

Each property funded through Minnesota Housing should have a tenant selection plan. Below is information that may assist housing providers in creating a plan. Project funding sources and jurisdictions may also impose tenant selection plan requirements. This is not intended to be a complete list or to supersede those requirements. You should consult with an attorney to ensure your tenant selection plan complies with all applicable laws and regulations, program requirements, the Fair Housing Act, and the Minnesota Human Rights Act.¹

General Considerations

1. **Written Tenant Selection Plan.** Housing providers should have a written tenant selection plan. The plan should be made available to applicants before they apply and/or pay an application fee.
2. **Wait List.** The tenant selection plan should spell out any wait list process.
3. **Eligibility.** The tenant selection plan should provide clear information on eligibility criteria such as income restrictions and any program-specific requirements. It should also clearly state the processes and criteria that will be used to evaluate applications.
4. **Tenant Background/Credit Reports.** Many housing providers use consumer reports, such as tenant background or credit reports, as part of the application process. The Federal Trade Commission (FTC) provides [guidance for housing providers](#) who use such reports.² The FTC notes that when a housing provider takes an adverse action based on information in a consumer report, the housing provider must provide a notice to the applicant that includes:
 - a. The name, address and telephone number of the Credit Reporting Agency (CRA) that supplied the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide;
 - b. A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and
 - c. A notice of the applicant's right to dispute the accuracy or completeness of any information the CRA furnished, and the applicant's right to a free report from the CRA upon request within 60 days.³
5. **Notice of Denial.** Housing providers should give applicants a prompt written notice of denial that states the criteria the applicant failed to meet.

¹ It is Minnesota Housing's policy to affirmatively further fair housing in all programs so that individuals of similar income levels have equal access to its programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, or sexual orientation. Property owners and managers are expected to comply with laws and regulations prohibiting housing discrimination when creating and implementing a tenant selection plan.

² Federal Trade Commission, Using Consumer Reports: What Landlords Need to Know, available at <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know>.

³ If the rejection is based on a credit score, the housing provider must also inform the applicant of the numerical score used as well as information on the basis of the score. For more information, see 15 U.S.C. §§ 1681m(a), 1681g(f).

6. **Appeal Process.** Any appeal process should be clearly stated in the tenant selection plan and the notice of denial should inform applicants how to seek an appeal. Some programs require housing providers to offer unsuccessful applicants an appeal. Housing providers may find that an appeal is a useful way to obtain additional mitigating information.
7. **Domestic Violence.** A number of federal programs are subject to the Violence Against Women Act (VAWA), which provides that an applicant “may not be denied admission...on the basis that the applicant...is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission”.⁴ Those that aren’t subject to VAWA restrictions may consider adopting similar terms.
8. **Applicants with Disabilities.** Housing providers should provide a reasonable accommodation process and make that information readily available to applicants.⁵ Housing providers should also make sure that tenant selection plans do not raise barriers to individuals with disabilities, such as imposing requirements that applicants be able to “live independently”.
9. **Tenant-Based Rental Assistance.** As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or any other form of tenant-based rental assistance.

Criminal Background Screening

HUD issued new guidance ([HUD Guidance](#)) in April 2016 regarding the Fair Housing Act and the use of criminal history in tenant screening.⁶ The guidance set out the following considerations, which are relevant to all properties funded by Minnesota Housing.⁷

1. **Arrests.** HUD indicates that a policy that rejects applicants because of arrests (without conviction) would not be acceptable.
2. **Convictions.**
 - a. While a conviction is usually evidence of criminal conduct, HUD encourages housing providers to distinguish between convictions for criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.⁸

⁴ 42 USC § 14043e(b)(1); 24 CFR § 5.2001. Housing providers subject to VAWA should review HUD regulations and policies regarding how to fully comply with the requirements.

⁵ See, e.g., Minn. Stat. § 363A.10 (“[D]iscrimination includes . . . a refusal to make reasonable accommodations in rules, policies, practices, or services, when accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.”); 42 U.S.C. § 3604(f)(3)(B); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodation Under the Fair Housing Act (May 17, 2004), available at <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

⁶ U.S. Department of Housing and Urban Development, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Reports by Providers of Housing and Real Estate-Related Transactions (Apr. 4, 2016), available at http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf [HUD Guidance].

⁷ Some funding sources incorporate additional criminal screening requirements. Housing providers should consult with an attorney to ensure their plan complies with all program requirements.

⁸ HUD makes clear that the Fair Housing Act does not prohibit housing providers from rejecting applicants with convictions of the illegal manufacture or distribution of the controlled substances listed in section 102 of the Controlled Substances Act, 21 U.S.C. 802. HUD Guidance at 8. HUD stresses that the limitation applies only to convictions for manufacturing or distribution of those substances, and does not apply to arrests (without conviction) for those offenses or to convictions for drug possession. Id.

- b. In addition, HUD suggests a tenant screening policy take into account:
 - i. The **nature and severity** of a conviction; and
 - ii. The **amount of time that has passed** since the criminal conduct occurred.⁹
- 3. **Mitigating Factors.** The HUD guidance suggests a policy that considers mitigating information (as opposed to a policy with strict time limit exclusions) is less likely to be discriminatory.¹⁰ HUD suggests that housing providers consider the following factors:
 - a. The **facts or circumstances** surrounding the criminal conduct;
 - b. The **age** of the individual at the time of the conduct;
 - c. Evidence that the individual has maintained a **good tenant history** before and/or after the conviction or conduct; and
 - d. Evidence of **rehabilitation** efforts.
- 4. **Consistent Application of Tenant Screening Policy.** HUD stresses the importance of applying the standards consistently to all applicants.¹¹

Supportive Housing

Minnesota Housing is committed to the goal of housing stability for all Minnesotans. Preventing and ending homelessness is crucial to that goal. Households at risk of or experiencing homelessness often encounter barriers to housing beyond just their ability to pay. Property managers and owners are encouraged to recognize that supportive housing programs are intended to house people who often have poor credit, poor rental histories, or criminal backgrounds. Supportive housing programs are successful in serving the people for whom they are designed only when these issues do not raise insurmountable barriers to accessing housing.

To the extent permitted by the rules and regulations related to the type of housing, housing providers are encouraged to adopt lenient and flexible criteria regarding these common barriers when creating a tenant selection plan. The development of a tenant selection plan should be a collaborative effort between the management agent, the owner, and the supportive service provider. Please note the following:

- 1. Poor rental and credit history may be evidence of financial or personal stress that will be alleviated by living in affordable supportive housing. As a result, an applicant's poor rental or credit history may not be a reliable indication of future behavior. A screening process that allows individuals to demonstrate mitigating circumstances and takes into account factors like a support structure, the potential benefit of available services, and an affordable rent level may help to mitigate unnecessary barriers to housing. For example, requiring a year or more of

⁹ The HUD Guidance cites research "reporting that after six or seven years without reoffending, the risk of new offenses by persons with a prior criminal history begins to approximate the risk of new offenses among persons with no criminal record." HUD Guidance at 7 fn 34, citing Megan C. Kurlycheck et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL'Y 483 (2006). That research also refers to studies showing that recidivism decreased significantly if the individual avoided engaging in criminal activity for two years. Kurlycheck at 7.

¹⁰ HUD notes that by "delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process." HUD Guidance at 7.

¹¹ HUD Guidance at 9 ("For example, the fact that a housing provider acted upon comparable criminal history information differently for one or more individuals of a different protected class . . . is strong evidence that a housing provider was not considering criminal history information uniformly or did not in fact have a criminal history policy.").

consecutive housing history or a good credit score would likely be an unnecessary barrier for an applicant for supportive housing.

2. Criminal backgrounds can raise additional hurdles in a population experiencing homelessness.¹² The individualized screening process discussed in the HUD Guidance will help housing providers better distinguish between a criminal background that indicates a demonstrable risk to resident safety and/or property and one that does not.

¹² The HUD Guidance notes the relationship between criminal backgrounds and homelessness, citing research explaining “how the increasing numbers of people leaving carceral institutions faced an increased risk for homelessness and, conversely, how persons experiencing homelessness are vulnerable to incarceration.” HUD Guidance at 1 fn 7 (citation omitted).