

FAIR HOUSING AND CRIMINAL RECORDS SCREENING

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Presentation Outline:

1. HUD’s “*Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*,” April 4, 2016,
https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF
 - a. Background
 - b. Discriminatory Effects Liability: 3-step burden-shifting standard requiring a fact-specific analysis. 24 C.F.R. § 100.500.
 - i. Step 1: Evaluate whether the criminal history policy or practice has a discriminatory effect
 - ii. Step 2: Evaluate whether the challenged policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest
 - iii. Step 3: Evaluate whether there is a less discriminatory alternative
2. Applying the HUD guidance: cases filed in federal district court that have alleged violations of the Fair Housing Act due to use of certain criminal history policies:
 - a. Using national and local statistics to establish disparate impact
 - i. *Fortune Society, Inc. v. Sandcastle Towers Housing Development Fund Corp*, Case 1:14-cv-06410-VMS, ECF No. 102 (E.D.N.Y.)
 - ii. *Sams v. Ga W. Gate, LLC*, 2017 WL 4362811 (S.D. Ga. 2017).
 - iii. *Equal Rights Center v Mid-America Apartment Communities, Inc. and Mid-America Apartments, L.P.*, Case 1:17-cv-02659 (D. D.C.)
3. Less Discriminatory Alternatives
4. Intentional Discrimination and Use of Criminal History
 - a. *United States v. Dyersburg Apts, Ltd.*, Case 2:18-cv-02693 (W.D. Tenn.)