

# Housing Rights **ADVOCATE**

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## HUD Issues Criminal History Guidance

**Y**ou have a criminal history and now you are being denied access to safe, affordable housing. What do you do now? Sadly, if you are seeking housing and have a criminal past, your protections under the Fair Housing Act are limited because criminal history is not one of the protected classes under the Act. Even so, the U.S. Department of Housing and Urban Development (HUD) and housing advocates around the country realize that there is a serious problem with housing individuals with criminal histories and that there is an unfair and discriminatory effect on some groups if criminal history guidelines are not consistently applied. One-third of the U.S. adult population has a criminal history of some kind. African Americans and Hispanics are arrested, convicted, and incarcerated at rates that are disproportionate to their share of the general population. Without stable housing, people who have paid their debt to society cannot become productive citizens again no matter how much they want to or how hard they try. This perpetuates a vicious cycle of recidivism.

On April 4, 2016, HUD offered guidance to housing providers on the use of criminal records for persons who seek access to housing. This guidance acknowledged that housing providers may be violating the Act by enacting policies that have a disparate impact on persons with a criminal history who are seeking housing, referred to as "discriminatory effects liability." It also pointed out that it is a violation of the Act to intentionally treat individuals

with the same or similar criminal histories differently based on their membership in a protected class: race, disability, familial status, disability, religion, sex, and national origin – discriminatory treatment liability.

### **Discriminatory Effects Liability**

This occurs when a housing provider has what appears to be a facially-neutral policy—they will not rent to you if you have any arrests – that actually has an unjustified discriminatory effect resulting in housing applicants of a particular race or national origin being denied in disproportionate numbers. This is the case with a "no arrests" policy, because African Americans and Hispanics are arrested at higher rates than the rest of the general population. Policies such as these violate the Fair Housing Act because they are not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, and such interests could be served in another way that has a less discriminatory effect. The landlord's interests can be served in a less discriminatory way by giving individualized consideration to applicants and considering factors such as the nature of the conduct, whether the conduct is isolated, the length of time that has expired since the conduct, rehabilitative or educational changes since the conduct, employment history, references, etc.

### **Discriminatory Treatment Liability**

This occurs when a housing provider treats two potential tenants who both have comparable criminal histories differently based on one or more of the

protected classes under the Act. For example, a housing provider rejects an African American applicant based on his/her criminal history, but decides to rent to a Caucasian applicant with a similar criminal history. Discriminatory treatment can also occur prior to the date that an individual actually applies for the housing. This is often seen when a housing provider discourages an applicant in a certain protected class from applying or tells the applicant that he or she wouldn't qualify for housing because of his or her criminal history but doesn't tell the same thing to another applicant in a different class. For instance, a male with a criminal history calls to inquire about housing and discloses that he has a criminal history and is encouraged not to waste his money by applying because he would not qualify for the housing. However, a female with a similar criminal history is encouraged to apply for the housing.

The bottom line: If you have a criminal record and you believe that you have been denied housing in possible violation of the Fair Housing Act or if you have questions about HUD's guidance, contact the Austin Tenants Council at 512-474-1961.

For the full HUD guidance, go to: [Http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASStandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASStandCR.pdf)

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# You Have Rights! Do You Know Them and Can You Enforce Them?

**T**exas tenants have a variety of rights under the Texas Property Code and their city's municipal code. Knowing these rights is just the first step to ensuring fair treatment in your housing. Preparing yourself to enforce your rights is the critical next step.

## **RULE 1. Get it in writing**

Never merely accept a landlord's verbal promise. Many landlords are well meaning but if the promise or agreement is not in writing, you can't prove that it ever existed and you have nothing to refer to if there is a future disagreement. E.g. Your landlord promises to repair your stove before you move in. Get that promise in writing and make sure there's a repair completion deadline.

## **RULE 2. Always Pay Rent**

Texas Property Code states that a tenant has a right to a repair that's a threat to their health and safety but the tenant must be current on rent at the time they request a repair. If a tenant owes rent, the landlord may delay making the repair until all rent and late fees are paid. Never withhold rent because a landlord has not made requested repairs.

## **RULE 3. Understand Your Lease**

Your lease is a contract and you are legally bound to it. Never move into an apartment or house without first receiving a written lease agreement and reading it carefully. Sometimes leases say things that are not enforceable. E.g. A landlord

may not charge you a fee unless the fee is explicitly stated in the lease.

## **RULE 4. Respond to All Notices**

Tenants sometimes receive notices alleging lease violations. Never allow a notice to go without your response. Write a certified letter (via the US Post Office) to the landlord responding to the notice, making your position clear and asking for a written response in return by a specific deadline (7 days upon receipt is considered reasonable).

These are easy practical steps you can take to ensure that you can *enforce your rights* should you ever need to. Call the ATC counseling line if you have questions: 512-474 1961.

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## ATC Welcomes New Fair Housing Testing Coordinator

**A**ustin Tenants' Council would like to announce that Giovanni Zamora has been promoted to the position of Fair Housing Testing Coordinator. Mrs. Zamora joined the Austin Tenants Council in February of 2015 as a Fair Housing Specialist and

accepted her new role in April 2016. Mrs. Zamora holds college degrees in Social Work, Sociology and Psychology, which shows her interest in our community and in helping the community. In assuming her new duties as testing coordinator, Mrs. Zamora will oversee the

testing program and be responsible for recruitment of new volunteers as testers. She will also continue to directly assist clients through case management. Giovanni Zamora has a strong interest in fair housing, a strong work ethic, and has proven to be a valuable asset to the organization.

## From Our Testing Coordinator: A Call For Volunteers!

**W**hat do you look for in a place to live? When housing discrimination occurs, your choices are limited! The fair housing program needs volunteer testers to fight housing discrimination in our community. These

"secret shoppers" help uncover evidence of discriminatory housing practices that a person on his/her own probably would not see. Would you like to be a tester? Contact me at Giovanni@housing-rights.org or 512-474-7007, ext. 104.

Giovanni will schedule you to attend a training workshop. Training is free and materials are provided to help you become an objective fact-finder. Let's work together to end housing discrimination.

## New Staff Member Welcomed to Fair Housing Department

**A**ustin Tenants' Council welcomes Alex Tingquist to the Fair Housing Department. Alex joined ATC's staff in July this year as a Fair Housing Specialist. In 2015, Alex graduated from the University of Arkansas with a Bachelor of Science

in Social Work. Post-graduation, Alex moved to Austin where he served as an AmeriCorps Member with Keep Austin Housed. Americorps, placed Alex at Trinity Center in downtown Austin where he worked as a Case Management Aide, assisting those experiencing homelessness

and extreme poverty. Alex is excited to help fight against housing discrimination and to advocate for fair housing policies. ATC extends a warm welcome to Alex and we look forward to working with him to ensure that everyone has safe, fair, and decent housing in Central Texas.

# Guía sobre antecedentes criminales en el acceso a HUD

**U**sted tiene antecedentes criminales y ahora se le niega acceso a una vivienda segura y económica. ¿Qué puede hacer? Lamentablemente, si usted busca vivienda y tiene un historial criminal, las protecciones bajo el Acta de Vivienda Justa son limitadas porque los antecedentes criminales no están entre las clases protegidas bajo el Acta. Aún así, el Departamento de Vivienda y Desarrollo Urbano (HUD) de Estados Unidos, y grupos que abogan por la vivienda en el país, saben que hay serios problemas para alojar a personas con antecedentes criminales, y que existe un efecto injusto y discriminatorio en algunos grupos cuando las disposiciones para antecedentes criminales no se aplican consistentemente. Una tercera parte de la población adulta de EE.UU. tiene historial criminal de algún tipo. Los afroamericanos e hispanos son arrestados, condenados y encarcelados desproporcionadamente en relación a la población en general. Careciendo de vivienda estable, personas que ya han pagado su deuda a la sociedad no pueden convertirse nuevamente en ciudadanos productivos independientemente de cuánto lo deseen o cuánto se esmeren en lograrlo. Esto perpetúa un ciclo vicioso de reincidencia.

El 4 de abril de 2016, HUD ofreció una guía a proveedores de viviendas sobre el tema de antecedentes criminales en personas que buscan vivienda. Esta guía reconoció que los proveedores de vivienda podrían violar el Acta con medidas que tengan un efecto discriminatorio en personas con antecedentes que buscan vivienda, conocido como “responsabi-

lidad legal por efecto discriminatorio”. También señaló que es una violación del Acta tratar intencionalmente a personas con el mismo o similar historial criminal de forma diferente debido a su inclusión en una clase protegida: por raza, discapacidad, situación familiar, religión, sexo o nacionalidad de origen –responsabilidad legal por tratamiento discriminatorio.

**Responsabilidad legal por efecto discriminatorio** - Esto ocurre cuando un proveedor de vivienda tiene requisitos que a primera vista son neutrales –no le rentan si usted tiene algún arresto—pero tienen efectos injustificadamente discriminatorios que resultan en que solicitantes de vivienda de una raza o nacionalidad de origen determinada son rechazados en números desproporcionados. Éste es el caso del requisito “sin arrestos”, porque afroamericanos e hispanos son arrestados en mayor proporción que el resto de la población. Medidas como ésta violan el Acta de Vivienda Justa porque no son necesarias para un interés sustancial, legítimo y no discriminatorio del proveedor de viviendas, y tal interés puede ser servido de otra manera que tenga un efecto menos discriminatorio. El interés del arrendador puede ser servido de manera menos discriminatoria dando una consideración individual a cada solicitante, y considerando factores como la naturaleza de la pasada conducta, si la conducta fue aislada, el período de tiempo pasado desde esa conducta, cambios de rehabilitación o educativos desde la conducta, historial de empleo, referencias, etc.

**Responsabilidad legal por tratamiento discriminatorio** - Esto ocurre cuando un proveedor de vivienda trata de forma diferente a dos potenciales inquilinos con antecedentes criminales comparables, en base a una o más de las clases protegidas bajo el Acta. Por ejemplo, el proveedor de vivienda rechaza a un solicitante afroamericano debido a sus antecedentes criminales, pero decide rentarle a un solicitante blanco con antecedentes criminales similares. El tratamiento discriminatorio también puede ocurrir antes de que la persona solicita una vivienda. Esto se da cuando un proveedor de vivienda desanima a un solicitante de cierta clase protegida para que no haga la solicitud, o le dice que no cumpliría los requisitos de vivienda por sus antecedentes criminales pero no le dice lo mismo a un solicitante de otra clase. Por ejemplo, un hombre con antecedentes criminales llama preguntando sobre una vivienda y revela que tiene antecedentes criminales, y se le dice que no gaste su dinero en la solicitud porque no cumpliría los requisitos. Sin embargo, a una mujer con similar historial criminal se le alienta a que haga la solicitud de vivienda.

En conclusión: Si usted tiene antecedentes criminales y cree que se le ha negado una vivienda en posible violación al Acta de Vivienda Justa, comuníquese con Austin Tenants Council al (512) 474-1961. Para ver la guía completa (en inglés), vaya a: [http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGC-GuidAppFHASandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGC-GuidAppFHASandCR.pdf)

## De nuestro coordinador de verificadores: ¡Un llamado a voluntarios!

**C**uando ocurre discriminación en la vivienda, ¡sus opciones son limitadas! El programa de

vivienda justa necesita verificadores voluntarios para luchar contra la discriminación en la vivienda en nuestra comu-

nidad. ¿Le gustaría ser un verificador? Comuníquese conmigo en [Giovanni@housing-rights.org](mailto:Giovanni@housing-rights.org) ó (512) 474-7007, ext. 104..

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This service is certified as a lawyer referral service as required by the State of Texas under Chapter 952, Occupations Code.

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The Austin Tenants' Council, as a subrecipient of the City of Austin, is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance. The City does not discriminate on the basis of disability in the admission or access to, or treatment or employment in its programs and activities. David Ondich has been designated as the City's Section 504/ADA Program Manager. His office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your Section 504/ADA rights, please call the 504/ADA Program Manager at 512-974-3256 (voice) or 974-2445 (TTY). This publication is available in alternative formats. Please call 512-474-1961 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

**Fair Housing Program / Programa de Vivienda Justa** This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing, or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under state and federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento, o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7006.

**Telephone Counseling / Consejos por Telefono** Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 474-1961.

**In-House Counseling / Consejos en la Oficina** Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 474-7006.

**Crisis Intervention / Intervencion Crisis** Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenaza su vivienda. Call / llame al 474-1961.

**Rental Repair Assistance / Ayuda con Reparaciones en su Vivenda** The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 474-7006.

**Lease Forms / Contratos** ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7006 .

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