

FAIR HOUSING ACT: CRIMINAL HISTORY-BASED PRACTICES AND POLICIES

NAR LEGAL AFFAIRS DEPARTMENT
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<u>CRIMINAL HISTORY-BASED HOUSING POLICIES AND PRACTICES</u>	
<u>Do's</u>	<u>DON'Ts</u>
✓ Create tailored criminal history-based policies/practices.	× Don't create arbitrary or overly-broad criminal history-based policies/practices.
✓ Be sure to have clear, specific reasoning for the criminal history-based policy/practice that can be supported by evidence.	× Don't maintain a policy/practice, or any portion thereof, that does not serve a substantial, legitimate, nondiscriminatory interest.
✓ Exclude individuals only based on criminal convictions that present a demonstrable risk to resident safety or property.	× Don't create exclusions based on <u>arrest</u> records alone.
✓ Consider the nature and severity of an individual's conviction before excluding the individual based on the conviction.	× Don't create a blanket exclusion of any person with any conviction record.
✓ Consider the amount of time that has passed since the criminal conduct occurred.	× Don't provide inconsistent explanations for the denial of a housing application.
✓ Consider criminal history uniformly, regardless of an individual's inclusion in a protected class.	× Don't use criminal history as a pretext for unequal treatment of individuals of a protected class.
✓ Treat all applicants for housing equally, regardless of protected characteristics.	× Don't use comparable criminal history differently for individuals of protected classes.
✓ Conduct individualized assessments that take into account mitigating factors, such as facts and circumstances surrounding the criminal conduct, age at the time of the conduct, evidence of good tenancy before/after conduct, and rehabilitative efforts.	× Don't make exceptions to a policy or practice for some individuals, but not make the same exception for another individual based on the individual's inclusion in a protected class.
✓ Housing providers may exclude persons convicted of the illegal <u>manufacture</u> or <u>distribution</u> of a controlled substance. ²	× Don't include a blanket prohibition against individuals convicted of drug <u>possession</u> .

² 42 U.S.C. 3607(b)(4).