to the property for which the
38 tenant is responsible together with reasonable attorneys' fees.

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Recommended Best Practices to Do and Not Do in Drafting and Implementing a Criminal Conviction Screening Policy

DO	DO NOT
Have a written and thoughtfully developed criminal screening policy	Inconsistently apply the screening policy or allow subjective considerations to be part of the decision
Narrowly tailor the screening policy to reflect legitimate concerns over convictions that directly relate to the legitimate interests of a housing provider	Ignore mitigating information and fail to review on a case-by-case basis accounting for the time passed since the conviction, the nature and severity of the conviction, and efforts to rehabilitate
Write down justifications in support of the legitimate interests for the policy	Automatically deny an applicant because of the mere existence of a prior arrest
Give greater weight to convictions that reflect the legitimate concerns	Automatically deny an applicant because of the mere existence of a prior conviction
Allow an individual the opportunity to explain mitigating circumstances and provide evidence of rehabilitation if he or she is declined for tenancy	Exempt certain people or classes of people from the screening policy
Provide detailed training to staff to consistently apply the screening policy and to understand the justifications for the policy	Use a criminal screening policy as a pretext to exclude certain individuals or classes of individuals