

FAIR CHANCE IN HOUSING ACT

What You Need To Know

The Fair Chance in Housing Act is effective January 1, 2022

Formerly incarcerated people are substantially more likely to experience housing instability compared to the general population. The Fair Chance in Housing Act (FCHA) ensures that people with past involvement in the criminal justice system have fair access to housing in New Jersey, thereby reducing recidivism and reducing racial disparities and discrimination in access to housing.

Under the FCHA, a **housing provider** is never required to consider a housing applicant's criminal history. If it chooses to consider such information, this guide explains what can and cannot occur.

Under the FCHA, it is **always unlawful** for a housing provider to consider any of the following records:

- 1) Arrests or charges that did not result in a criminal conviction
- 2) Expunged convictions
- 3) Convictions erased through executive pardon
- 4) Vacated and otherwise legally nullified convictions
- 5) Juvenile adjudications of delinquency
- 6) Sealed records

Housing providers are defined in the FCHA as: landlords, owners, lessors, sublessors, assignees, or their agents, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental dwelling unit.

A **rental dwelling unit** means a home offered for rent by a housing provider for residential purposes, except for a dwelling unit in an owner-occupied premises of no more than four (4) dwelling units.

Advertising/Initial Application/Conditional Offer:

If a housing provider chooses to consider criminal history, **it must** make a conditional offer of housing before doing so.

That means a housing provider cannot ask an applicant if they have a criminal history on their initial application materials, in an interview, or in any other way before making a conditional offer, and cannot advertise that it will refuse to consider applicants with criminal histories, with two limited exceptions:

- a conviction for the manufacture or production of methamphetamine on the premises of federally assisted housing, or
- a conviction that requires the applicant to register as a sex offender for life

In addition, if a housing provider chooses to consider an applicant's criminal history, it must then provide the applicant with a **Notice of Disclosure** stating that criminal history will be considered and that the applicant has a right to provide evidence of mitigating factors, including inaccuracies in their criminal record and evidence of rehabilitation.



After a conditional offer, a housing provider may only consider:

- 1) Any conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault, or endangering the welfare of a child in violation of N.J.S.2C:24-4(b)(3);
- 2) Any conviction that requires lifetime state sex offender registration;
- 3) Any conviction for a 1st degree indictable offense, or release from prison for that offense, within the past 6 years;
- 4) Any conviction for a 2nd or 3rd degree indictable offense, or release from prison for that offense, within the past 4 years;
- 5) Any conviction for a 4th degree indictable offense, or release from prison for that offense, within the past 1 year.



Individualized Assessment. After a housing provider reviews the above permissible convictions, it must conduct an individualized assessment of the:

- 1) Nature and severity of the offense(s);
- 2) Applicant's age at the time of the offense(s);
- 3) How recently the offense(s) occurred;
- 4) Any information the applicant provided in their favor since the offense(s);
- 5) If the offense(s) happened again in the future, whether that would impact the safety of other tenants or property; and
- 6) Whether the offense(s) happened on, or was connected to, property that the applicant had rented or leased



Optional Withdrawal of Conditional Offer. If a housing provider decides to withdraw a conditional offer, it must provide an applicant with a **Notice of Withdrawal** that explains the specific reasons for the withdrawal, and notifies the applicant of their right to appeal the decision.

After receiving the above, the applicant has 30 days to request all of the information a housing provider relied upon. The housing provider must provide the requested information for free within 10 days of the request.

The applicant can appeal the withdrawal by submitting evidence of inaccuracies in their criminal record or evidence of rehabilitation. A housing provider must consider the information and provide a new determination within 30 days.

The FCHA protects against retaliation and sharing criminal history information.

No one can retaliate against you for reporting possible FCHA violations, filing a complaint with DCR, or exercising any other rights under the FCHA. A housing provider cannot share an applicant's criminal history with anyone for any purpose other than to assess a housing application under the FCHA.

To find out more or to file a complaint, go to NJCivilRights.gov or call 1-866-405-3050.

Please note, DCR enforces the FCHA, which protects anyone seeking housing in New Jersey, regardless of immigration or citizenship status.



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