

advanced reporting


**Screen Smart:
What Landlords Need to Know About Using
Consumer Reports**

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Introduction

- Founded in 1994 to offer mortgage credit reporting services
 - A subsidiary of Maps Credit Union
- Advanced Reporting screens tenants, employees, volunteers, students and borrowers nationwide for:
 - Property Managers
 - Private Businesses
 - Public Agencies
 - Financial Institutions
 - HR Consultants
 - Staffing Agencies
 - Non-Profits
 - Higher Education
 - Lenders



Disclaimer


The following presentation is not legal advice.

The information provided in this presentation does not constitute legal advice and is not intended by Advanced Reporting or the presenter to do so.

Persons or businesses in need of legal advice related to the subject discussed in the presentation should contact a lawyer who is qualified to practice in that area of law.

Credit v. Consumer Reports

- Is a credit report a consumer report?
 - Yes
- Is a consumer report a credit report?
 - Not necessarily
- A Consumer Report is:
 - created by a consumer reporting agency and,
 - is an inquiry to reveal an individual's past actions, character, general reputation, personal characteristics and/or mode of living and,
 - is for a purpose authorized by the Fair Credit Reporting Act (FCRA).
 - Criminal & Civil Records
 - Verifications & References
 - Credit History
 - Etc.



The Legalese

FCRA §603(d)(1)
Consumer Report

In general. The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for

- (A) credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized under section 604.

Section 604(a)(3)(F) allows a CRA to furnish consumer reports to a person which it has reason to believe "otherwise has a legitimate business need for the information (i) in connection with a business transaction that is initiated by the consumer..."

The FCRA

Background Checks for residential rental purposes are federally regulated by the Fair Credit Reporting Act

Additional, state specific, regulations can also apply and may conflict with each other and/or the FCRA.

Best Practice:
When in doubt, follow the regulation that provides the applicant with the most protection.

Who can use consumer reports?

- If you're a landlord, you may use consumer reports to evaluate rental applications - as long as you follow the provisions of the Fair Credit Reporting Act (FCRA).
- The FCRA is designed to protect the privacy of consumer report information and to guarantee that the information supplied by consumer reporting agencies (CRAs) is as accurate as possible.

What is a CRA?

FCRA §603 (f)

The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Types of CRAs


Data Aggregators

Some companies specialize in acquiring records and creating searchable databases

—These vendors often provide a large number of possible results for their clients to examine and verify

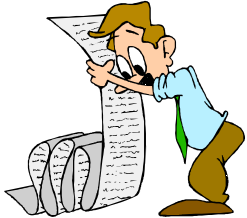


Types of CRAs



Full-Service CRAs
 Other companies focus on providing full-service screening
 –These vendors usually access a combination of live and database record sources and return complete and up-to-date results

Types of CRAs



DIY
 Background investigations performed by your internal HR staff would not fall under the FCRA
 –These checks may still be regulated by other Federal and State codes

What information is available?

- Public Records
 - County Courts
 - State Courts
 - Federal Courts
 - Departments of Corrections
 - Public Safety
 - Sex Offender Registries
- SSN
 - SSN Trace
 - Credit Bureaus
 - SSN Verification
- Employment History
 - IRS Tax Filings
- Rental History
 - Reference Interviews
- Renter Black Lists?
- Bad Check Lists?



Criminal Record Facts

- There are over 10,000 courthouses in the United States, spread out over more than 3,000 counties
 - Records reside in the court where the case was filed
 - The most complete and up-to-date records are found at the county level
 - Access to these records vary by jurisdiction
- THERE IS **NO** SINGLE NATIONAL REPOSITORY!
 - Database records are not always updated consistently
 - Many jurisdictions do not make their records available

Reporting Restrictions

- Most information can only be reported for 7 years
 - There is an FCRA exception for “conviction” information
- Many states have FCRA corollaries that do not include the same exception and can impose other restrictions and requirements.



Questions? Discussion!




Build a compliant program

- Understand how Federal and State regulations apply to your screening program
 - Disclosures
 - Authorizations
 - Content
 - Public Records
 - Credit
 - Scores
 - Adverse Action Notification
 - Liability
- Have a written policy
- Be consistent




Authorizations

- A consumer’s clear and specific written statement that “I authorize you to procure a consumer report on me” provides a permissible purpose.
- The statement “I understand that where appropriate, credit bureau reports may be obtained” is not a sufficiently specific instruction from the consumer to authorize a CRA to provide a consumer report.
- A consumer may transmit “written” authorization electronically or by facsimile, in addition to regular mail or in person.




Adverse Action: What Is It?

- An adverse action is any action by a landlord that is unfavorable to the interests of a rental applicant. Common adverse actions by landlords include:
 - Denying the application;
 - Requiring a co-signer on the lease;
 - Requiring a deposit that would not be required for another applicant;
 - Requiring a larger deposit than might be required for another applicant; and
 - Raising the rent to a higher amount than for another applicant.



Adverse Action Notices

- When an adverse action is taken that is based solely or partly on information in a consumer report, the FCRA requires you to provide a notice of the adverse action to the consumer. The notice must include:
 - the name, address and telephone number of the CRA that supplied the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide;
 - 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
 - a notice of the individual's right to dispute the accuracy or completeness of any information the CRA furnished, and the consumer's right to a free report from the CRA upon request within 60 days.



Adverse Action Notices


New Requirement

- Effective July 21, 2011, the party taking the adverse action must also disclose any numerical score that contributed to the adverse action, along with certain related information.
 - Credit scores. The term "consumer report" includes numerical or other evaluation of data by a CRA, such as a credit score that bears on a consumer's creditworthiness.
 - Adverse action notices must include:
 - Score
 - Key factors that affected the score
 - Range of possible scores
 - Date the score was created
 - Name of the person/entity that provided the score




Consequences of Non-Compliance

- Landlords who fail to provide required disclosure notices face legal consequences.
- The FCRA allows individuals to sue landlords for damages in federal court.
 - A person who successfully sues is entitled to recover court costs and reasonable legal fees.
 - The law also allows individuals to seek punitive damages for deliberate violations of the FCRA.
 - In addition, the Federal Trade Commission (FTC), other federal agencies and the states may sue landlords for non-compliance and get civil penalties.
- Landlords who inadvertently fails to provide a required notice in an isolated case have legal protections, so long as they can demonstrate "that at the time of the . . . violation he maintained reasonable procedures to assure compliance" with the FCRA.




FACT Act

- Federal law adopted November 1, 2008 attempting to stem ID Theft.
 - Two key requirements of FACT Act
 - **Red Flag Rule – Written ID theft prevention programs to detect, prevent and mitigate ID theft.**
 - Applies to Financial Institutions and Creditors
 - **Address discrepancies – Requires end users to establish reasonable policies and procedures when notice of a substantial address discrepancy is received from a CRA .**
 - Applies to all users of consumer credit reports
 - » Including landlords
 - Verify that the consumer report provided relates to the applicant



Disposing of Consumer Reports

- The Disposal Rule applies to people and both large and small organizations that use consumer reports. Among those who must comply with the Rule are:
 - Consumer reporting companies , Lenders , Insurers , Employers , **Landlords** , Government agencies , Mortgage , Brokers , Automobile dealers , Attorneys or private , Investigators , Debt collectors , Individuals who obtain a credit report on prospective nannies, contractors, or tenants and Entities that maintain information in consumer reports as part of their role as service providers to other organizations covered by the Rule
- Applies to consumer reports or information derived from consumer reports.



Disposing of Consumer Reports

- The Disposal Rule requires disposal practices that are reasonable and appropriate to prevent the unauthorized access to – or use of – information in a consumer report.
 - Proper disposal practices include:
 - Burn, pulverize or shred papers so information cannot be read or reconstructed
 - Destroy or erase electronic files
 - Conduct due diligence of document destruction contractor



