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November 6, 2019

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***Via Email***

Dear Mr. Davidson and Chief Dunkin:

We first sent you a letter on April 3, 2019 (see attached) regarding Roswell’s Crime Free Housing Program and how it violates the Fair Housing Act. We followed up in April and May to try and discuss the issue in person. Mr. Davidson, you then informed us that City Council would discuss the issue internally at its July 8th meeting. Following that meeting, you asked us to provide materials on another county’s Crime Free Housing Program—which had previously made changes in response to a nearly identical letter we sent them regarding potential fair housing violations. We provided these materials. We have not heard back from you.

In its current form, Roswell’s Crime Free Housing Program continues to expose the City of Roswell to liability. As detailed in our April 3rd letter, the Program requires landlords to engage in far-overreaching criminal history screening of potential tenants. The result is many well-deserving men and women and their families—the vast majority of whom are people of color—being shut out from living in the City. This result is unlawful discrimination.

We urge the City of Roswell to change its Crime Free Housing Program immediately to comply with the Fair Housing Act.

Sincerely,

Dominque Madison  
Equal Justice Works Advocate  
Georgia Justice Project

Kosha S. Tucker  
Staff Attorney  
ACLU of Georgia

Margaret A. Burgess  
Equal Justice Works Fellow  
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*Encl.: April 3, 2019 Letter*



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April 3, 2019

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***Via Email***

Dear Mr. Davidson and Chief Dunkin:

Everyone deserves a second chance. Preventing people who have encountered the criminal legal system from having a place to live violates that basic American principle and does little to enhance public safety. To the contrary, preventing people who have been arrested, were formerly incarcerated, or were convicted but not incarcerated from reintegrating into our society increases recidivism, homelessness, and ultimately more crime.

We write to inform you that the criminal history screening policy promulgated by the Roswell Police Department (“RPD”) as part of its Crime Free Housing Program (“CFH Program”) not only violates basic American principles and makes our communities less safe, it also violates the Fair Housing Act (“FHA”). RPD must revise this policy in order to comply with the law. The FHA prohibits RPD as well as landlords from engaging in even facially-neutral practices that have a disproportionately adverse effect on people of color, unless the practice is shown to be necessary to serve a substantial, legitimate, nondiscriminatory interest and that interest could not be served by a different practice with a less discriminatory effect. 24 C.F.R. § 100.500(a)-(b); *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. --, 135 S.Ct. 2507 (2015). The FHA also prohibits housing policies that are intentionally discriminatory. 42 U.S.C. § 3604.

In 2016, the United States Department of Housing and Urban Development (“HUD”) issued guidance (“HUD Guidance”) “concerning how the FHA applies to the use of criminal history by providers or operators of housing and real-estate related transactions.”<sup>1</sup> The 2016

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<sup>1</sup> U.S. Dep’t of Housing and Urban Dev., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real-Estate Related Transactions, Apr. 4,

HUD Guidance specifically addresses “how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual’s criminal history.” HUD Guidance at 1.

The stated goal of RPD’s CFH Program is to help citizens take back their communities.<sup>2</sup> We commend RPD for working proactively to make life safer for Roswell’s rental housing residents. However, certain aspects of the program, like its criminal history screening policy, fail to achieve these goals and run afoul of the FHA. RPD must revise or revoke this screening policy in order to comply with the law as explained in the 2016 HUD Guidance.

We remind you that police action can make a local government liable under the FHA when those actions affect the availability or terms of private housing. *See, e.g., Southend Neighborhood Imp. Ass’n v. St. Clair Cty.*, 743 F.2d 1207, 1209-10 (7th Cir. 1984) (“[C]ourts have construed the phrase ‘otherwise make unavailable or deny’ in subsection (a) to encompass . . . actions by *individuals or governmental units* which directly affect the availability of housing to minorities.”) (emphasis added); *Davis v. City of New York*, 902 F. Supp. 2d 405, 435-37 (S.D.N.Y. 2012) (municipality can be liable under FHA for discriminatory policing); *Cnty. Action League v. City of Palmdale*, No. CV 11-4817 ODW VBKX, 2012 WL 10647285, at \*4-5 (C.D. Cal. Feb. 1, 2012) (same). Not only can a landlord be liable for a FHA violation when it enforces discriminatory screening policies, but a local government can also be liable when one of its units, such as RPD, promotes and enforces these policies. *See* 42 U.S.C. § 3604(a), (b).

## **I. Criminal History Screening Can Violate the Fair Housing Act.**

As noted above, the FHA covers “practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.” *Binns v. City of Marietta Georgia*, 704 F. App’x 797, 802 (11th Cir. 2017) (quoting *Inclusive Cmty. Project*, 135 S.Ct. 2507, 2513). The 2016 HUD Guidance synthesizes this existing law to make clear that the FHA and its disparate impact standard *do* apply to the use of criminal history information by providers or operators of housing: “While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act, if without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).” HUD Guidance at 1-2. *See also Sams v. Ga W. Gate, LLC*, No. CV415-282, 2017 WL 436281, at \*5 (S.D. Ga. Jan. 30, 2017) (denying motion to dismiss plaintiffs’ FHA disparate impact claim based on barring individuals with criminal records from housing).

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2016, [https://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASstandCR.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASstandCR.pdf), attached hereto as **Exhibit A**.

<sup>2</sup> Roswell Crime Free Housing Program Welcome Letter, 1, attached hereto as **Exhibit B**.

The 2016 HUD Guidance makes clear that “criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.”<sup>3</sup> HUD Guidance at 2. To put this into context, the HUD Guidance notes that “[a]cross the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.” HUD Guidance at 4. In 2013, “African Americans were arrested at a rate more than double their proportion of the general population,” and in 2014, they were imprisoned at a rate about three times higher than their proportion of the general population. HUD Guidance 3; *Sams*, 2017 WL 436281, at \*5. Likewise, Hispanic individuals comprise “approximately 22 percent of the prison population, but only 17 percent of the total U.S. population.” HUD Guidance at 4. And “[a]cross all age groups, the imprisonment rates for African American males is almost six times greater than for White males, and for Hispanic males it is more than double that for non-Hispanic White males.” *Id.* The disparity in Georgia is also severe; in 2014, while 30.5% of Georgia’s population was Black, 62% of those incarcerated in its prisons were Black.<sup>4</sup>

## II. RPD Requires Landlords Participating in the Crime Free Housing Program to Violate the Fair Housing Act.

RPD’s current policy requires participating landlords to exclude potential tenants with a broad range of criminal histories, which violates the Fair Housing Act. The “Criminal History Disqualification Standards” policy (“Criminal History Policy”), attached hereto as **Exhibit D**, requires landlords to reject applications for housing for the following reasons:

1. Any felony of a violent nature, with no limit on the look-back period.
2. Any felony, of a non-violent nature, under twenty (20) years.
3. Two or more felonies, of a non-violent nature, with no limit on the look-back period.
4. Probation / parole, for a non-violent felony, within the past ten (10) years.
5. Any misdemeanor conviction within the past three (3) years, which can be waived by the Crime Free Housing Program Officer.

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<sup>3</sup> RPD’s current CFH Program requires tenants to sign a “Crime Deterrence Housing Addendum,” attached hereto as **Exhibit C**, which appears to evaluate acts that do not even rise to the level of an arrest, let alone a conviction. A policy of excluding potential tenants based on arrest records—as opposed to convictions—can never be necessary to achieve such an interest, since arrest records do not even constitute proof of any past criminal conduct. *See Schware v. Bd. of Bar Exam. of State of N.M.*, 353 U.S. 232, 241 (1957) (“The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.”); *Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (holding that excluding from employment persons with arrests without convictions unlawfully discriminated against African American applicants in violation of Title VII), *aff’d*, 472 F.2d 631 (9th Cir. 1972); HUD Guidance 5.

<sup>4</sup> The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), at 16, Table A. (citing United States Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics, *National Prisoner Statistics, 1978-2014* (2014)).

6. Four or more misdemeanor convictions, with no limit on the look-back period, which can be waived by the Crime Free Housing Program Officer.
7. Active parole / probation status.
8. Active Warrants.
9. Sexual Offender / predator registry requirement.

These limits are substantially overbroad. For instance, an individual who has been on probation or parole for a non-violent felony in the last decade (Category 4) may have committed her single crime fifteen years ago or more. With respect to barring people from rental housing for three years on the basis of a single misdemeanor conviction (Category 5), including for example driving with an expired license (Ga. Code Ann., § 40-5-20(a); § 40-5-121(a)), there is simply no evidence tying the existence of such a conviction to any safety risk in the rental housing community.

Although the policy states that each exclusion category applies solely to convictions (and not, presumably, to arrests), Category 8, concerning “active warrants,” by its very terms applies to a situation in which no conviction has occurred. An open warrant does not even signify that the applicant for housing is fleeing the police or evading court. In Georgia, a judge can issue a bench warrant when a person does not appear for a scheduled criminal court date, even when the only notice of that court date was mailed to his last known address and he no longer lives there. Ga. Code Ann. § 17-7-90(a). Excluding persons with active warrants, then, cannot be justified in terms of any demonstrable impact on the safety of residents or property.

Finally, it is not at all clear that there is a legitimate justification for excluding individuals currently on probation or parole from housing (Category 7). *See Victor Valley Family Res. Ctr. v. City of Hesperia*, No. EDCV1600903ABSPX, 2016 WL 3647340, at \*4 (C.D. Cal. July 1, 2016) (noting animus against probationers, unsupported by evidence of actual public safety threat they pose, likely to violate Equal Protection Clause). Individuals on probation or parole are subject to heightened scrutiny by law enforcement. As a result, they may be *less* likely to commit crime than similar individuals not under supervision.

This list of problems with the current Criminal History Policy is not exhaustive. It suffices, however, to make clear that the policy must immediately change, or be revoked altogether, in order to comply with the law.

### **III. RPD Must Change or Revoke Its Criminal History Policy in Order to Address the Housing Needs of Residents with Criminal Records and to Comply with the FHA.**

RPD must immediately revise or revoke its Criminal History Policy so that it better serves Roswell’s needs and complies with the FHA. **RPD should immediately cease requiring landlords to engage in criminal history screening through the Crime Free Housing**

**Program or through any other means.** This shift is necessary to limit RPD's liability for criminal history screening that landlords conduct in violation of the FHA.

To the extent that RPD continues to discuss criminal history screening of tenants with landlords or property managers, it must inform them that they risk fair housing liability for performing overbroad screening. RPD should also provide landlords with fair housing guidelines for criminal history screening, similar to those contained within the 2016 HUD Guidance, so that they understand that a policy of barring potential tenants based on criminal history violates the law if it is not tailored to serve the landlord's substantial, legitimate, and nondiscriminatory interests.

\* \* \* \*

We look forward to hearing how you plan to address these urgent concerns. To that end, we are available for an in-person meeting on the afternoon of Tuesday, April 30, 2019. Please let us know whether you would like to speak at that time or at another point soon by contacting Natasha Alladina, an attorney with Georgia Justice Project, at 404-827-0027, ext. 229, or [natasha@GJP.org](mailto:natasha@GJP.org).

Sincerely,



Natasha Alladina, Esq.  
Georgia Housing Corps Fellow  
Georgia Justice Project



Kosha S. Tucker  
Staff Attorney  
ACLU of Georgia



Lindsey Siegel  
Senior Attorney  
Atlanta Legal Aid Society

# **EXHIBIT A**



April 4, 2016

**Office of General Counsel Guidance on  
Application of Fair Housing Act Standards to the Use of Criminal Records by  
Providers of Housing and Real Estate-Related Transactions**

**I. Introduction**

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.<sup>1</sup> HUD's Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

**II. Background**

As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.<sup>2</sup> The United States prison population of 2.2 million adults is by far the largest in the world.<sup>3</sup> As of 2012, the United States accounted for only about five percent of the world's population, yet almost one quarter of the world's prisoners were held in American prisons.<sup>4</sup> Since 2004, an average of over 650,000 individuals have been released annually from federal and state prisons,<sup>5</sup> and over 95 percent of current inmates will be released at some point.<sup>6</sup> When individuals are released from prisons and jails, their ability to access safe, secure and affordable housing is critical to their successful reentry to society.<sup>7</sup> Yet many formerly incarcerated individuals, as well as individuals who were convicted but not incarcerated, encounter significant barriers to securing housing, including public and other federally-subsidized housing,

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<sup>1</sup> 42 U.S.C. § 3601 *et seq.*

<sup>2</sup> Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems, 2012*, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

<sup>3</sup> Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences 2* (Jeremy Travis, et al. eds., 2014), available at: <http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

<sup>4</sup> *Id.*

<sup>5</sup> E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>.

<sup>6</sup> Bureau of Justice Statistics, U.S. Dep't of Justice, *Reentry Trends in the United States*, available at <http://www.bjs.gov/content/pub/pdf/reentry.pdf>.

<sup>7</sup> See, e.g., S. Metraux, et al. "Incarceration and Homelessness," in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research, #9* (D. Dennis, et al. eds., 2007), available at: <https://www.huduser.gov/portal/publications/pdf/p9.pdf> (explaining "how the increasing numbers of people leaving carceral institutions face an increased risk for homelessness and, conversely, how persons experiencing homelessness are vulnerable to incarceration.").

because of their criminal history. In some cases, even individuals who were arrested but not convicted face difficulty in securing housing based on their prior arrest.

Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.<sup>8</sup> Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers. While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).<sup>9</sup> Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or other protected characteristic (i.e., disparate treatment liability).

### **III. Discriminatory Effects Liability and Use of Criminal History to Make Housing Decisions**

A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.<sup>10</sup> Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification. Thus, where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.<sup>11</sup> Discriminatory effects liability is assessed under a three-step burden-shifting standard requiring a fact-specific analysis.<sup>12</sup>

The following sections discuss the three steps used to analyze claims that a housing provider's use of criminal history to deny housing opportunities results in a discriminatory effect in violation of the Act. As explained in Section IV, below, a different analytical framework is used to evaluate claims of intentional discrimination.

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<sup>8</sup> See *infra* nn. 16-20 and accompanying text.

<sup>9</sup> The Fair Housing Act prohibits discrimination based on race, color, religion, sex, disability, familial status, and national origin. This memorandum focuses on race and national origin discrimination, although criminal history policies may result in discrimination against other protected classes.

<sup>10</sup> 24 C.F.R. § 100.500; accord *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2507 (2015).

<sup>11</sup> 24 C.F.R. § 100.500; see also *Inclusive Cmty. Project*, 135 S. Ct. at 2514-15 (summarizing HUD's Discriminatory Effects Standard in 24 C.F.R. § 100.500); *id.* at 2523 (explaining that housing providers may maintain a policy that causes a disparate impact "if they can prove [the policy] is necessary to achieve a valid interest.").

<sup>12</sup> See 24 C.F.R. § 100.500.

#### A. Evaluating Whether the Criminal History Policy or Practice Has a Discriminatory Effect

In the first step of the analysis, a plaintiff (or HUD in an administrative adjudication) must prove that the criminal history policy has a discriminatory effect, that is, that the policy results in a disparate impact on a group of persons because of their race or national origin.<sup>13</sup> This burden is satisfied by presenting evidence proving that the challenged practice actually or predictably results in a disparate impact.

Whether national or local statistical evidence should be used to evaluate a discriminatory effects claim at the first step of the analysis depends on the nature of the claim alleged and the facts of that case. While state or local statistics should be presented where available and appropriate based on a housing provider's market area or other facts particular to a given case, national statistics on racial and ethnic disparities in the criminal justice system may be used where, for example, state or local statistics are not readily available and there is no reason to believe they would differ markedly from the national statistics.<sup>14</sup>

National statistics provide grounds for HUD to investigate complaints challenging criminal history policies.<sup>15</sup> Nationally, racial and ethnic minorities face disproportionately high rates of arrest and incarceration. For example, in 2013, African Americans were arrested at a rate more than double their proportion of the general population.<sup>16</sup> Moreover, in 2014, African Americans comprised approximately 36 percent of the total prison population in the United States, but only about 12 percent of the country's total population.<sup>17</sup> In other words, African Americans were incarcerated at a rate nearly three times their proportion of the general population. Hispanics were similarly incarcerated at a rate disproportionate to their share of the

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<sup>13</sup> 24 C.F.R. § 100.500(c)(1); *accord Inclusive Cmty. Project*, 135 S. Ct. at 2522-23. A discriminatory effect can also be proven with evidence that the policy or practice creates, increases, reinforces, or perpetuates segregated housing patterns. See 24 C.F.R. § 100.500(a). This guidance addresses only the method for analyzing disparate impact claims, which in HUD's experience are more commonly asserted in this context.

<sup>14</sup> *Compare Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) (“[R]eliance on general population demographic data was not misplaced where there was no reason to suppose that physical height and weight characteristics of Alabama men and women differ markedly from those of the national population.”) with *Mountain Side Mobile Estates P’ship v. Sec’y of Hous. & Urban Dev.*, 56 F.3d 1243, 1253 (10th Cir. 1995) (“In some cases national statistics may be the appropriate comparable population. However, those cases are the rare exception and this case is not such an exception.”) (citation omitted).

<sup>15</sup> *Cf. El v. SEPTA*, 418 F. Supp. 2d 659, 668-69 (E.D. Pa. 2005) (finding that plaintiff proved prima facie case of disparate impact under Title VII based on national data from the U.S. Bureau of Justice Statistics and the Statistical Abstract of the U.S., which showed that non-Whites were substantially more likely than Whites to have a conviction), *aff’d on other grounds*, 479 F.2d 232 (3d Cir. 2007).

<sup>16</sup> See FBI Criminal Justice Information Services Division, *Crime in the United States, 2013*, tbl.43A, available at <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-43> (Fall 2014) (reporting that African Americans comprised 28.3% of all arrestees in 2013); U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2013 to December 1, 2013, available at <http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html> (reporting data showing that individuals identifying as African American or Black alone made up only 12.4% of the total U.S. population at 2013 year-end).

<sup>17</sup> See E. Ann Carson, Bureau of Justice Statistics, U.S. Dep’t of Justice, *Prisoners in 2014* (Sept. 2015) at tbl. 10, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>; and U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2014 to December 1, 2014, available at <http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html>.

general population, with Hispanic individuals comprising approximately 22 percent of the prison population, but only about 17 percent of the total U.S. population.<sup>18</sup> In contrast, non-Hispanic Whites comprised approximately 62 percent of the total U.S. population but only about 34 percent of the prison population in 2014.<sup>19</sup> Across all age groups, the imprisonment rates for African American males is almost six times greater than for White males, and for Hispanic males, it is over twice that for non-Hispanic White males.<sup>20</sup>

Additional evidence, such as applicant data, tenant files, census demographic data and localized criminal justice data, may be relevant in determining whether local statistics are consistent with national statistics and whether there is reasonable cause to believe that the challenged policy or practice causes a disparate impact. Whether in the context of an investigation or administrative enforcement action by HUD or private litigation, a housing provider may offer evidence to refute the claim that its policy or practice causes a disparate impact on one or more protected classes.

Regardless of the data used, determining whether a policy or practice results in a disparate impact is ultimately a fact-specific and case-specific inquiry.

B. Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

In the second step of the discriminatory effects analysis, the burden shifts to the housing provider to prove that the challenged policy or practice is justified – that is, that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider.<sup>21</sup> The interest proffered by the housing provider may not be hypothetical or speculative, meaning the housing provider must be able to provide evidence proving both that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting the challenged policy and that the challenged policy actually achieves that interest.<sup>22</sup>

Although the specific interest(s) that underlie a criminal history policy or practice will no doubt vary from case to case, some landlords and property managers have asserted the protection of other residents and their property as the reason for such policies or practices.<sup>23</sup> Ensuring

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<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at table 10, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>.

<sup>21</sup> 24 C.F.R. § 100.500(c)(2); see also *Inclusive Cmty. Project*, 135 S. Ct. at 2523.

<sup>22</sup> See 24 C.F.R. § 100.500(b)(2); see also 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013).

<sup>23</sup> See, e.g., Answer to Amended Complaint at 58, *The Fortune Society, Inc. v. Sandcastle Towers Hsg. Dev. Fund Corp.*, No. 1:14-CV-6410 (E.D.N.Y. May 21, 2015), ECF No. 37 (“The use of criminal records searches as part of the overall tenant screening process used at Sand Castle serves valid business and security functions of protecting tenants and the property from former convicted criminals.”); *Evans v. UDR, Inc.*, 644 F.Supp.2d 675, 683 (E.D.N.C. 2009) (noting, based on affidavit of property owner, that “[t]he policy [against renting to individuals with criminal histories is] based primarily on the concern that individuals with criminal histories are more likely than others to commit crimes on the property than those without such backgrounds ... [and] is thus based [on] concerns for the safety of other residents of the apartment complex and their property.”); see also J. Helfgott, *Ex-Offender Needs Versus Community Opportunity in Seattle*, Washington, 61 Fed. Probation 12, 20 (1997) (finding in a survey of 196

resident safety and protecting property are often considered to be among the fundamental responsibilities of a housing provider, and courts may consider such interests to be both substantial and legitimate, assuming they are the actual reasons for the policy or practice.<sup>24</sup> A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property. Bald assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any individual without such a record are not sufficient to satisfy this burden.

### 1. Exclusions Because of Prior Arrest

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.<sup>25</sup> As the Supreme Court has recognized, “[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense.”<sup>26</sup> Because arrest records do not constitute proof of past unlawful conduct and are often incomplete (e.g., by failing to indicate whether the individual was prosecuted, convicted, or acquitted),<sup>27</sup> the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual. For that reason, a housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property.

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landlords in Seattle that of the 43% of landlords that said they were inclined to reject applicants with a criminal history, the primary reason for their inclination was protection and safety of community).

<sup>24</sup> As explained in HUD’s 2013 Discriminatory Effects Final Rule, a “substantial” interest is a core interest of the organization that has a direct relationship to the function of that organization. The requirement that an interest be “legitimate” means that a housing provider’s justification must be genuine and not false or fabricated. See 78 Fed. Reg. at 11470; see also *Charleston Hous. Auth. v. U.S. Dep’t of Agric.*, 419 F.3d 729, 742 (8th Cir. 2005) (recognizing that, “in the abstract, a reduction in the concentration of low income housing is a legitimate goal,” but concluding “that the Housing Authority had not shown a need for deconcentration in this instance, and in fact, had falsely represented the density [of low income housing] at the location in question in an attempt to do so”).

<sup>25</sup> HUD recently clarified that arrest records may not be the basis for denying admission, terminating assistance, or evicting tenants from public and other federally-assisted housing. See Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, HUD PIH Notice 2015-19, (November 2, 2015), available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>.

<sup>26</sup> *Schwartz v. Bd of Bar Examiners*, 353 U.S. 232, 241 (1957); see also *United States v. Berry*, 553 F.3d 273, 282 (3d Cir. 2009) (“[A] bare arrest record – without more – does not justify an assumption that a defendant has committed other crimes and it therefore cannot support increasing his/her sentence in the absence of adequate proof of criminal activity.”); *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006) (“[A] mere arrest, especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct.”).

<sup>27</sup> See, e.g., U.S. Dep’t of Justice, *The Attorney General’s Report on Criminal History Background Checks* at 3, 17 (June 2006), available at [http://www.bjs.gov/content/pub/pdf/ag\\_bgchecks\\_report.pdf](http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf) (reporting that the FBI’s Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and “the most comprehensive single source of criminal history information in the United States,” is “still missing final disposition information for approximately 50 percent of its records”).

Analogously, in the employment context, the Equal Employment Opportunity Commission has explained that barring applicants from employment on the basis of arrests not resulting in conviction is not consistent with business necessity under Title VII because the fact of an arrest does not establish that criminal conduct occurred.<sup>28</sup>

## 2. Exclusions Because of Prior Conviction

In most instances, a record of conviction (as opposed to an arrest) will serve as sufficient evidence to prove that an individual engaged in criminal conduct.<sup>29</sup> But housing providers that apply a policy or practice that excludes persons with prior convictions must still be able to prove that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. A housing provider that imposes a blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden. One federal court of appeals held that such a blanket ban violated Title VII, stating that it “could not conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed.”<sup>30</sup> Although the defendant-employer in that case had proffered a number of theft and safety-related justifications for the policy, the court rejected such justifications as “not empirically validated.”<sup>31</sup>

A housing provider with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary to serve a “substantial, legitimate, nondiscriminatory interest.” To do this, a housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.<sup>32</sup>

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<sup>28</sup> See U.S. Equal Emp’t Opportunity Comm’n, *EEOC Enforcement Guidance, Number 915.002*, 12 (Apr. 25, 2012), available at [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm); see also *Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (holding that defendant employer’s policy of excluding from employment persons with arrests without convictions unlawfully discriminated against African American applicants in violation of Title VII because there “was no evidence to support a claim that persons who have suffered no criminal convictions but have been arrested on a number of occasions can be expected, when employed, to perform less efficiently or less honestly than other employees,” such that “information concerning a . . . record of arrests without conviction, is irrelevant to [an applicant’s] suitability or qualification for employment”), *aff’d*, 472 F.2d 631 (9th Cir. 1972).

<sup>29</sup> There may, however, be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged, or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor. See generally SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2005), available at <http://www.search.org/files/pdf/RNTFCSCJRI.pdf>.

<sup>30</sup> *Green v. Missouri Pacific R.R.*, 523 F.2d 1290, 1298 (8th Cir. 1975).

<sup>31</sup> *Id.*

<sup>32</sup> *Cf. El*, 479 F.3d at 245-46 (stating that “Title VII . . . require[s] that the [criminal conviction] policy under review accurately distinguish[es] between applicants that pose an unacceptable level or risk and those that do not”).

A policy or practice that fails to take into account the nature and severity of an individual's conviction is unlikely to satisfy this standard.<sup>33</sup> Similarly, a policy or practice that does not consider the amount of time that has passed since the criminal conduct occurred is unlikely to satisfy this standard, especially in light of criminological research showing that, over time, the likelihood that a person with a prior criminal record will engage in additional criminal conduct decreases until it approximates the likelihood that a person with no criminal history will commit an offense.<sup>34</sup>

Accordingly, a policy or practice that fails to consider the nature, severity, and recency of criminal conduct is unlikely to be proven necessary to serve a "substantial, legitimate, nondiscriminatory interest" of the provider. The determination of whether any particular criminal history-based restriction on housing satisfies step two of the discriminatory effects standard must be made on a case-by-case basis.<sup>35</sup>

### C. Evaluating Whether There Is a Less Discriminatory Alternative

The third step of the discriminatory effects analysis is applicable only if a housing provider successfully proves that its criminal history policy or practice is necessary to achieve its substantial, legitimate, nondiscriminatory interest. In the third step, the burden shifts back to the plaintiff or HUD to prove that such interest could be served by another practice that has a less discriminatory effect.<sup>36</sup>

Although the identification of a less discriminatory alternative will depend on the particulars of the criminal history policy or practice under challenge, individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account. Relevant individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts. 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.

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<sup>33</sup> *Cf. Green*, 523 F.2d at 1298 (holding that racially disproportionate denial of employment opportunities based on criminal conduct that "does not significantly bear upon the particular job requirements is an unnecessarily harsh and unjust burden" and violated Title VII).

<sup>34</sup> *Cf. El*, 479 F.3d at 247 (noting that plaintiff's Title VII disparate impact claim might have survived summary judgment had plaintiff presented evidence that "there is a time at which a former criminal is no longer any more likely to recidivate than the average person..."); see also *Green*, 523 F.2d at 1298 (permanent exclusion from employment based on any and all offenses violated Title VII); see Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *Criminology and Pub. Pol'y* 483 (2006) (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).

<sup>35</sup> The liability standards and principles discussed throughout this guidance would apply to HUD-assisted housing providers just as they would to any other housing provider covered by the Fair Housing Act. See HUD PIH Notice 2015-19 *supra* n. 25. Section 6 of that Notice addresses civil rights requirements.

<sup>36</sup> 24 C.F.R. § 100.500(c)(3); accord *Inclusive Cmty. Project*, 135 S. Ct. 2507.

#### D. Statutory Exemption from Fair Housing Act Liability for Exclusion Because of Illegal Manufacture or Distribution of a Controlled Substance

Section 807(b)(4) of the Fair Housing Act provides that the Act does not prohibit “conduct against a person because such person has been convicted ... of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).”<sup>37</sup> Accordingly, a housing provider will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.

*Limitation.* Section 807(b)(4) only applies to disparate impact claims based on the denial of housing due to the person’s *conviction* for drug manufacturing or distribution; it does not provide a defense to disparate impact claims alleging that a policy or practice denies housing because of the person’s *arrest* for such offenses. Similarly, the exemption is limited to disparate impact claims based on drug *manufacturing or distribution* convictions, and does not provide a defense to disparate impact claims based on other drug-related convictions, such as the denial of housing due to a person’s conviction for drug *possession*.

#### IV. **Intentional Discrimination and Use of Criminal History**

A housing provider may also violate the Fair Housing Act if the housing provider intentionally discriminates in using criminal history information. This occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic. In these cases, the housing provider’s use of criminal records or other criminal history information as a pretext for unequal treatment of individuals because of race, national origin or other protected characteristics is no different from the discriminatory application of any other rental or purchase criteria.

For example, intentional discrimination in violation of the Act may be proven based on evidence that a housing provider rejected an Hispanic applicant based on his criminal record, but admitted a non-Hispanic White applicant with a comparable criminal record. Similarly, if a housing provider has a policy of not renting to persons with certain convictions, but makes exceptions to it for Whites but not African Americans, intentional discrimination exists.<sup>38</sup> A disparate treatment violation may also be proven based on evidence that a leasing agent assisted a White applicant seeking to secure approval of his rental application despite his potentially disqualifying criminal record under the housing provider’s screening policy, but did not provide such assistance to an African American applicant.<sup>39</sup>

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<sup>37</sup> 42 U.S.C. § 3607(b)(4).

<sup>38</sup> *Cf. Sherman Ave. Tenants’ Assn. v. District of Columbia*, 444 F.3d 673, 683-84 (D.C. Cir. 2006) (upholding plaintiff’s disparate treatment claim based on evidence that defendant had not enforced its housing code as aggressively against comparable non-Hispanic neighborhoods as it did in plaintiff’s disproportionately Hispanic neighborhood).

<sup>39</sup> *See, e.g., Muriello*, 217 F. 3d at 522 (holding that Plaintiff’s allegations that his application for federal housing assistance and the alleged existence of a potentially disqualifying prior criminal record was handled differently than those of two similarly situated white applicants presented a prima facie case that he was discriminated against because of race, in violation of the Fair Housing Act).

Discrimination may also occur before an individual applies for housing. For example, intentional discrimination may be proven based on evidence that, when responding to inquiries from prospective applicants, a property manager told an African American individual that her criminal record would disqualify her from renting an apartment, but did not similarly discourage a White individual with a comparable criminal record from applying.

If overt, direct evidence of discrimination does not exist, the traditional burden-shifting method of establishing intentional discrimination applies to complaints alleging discriminatory intent in the use of criminal history information.<sup>40</sup> First, the evidence must establish a prima facie case of disparate treatment. This may be shown in a refusal to rent case, for example, by evidence that: (1) the plaintiff (or complainant in an administrative enforcement action) is a member of a protected class; (2) the plaintiff or complainant applied for a dwelling from the housing provider; (3) the housing provider rejected the plaintiff or complainant because of his or her criminal history; and (4) the housing provider offered housing to a similarly-situated applicant not of the plaintiff or complainant's protected class, but with a comparable criminal record. It is then the housing provider's burden to offer "evidence of a legitimate, nondiscriminatory reason for the adverse housing decision."<sup>41</sup> A housing provider's nondiscriminatory reason for the challenged decision must be clear, reasonably specific, and supported by admissible evidence.<sup>42</sup> Purely subjective or arbitrary reasons will not be sufficient to demonstrate a legitimate, nondiscriminatory basis for differential treatment.<sup>43</sup>

While a criminal record can constitute a legitimate, nondiscriminatory reason for a refusal to rent or other adverse action by a housing provider, a plaintiff or HUD may still prevail by showing that the criminal record was not the true reason for the adverse housing decision, and was instead a mere pretext for unlawful discrimination. 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 than the plaintiff or complainant is strong evidence that a housing provider was not considering criminal history information uniformly or did not in fact have a criminal history policy. Or pretext may be shown where a housing provider did not actually know of an applicant's criminal record at the time of the alleged discrimination. Additionally, shifting or inconsistent explanations offered by a housing provider for the denial of an application may also provide evidence of pretext. Ultimately, the evidence that may be offered to show that the plaintiff or complainant's criminal history was merely a pretextual

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<sup>40</sup> See, generally, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (articulating the concept of a "prima facie case" of intentional discrimination under Title VII); see, e.g., *Allen v. Muriello*, 217 F.3d 517, 520-22 (7th Cir. 2000) (applying prima facie case analysis to claim under the Fair Housing Act alleging disparate treatment because of race in housing provider's use of criminal records to deny housing).

<sup>41</sup> *Lindsay v. Yates*, 578 F.3d 407, 415 (6th Cir. 2009) (quotations and citations omitted).

<sup>42</sup> See, e.g., *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1039-40 (2d Cir. 1979) ("A prima facie case having been established, a Fair Housing Act claim cannot be defeated by a defendant which relies on merely hypothetical reasons for the plaintiff's rejection.").

<sup>43</sup> See, e.g., *Muriello*, 217 F.3d at 522 (noting that housing provider's "rather dubious explanation for the differing treatment" of African American and White applicants' criminal records "puts the issue of pretext in the lap of a trier of fact"); *Soules v. U.S. Dep't of Hous. and Urban Dev.*, 967 F.2d 817, 822 (2d Cir. 1992) ("In examining the defendant's reason, we view skeptically subjective rationales concerning why he denied housing to members or protected groups [because] 'clever men may easily conceal their [discriminatory] motivations.'" (quoting *United States v. City of Black Jack, Missouri*, 508 F.2d 1179, 1185 (8th Cir. 1974))).

justification for intentional discrimination by the housing provider will depend on the facts of a particular case.

The section 807(b)(4) exemption discussed in Section III.D., above, does not apply to claims of intentional discrimination because by definition, the challenged conduct in intentional discrimination cases is taken because of race, national origin, or another protected characteristic, and not because of the drug conviction. For example, the section 807(b)(4) exemption would not provide a defense to a claim of intentional discrimination where the evidence shows that a housing provider rejects only African American applicants with convictions for distribution of a controlled substance, while admitting White applicants with such convictions.

## **V. Conclusion**

The Fair Housing Act prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.

Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction. Where a policy or practice excludes individuals with only certain types of convictions, a housing provider will still bear the burden of proving that any discriminatory effect caused by such policy or practice is justified. Such a determination must be made on a case-by-case basis.

Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act.

Helen R. Kanovsky, General Counsel

# **EXHIBIT B**



## Crime Free Housing Program Welcome Letter

**CRIME.** What a wide range of emotions that is evoked at the mere mention of the word; fear, anger, frustration. Many people feel helpless, because too often crime is seen as an inevitable part of our society. It has been said, if a criminal wants to get you, he will get you. Helplessness and fear most often lead to **APATHY**. Citizens feel as though they have to live with it and just hope that they do not become a victim.

This way of thinking forces police to be more **REACTIVE** than **PROACTIVE**. Because many residents don't know how to deter crime, it starts to grow and flourish. Weeds in a lawn or garden are a good analogy. A weed that grows unchecked will set roots, sprout, and eventually choke out the healthy plants. The best way to stop weeds from destroying your lawn or garden is to stop them from taking root. This is the philosophy behind this program.

Historically, apartment complexes have been a playground for a host of criminal activity. The City of Roswell has approximately 30 apartment home communities. Because apartment living is mainly a state of transience, it is ideal for the criminal to do his deeds almost undetected. Neighbors come and go at an alarming rate when criminal activity is around, so it becomes difficult to know who belongs and who does not. Residents of apartment communities don't have a feel of ownership towards their community. Criminals can have anonymity. Crimes occur in apartment communities for these reasons and more. This causes the landlord to spend money repairing property damage due to criminal activity and evictions. This cost is, in turn, passed on to the tenants.

The **ROSWELL CRIME-FREE HOUSING PROGRAM** addresses these problems. The program is a three segment **PARTNERSHIP** between the apartment complex owners, tenants, and the Roswell Police Department. Our goal is to help our citizens take back their communities. The important part is that participation in this program is voluntary and not compulsory. However, statistics have shown vast differences in communities that participate versus those who do not. Introductory Membership is a three part process:

### **SEGMENT I:** Apartment Management & Owners

Citizens who live in apartments have the right to feel as safe as someone living in a single family dwelling. The apartment complex will have to go through three phases to be certified for Introductory Membership in the **ROSWELL CRIME FREE HOUSING PROGRAM:**

- **Phase I:** The community manager must complete the Crime Free Housing Program Application
- **Phase II:** Apartment Community agrees to use all standard Crime Prevention Standards introduced in the Crime Free Housing Program packet.
- **Phase III:** Community Manager agrees to participate in a **Crime Prevention Through Environmental Design (CPTED)** survey. The survey will concentrate on proven applications and theories involving the use of lighting, landscaping, surveillance, traffic



calming, and territorial reinforcement. The results of the survey will be furnished to the Community Manager highlighting areas of success and recommendations for improvement. This will make it harder for criminals to move around undetected.

- **Phase III:** Apartment Community Managers will be required to sign a Criminal Trespass Agreement with the Roswell Police Department. This will allow any sworn employee of the department to Criminally Trespass any person from the property found committing specific crimes who do not have a valid reason for being there (ie: residency).

### SEGMENT II: Tenant Application

As the apartment community managers work to create a safer environment for their tenants, the tenants will be required to go through a strict screening process. As stated before, don't let the weeds in your garden. Perspective tenants will be required to have a **Criminal Background Check**, as well as the traditional credit check. If a person applying for tenancy has been convicted of a **violent felony**, he/she will be turned away. If the person has been convicted of a **non-violent felony**, 10 years must pass before the application is considered. \*\*The complete list of disqualifications can be found in the Crime-Free Housing Program packet.

Once the person has been accepted as a tenant, he/she will then be required to sign a **Crime Deterrence Lease Addendum** stating they will not voluntarily bring criminal activity to the premises. This means the tenant is responsible for the activities of their guest(s). Failure to abide by the stipulations set forth in the addendum can result in an eviction. All persons living in an apartment will be required to go through the same screening.

### SEGMENT III: Roswell Police Department

The Roswell Police Department, through the Crime Free Housing Officer, will track criminal activities in member complexes and aid the management to expedite evictions, find trouble spots, answer questions, and secure criminal histories. The police department will recommend, to those seeking an apartment, to look into living in a **Crime Free Housing Program** community. The Roswell Police Department will also conduct the CPTED inspections.

### THE PATH TO SUCCESS: Tiered Membership

Continued membership in the **Crime Free Housing Program** will result in progressive levels of certification. The levels of certification begin at Introductory and rise through the levels of Bronze, Silver, and Gold. At each level of certification, the program becomes progressively more difficult, but successful completion results in new strategies and a new display sign for your Community.



### **Bronze Level Member**

- Continuous membership for minimum of one (1) calendar year by the management company
- Community Managers must attend a four (4) hour Crime Prevention training block hosted by the Crime Free Housing Specialist
- Management must require the registration of all resident's vehicles for the property in a searchable database
- Management must pass a Crime Free Housing administrative spot inspection

### **Silver Level Member**

- Community must show a noticeable decrease in crime over a minimum one (1) calendar year period after achieving Bronze level membership
- Management must implement CPTED recommendations
- Community must host a "Safety Social" for their community with Community Relations Specialist(s) in attendance
- Community must hold quarterly or semi-annual Safety Council meetings with the Crime Free Housing Specialist

### **Gold Level Member**

- Community continues to show decrease in crime/criminal activity over minimum two (2) calendar years after achieving Bronze level membership
- Community Management has all employees take a two (2) hour Community Safety Seminar hosted by the Crime Free Housing Specialist

Gold Level Members will also receive the benefit of being listed on the Roswell Police Department preferred community listing, a ***GREAT*** advertising tool.

By working together it is possible to create a crime resistant neighborhood. The Roswell Police Department welcomes the chance to work with the public to create a model community. By keeping the criminal element from ***living and thriving*** in our neighborhoods we can, together, send them packing!

**Police Officer Mitchell Kiker**  
**Crime Free Housing**  
**W-(770) 640-4390**  
**gkiker@roswellgov.com**



# **EXHIBIT C**



CRIME DETERRENCE HOUSING ADDENDUM

FORM VALID FOR
GEORGIA APARTMENT
ASSOCIATION
MEMBERS ONLY

Addendum Date:

["Management"] [ ] as Owner of [ ] as Agent for the Owner of
["Community Name"] enters into this Crime Deterrence Housing Addendum to the Apartment Rental Contract with

["Resident"],

pertaining to Apt. No.

located at

[Address]. This addendum is part of the Apartment Rental Contract dated

[Date of Lease] and amends Paragraph 10 of the Apartment Rental Contract.

In consideration of the execution or renewal of a lease of the dwelling unit identified in the lease and at the bottom hereof, Management and Resident agree as follows:

- 1. Resident, any members of the resident's household, or a guest, or other person under the resident's control shall not engage in criminal activity, on or off the premises. For the purpose of this addendum, "criminal activity" includes Felony or Misdemeanor, as prescribed under the laws of the State of Georgia, or the United States (see O.C.G.A., Section 16-1-3), as outlined, but not limited to, the following: Stalking, Possession, Use, Sell of any amount of Marijuana; Possession, Use, Sell, or Manufacture of any illegal drug and/or Substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C., 302] or in O.C.G.A. Title 16, Chapter 13); any crime considered to be of a Sexual Nature (see O.C.G.A. Title 16, Chapter 6); Parties to a Crime (see O.C.G.A. 16-2-20); Criminal Attempt, Conspiracy, and/or Solicitation (see O.C.G.A. Title 16, Chapter 4); Crime(s) against a person (see O.C.G.A. Title 16, Chapter 5); Damage to and/or Intrusion upon Property (see O.C.G.A. Title 16, Chapter 7); Offenses Involving Theft (see O.C.G.A. Title 16, Chapter 8); Forgery and/or Fraudulent Practices (see O.C.G.A. Title 16, Chapter 9); Offenses Against Public Order and Safety (see O.C.G.A. Title 16, Chapter 11); Offenses Against Public Health and Morals (see O.C.G.A. Title 16, Chapter 12); Gang Activity (see O.C.G.A. Title 16, Chapter 15).
2. Resident, any member of the resident's household, or a guest, or other person under the resident's control, shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, on or off said premises.
3. Resident, or any member of resident's household will not permit the dwelling to be used for, or to facilitate, criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
4. Resident, or any member of resident's household, will not engage in the manufacture, sale, or distribution of illegal drugs at any location, whether on or off said property.
5. Resident, any member of resident's household, a guest, or other person under the resident's control shall not engage in acts of violence, or threat of violence, including, but not limited to, the unlawful display or discharge of firearms, on or near the dwelling unit premises.
6. Resident, or any member of resident's household, a guest, or other person under the resident's control shall not engage in criminal gang activity, as defined in O.C.G.A. Section 16-15-1, ET. Seq.
7. VIOLATION OF ANY OF THE ABOVE PROVISIONS IS A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE, AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF THE TENANCY.

A single violation of any of the provisions of this addendum shall be deemed a serious violation and is a material and irreparable breach of the lease. It is understood and agreed that a SINGLE violation shall be a good cause for immediate termination of the lease. Unless otherwise provided by law, proof of the violation SHALL NOT REQUIRE CRIMINAL CONVICTION, but shall be by a preponderance of the evidence.

- 8. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of the addendum shall govern.
9. This LEASE ADDENDUM is incorporated into the lease, or renewal thereof, executed or renewed at any time between Owner/Landlord/Lessor, and Resident/Lessee.

Name of Owner or Management Company Resident

Resident

By: Signature of Owner or Management Company Resident

As: (Title) Resident



# **EXHIBIT D**



## *Roswell Crime Free Housing Program*

### **Criminal History Disqualification Standards**

The following are the required standards for evaluation of criminal histories, as set forth by the Roswell Crime Free Housing Program. A **CONVICTION** of any of the following, showing up on a Criminal History, will be mandatory grounds for rejection of the application.

1. Any felony of a violent nature.
2. Any felony, of a non-violent nature, under twenty (20) years.
3. Two or more felonies, of a non-violent nature, total.
4. Probation / parole, for a non-violent felony, within past ten (10) years.
5. Any misdemeanor conviction within past three (3) years. (Can be waived by CFHP Officer)
6. Four or more misdemeanor convictions total. (Can be waived by CFHP Officer)
7. Active parole / probation status.
8. Active warrants.
9. Sexual offender / predator registry requirement.