

Tenant Screening Updates

Recently the states of Washington and Oregon have enacted laws that place requirements on users of tenant screening.

Washington: RCW §59.18.257

The law requires that written notice must be given to the consumer when any background screening report will be obtained. The notice must contain at least the following:

1. The type of information that will be reviewed [Editor note: credit, criminal records, eviction records, etc.]
2. What criteria may result in denial [Editor note: the law does not mention notification for any other type of adverse action] of the application.
3. If a CRA is being used, provide the name and address of the CRA, along with a copy of the tenant's rights to obtain a free copy of the report.

A landlord may charge an applicant for the background screening, if they provide the above notice, for the cost of the background screen. In regard to screens obtained by CRAs the cost to the landlord may be passed through to the applicant. However, if the landlord does its own background screening, it may not charge in excess of the customary charges of CRAs in its geographical area.

If a landlord takes adverse action whether due to its own screening or from a consumer report provided by a CRA, a special adverse action notice must be given to the applicant. A sample form has been included in the forms section of the Resource Tabs of the State Rules Register. This form includes these Washington requirements along with those of the FCRA.

Oregon: OAS §90.295

This law only deviates from the FCRA if the landlord charges the applicant for the background screening report.

The restrictions on charges are similar to those adopted by the State of Washington. First, a landlord may not charge more than its average cost to screening applicants, but the landlord charges cannot be more than the typical CRA search for the same data would be. The cost for a CRA search can be passed through.

There are numerous requirements to be met before a landlord can pass charges on to the applicant. These include the following:

1. The landlord adopts a written, screening or admission criteria.
2. Provides written notice to the applicant containing the following:
 - a. The amount of application screening charge.

- b. The landlord screening or admission criteria.
- c. The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a CRA, reviews credit reports, public records or criminal records or contacts employers, landlords or other references.
- d. Provides notice to the applicant of his/her right to dispute the accuracy of any information provided to the landlord by a CRA.
- e. Landlord must give actual notice to the applicant of the estimate, made to the best of the landlord's ability at the time, of the approximate number of rental units of any type in the area sought by the applicant that are, are within a reasonable future time will be available to rent. This estimate shall also include the approximate number of applications previously accepted or remaining under consideration for those units.
- f. Provide written notice to the applicant of the amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into the rental agreement.
- g. If the landlord takes adverse action on the application, then an adverse action notice must be given. [Editor note: This law does not create any new requirements for the adverse action letter beyond that contained in the FCRA].
- h. The landlord may not charge for screening if the landlord knows that there are no rental units available at the time or available within a reasonable future time.
- i. The landlord cannot charge for screening if the landlord fills the vacant rental unit before screening the applicant. If the applicant has paid for the screening, then the landlord must refund that money.