

INDUSTRY UPDATE: PORTABLE SCREENING REPORTS IN COLORADO

Colorado recently amended the Rental Application Fairness Act (the “Act”) to add requirements about: (1) the use of “**portable tenant screening reports**” in residential leasing and: (2) providing copies of screening reports to applicants (the “Amendments”) ¹.

The Amendments take effect on August 7, 2023. This Industry Update provides a brief overview of these new requirements relating to tenant screening reports in Colorado.

The Act and the Amendments contain other responsibilities for Colorado housing providers that are not addressed here. Housing providers should review the entire Rental Application Fairness Act and consult with their legal counsel or other qualified advisor to ensure they are complying.

WHAT IS A PORTABLE TENANT SCREENING REPORT?

A “portable” tenant screening report is a consumer report that is prepared at the request of a prospective tenant and includes the information typically contained in a tenant screening report: (1) name and contact information; (2) verification of income and employment; (3) a rental and credit history report for all of the applicant’s prior residences that complies with Colorado law²; and, (4) a criminal history check that complies with Colorado law³.

WHAT ARE A LANDLORD’S OBLIGATIONS WHEN PRESENTED WITH A PORTABLE TENANT SCREENING REPORT?

Unless an exception applies, landlords must accept valid portable tenant screening reports from prospective applicants and must inform prospective tenants of their right to provide a portable tenant screening report. The Amendments require landlords to provide this information in a specific format and in a location reasonably likely to be seen by prospective tenants, such as in advertisements or public notices about the property’s availability, on the property’s website, or on the paper or online rental application.⁴

Before accepting a portable tenant screening report, the landlord may require that:

- The report was generated in the past 30 days;
- The report is made directly available to the landlord by a consumer reporting agency (CRA) or a third-party website;
- The report is available at no cost to the landlord; and
- That the applicant confirms there have been no material changes in the report since it was generated.

If an applicant presents a valid portable tenant screening report to the landlord, the landlord must not charge the applicant an application fee.

WHAT ARE THE EXCEPTIONS?

Landlords do not have to accept portable tenant screening reports if the landlord:

- Accepts no more than one application fee per dwelling unit; *and*
- Returns application fees to unsuccessful applicants within 20 days of providing the adverse action notice (or the applicant declines to execute a lease).

WHAT IF THE LANDLORD OBTAINS ITS OWN SCREENING REPORT?

Importantly, if a landlord independently obtains a screening report about an applicant (regardless of whether the applicant provided a portable tenant screening report), the landlord must give the applicant a copy of the report. The landlord must also tell the applicant about the right to dispute any inaccurate or incomplete information directly with the consumer reporting agency that provided the report and to obtain a file disclosure in accordance with the Colorado Consumer Credit Reporting Act.⁵

¹ See House Bill 24-1099 (https://leg.colorado.gov/sites/default/files/2023a_1099_signed.pdf)

² Colorado Revised Statutes, Section 38-12-904(1)(a).

³ Colorado Revised Statutes, Section 38-12-904(1)(b)

⁴ Colorado Revised Statutes, Section 38-12-904(1.5)(d).

⁵ See Colorado Revised Statutes, Section 5-18-106.

WHAT ARE THE POTENTIAL PENALTIES?

For violations of the Act and its Amendments, landlords may be liable to the prospective tenant for \$2,500, plus court costs and attorneys' fees. If the violation is cured within 7 calendar days of notice of the violation, the penalty is reduced to \$50. Additionally, the Colorado Attorney General can bring criminal or civil actions for violations of the Act.

QUESTIONS HOUSING PROVIDERS SHOULD ASK WHEN REVIEWING THEIR APPLICATION AND SCREENING PROCEDURES:

- Does your application process, including any application fees and the ability for applicants to provide a portable tenant screening report, comply with the Act and its Amendments?
- Do you have a process for providing applicants with copies of any screening reports you obtain?
- Are you providing all the required disclosures in your advertisements and application documents?
- As part of this exercise, consider consulting with your compliance and legal teams about your application process generally. Except for certain criteria expressly permitted by applicable law, housing providers should have a legitimate business reason for the criteria they apply to tenant screening reports.

Housing providers are encouraged to work closely with their legal and compliance staff on how to best meet the Act's requirements, and to review the screening products and services they use to ensure these products and services are consistent with the housing provider's obligations under all applicable laws and regulations.

This Brief Review was prepared for general information purposes only, does not constitute legal advice, must not be acted upon as such, and is subject to change without notice. Always consult a lawyer or qualified housing expert for legal or compliance advice.