

# Tenant-Landlord Law and the Application Process

Tenant Resource Center

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# Application Criteria

**Landlords can set their own application criteria**, as long as it is not discriminatory or retaliatory. They often have criteria around:

- Rental history, including payment history, and landlord references
- Eviction history
- Criminal history (more about this in Fair Housing)
- Income amount
- Credit history

## **Credit reports less than 30 days old:**

- When landlords run credit checks on prospective tenants, they are generally allowed to charge for those credit checks (see more under Earnest Money)
- However, if a tenant offers a credit report that is 30 days old or less, landlords cannot charge for that credit check fee

**Resources:** [TRC Preparing to Rent page](#)

# Earnest Money

**Definition:** the name for any kind of money paid before a lease is signed in order to have an application considered by a landlord.

**Other names for earnest money:** application fee, nonrefundable application fee, hold money, security deposit. However, this is all earnest money, and subject to the same laws.

## **Earnest money must be:**

- Returned, if the landlord rejects the applicant,
- Returned or transferred to the security deposit, if the landlord accepts the applicant as a tenant and the applicant chooses to rent
- Returned with some deductions,\* if the landlord accepts the applicant and the applicant chooses not to rent

## **Only allowable nonrefundable fees:**

- up to \$25 for a credit check, and
- up to \$25 for background checks for out-of-state applicants

\* **Deductions** that are most often allowed are for advertising costs (if a landlord took an advertisement down, and needs to put it back up, for example). Landlords are not allowed to charge for their time in re-renting the unit.

**Amount:** Earnest money is not limited - it can be any amount. However, the amount cannot be charged in a discriminatory way towards applicants.

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**Timeline for returning** the earnest money:

- The landlord has 3 business days to make a decision, or up to 21 calendar days if the application allows that extension
- When a landlord makes a decision about an applicant, the money must be returned or converted into a security deposit by the end of the next business day

**If Earnest Money is not returned**, the applicant can:

- Sue for double the amount of the wrongfully withheld part of the earnest money
- Complain to the Dept. of Agriculture, Trade and Consumer Protection, which takes complaints about earnest money violations

**Resources:** [TRC Preparing to Rent page](#), [TRC Small Claims Court Tips](#), [DATCP complaint form](#)

# Disclosures

Things a landlord must disclose the following to a tenant before taking earnest money:

- If the lease and rules are in writing, “furnish for inspection” a copy of the lease and all written rules and regulations.
- Identify the unit (or units) for which the person is applying.
- Disclose documented code violations and any conditions affecting habitability of which the landlord has actual knowledge (including types of violations listed under [ATCP 134.04\(2\)b](#)).
- Disclose any non-refundable part of the earnest money
- Inform the applicant of any charges for water, heat or electricity not included in the rent.
- Inform the applicant if the dwelling units and common areas are not separately metered, and how the charges will be determined if not included in the rent

Things a landlord must tell a tenant when signing a lease:

- Owner contact information
- That the tenant has at least 7 days to fill out a check-in form, and the ability to request a list of deductions from the previous tenant’s security deposit
- Lead paint disclosures

# Fair Housing

## The Basics of Understanding Protected classes:

- Everyone is a member of all of these protected classes.
- Discrimination is when you're treated differently from other people because of your status as a member of a protected class
- Discrimination can come in many forms. *For Example: If a landlord asks for a \$30 application fee (which is really earnest money) from most applicants, but asks for \$300 for all applicants who have Section 8 vouchers, that's discrimination in Madison and Dane County. Not because asking for a \$300 application fee is illegal, but to make a decision about the amount based on a protected class is illegal.*
- Protected classes are enforced on the levels at which they are legislated, and also have exemptions at those levels.

For more information: [TRC's Discrimination Page](#)

<u>Federal</u>	<u>Wisconsin</u>	<u>Dane County</u>	<u>City of Madison</u>
<p>Color, Disability, Familial Status, National Origin, Race, Religion, Sex</p>	<p>Color, Disability, Familial Status, National Origin, Race, Religion, Sex</p> <p>As well as: Age (18+), Ancestry, Lawful Source of Income, Marital Status, Sexual Orientation, Status as a Victim of Domestic Abuse/Sexual Assault/Stalking, and some Gender Identity*</p> <p>* Gender Identity: Local protections for Dane County and Milwaukee County, and the cities of Madison, Milwaukee, Appleton, Cudahy, Janesville, and Sun Prairie.</p>	<p>Color, Disability, Familial Status, National Origin, Race, Religion, Gender</p> <p>As well as: Age (18+), Ancestry, Lawful Source of Income, Marital Status, Sexual Orientation, Status as a Victim of Domestic Abuse/Sexual Assault/Stalking, Gender Identity</p> <p>As well as: Citizenship status, Domestic Partnership Status, Receipt of Rental Assistance (Section 8), Appearance/Physical Appearance, Student Status, Political Beliefs, Genetic Identity</p> <p>As well as: Physical Condition, Mental Illness, Military Discharge Status,</p>	<p>Color, Disability, Familial Status, National Origin, Race, Religion, Sex</p> <p>As well as: Age (18+), Ancestry, Lawful Source of Income, Marital Status, Sexual Orientation, Status as a Victim of Domestic Abuse/Sexual Assault/Stalking, Gender Identity</p> <p>As well as: Citizenship status, Domestic Partnership Status, Receipt of Rental Assistance (Section 8), Appearance/Physical Appearance, Student Status, Political Beliefs, Genetic Identity</p> <p>As well as: Handicap, Less than Honorable Discharge, Homelessness, Non-religion or Atheism, Unemployment</p>

# Protected Classes



# Renting to Minors

## Basics:

- **There is no such thing as an “emancipated minor” in Wisconsin.** So, there is no official legal documentation which allows or prevents a landlord from signing a rental contract with a minor.
- **Landlords are legally allowed to rent to minors if those minors are “contracting for a necessity.”** Generally, this means that they’d be homeless without the housing provided by the landlord.
- **Landlords are not required to rent to minors.** Age discrimination is only illegal when choosing between people based on their ages, if those ages are 18 or older.
- **Landlords are allowed to use their regular application criteria** (or better yet, tiered application criteria) when deciding whether or not to rent to a minor.
- **Minor tenants and landlords are encouraged to re-sign the lease with the tenant turns 18.**

# Fair Housing: Criminal History

On April 4, 2016, HUD released "[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.](#)"

This HUD document establishes the argument for saying that certain screening policies based on criminal history are discriminatory, based on race.

**The basic premise of the HUD Guidance is:**

In the US, African Americans and Hispanics are arrested, convicted and incarcerated at a rate disproportionate to the general population.

**"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."**

Therefore, any policy that screens housing applicants based on their criminal history is likely to have a "disproportionate impact on minority home seekers," even if the landlord had no intent to discriminate.

Since disproportionate impact and disparate impact are the bases by which things can be legally classified as discriminatory, this is significant.

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The HUD Guidance is says that any screening policy based on criminal history should follow this criteria:

## The policy can't:

- Deny all tenants with any kind of criminal conviction.
- Deny tenants who have only been arrested, not convicted.
- Make any decisions to deny based on criminal history or make exceptions to criminal history denials based on race, or other protected classes. (That's illegal). *For example, looking at the criminal history of only Hispanic applicants would be illegal. Or, allowing exceptions to a criminal history policy, but only to White applicants, would be illegal.*

## The policy should:

- Take into account how long ago the conviction was.
- Distinguish between how severe past crimes were, and what kinds of crimes they were.
- Have some kind of evidence-based justification for existing. *Why does the landlord need the policy? What evidence contributed to establishing that need?*

Resources: [TRC Blog Post for Landlords](#) & [TRC Blog Post for Tenants](#)

# Fair Housing: How to Respond to Discriminatory Application Rejections

## How a Tenant Might Challenge a Discriminatory Screening Policy:

1. **Apply.** A tenant applies for housing.
2. **Get rejected.** The landlord denies the tenant.
3. **Ask for the reason for rejection.** Either ask for a written rejection, or if you get a verbal one, write it down and send it. The landlord is not required to give this to the applicant, but you can always ask.
4. **Ask the landlord for their application eligibility criteria or criminal history screening policy,** if the landlord says the rejection is due to one of those. Do this in writing. The landlord is not required to give this to you, but you can ask.
5. **Challenge the policy as being discriminatory.** If the rejection is due to your status in one of the protected classes, you can go to an enforcement agency. If the rejection is due to criminal history, then explain, in writing, that this policy doesn't conform to HUD's guidance on use of criminal records using specific HUD citations.

# Fair Housing: How to Respond to Discriminatory Application Rejections

## How a Tenant Might Challenge a Discriminatory Screening Policy, continued:

6. For criminal history disputes, **landlords have the option to respond to discrimination concerns**, and explain why their policies are necessary. HUD says, "a housing provider must... 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."
7. At that point, there are **two choices**:
  - Option A.** If the landlord doesn't explain why the policy is necessary (either they don't say anything, or their explanation doesn't meet the standard in #6), then escalate by making a Fair Housing complaint to an enforcement agency.
  - Option B.** If the landlord does successfully explain why the policy is necessary, you can still challenge the policy by showing that the landlord could have had the same results with another policy that is less discriminatory. HUD says, "the burden shifts back to the plaintiff [that's the tenant in this situation] or HUD to prove that such interest could be served by another practice that has a less discriminatory effect."

# Fair Housing: Enforcement Agencies

## Enforcement Agencies:

- **City of Madison:** [City of Madison Department of Civil Rights](#)
- **Dane County:** [Dane County Corporation Counsel](#)
- **Wisconsin:** [State of Wisconsin Equal Rights Division](#) and State Courts
- **Federal level:** [Housing and Urban Development Fair Housing Enforcement](#) and the Federal Courts

For help around Wisconsin, contact the [Fair Housing Council](#). They help both tenants and landlords understand how to comply with fair housing law.

# Tiered Application or “B” Criteria

One way a landlord can avoid discrimination, but still have useful application criteria, is by instituting a tiered system.

Here are some components of tiered application eligibility:

- **A landlord would likely still have their top criteria:** perhaps perfect credit, perfect housing history, triple the income necessary to pay for the unit, etc.
- However, **the landlord might also have secondary criteria:** they'd be willing to accept someone with low credit as long as they pay a higher security deposit
- **There could be many levels below that:** a landlord might ask for a cosigner if there's poor housing history, or if there's a concern about criminal history related to housing (triggered by a non-discriminatory criminal history screening policy).

**The important components of these tiered policies are:**

- **The policy is available to all** (not just available to members of some protected classes) to use and understand
- The reasons which cause someone to be accepted or denied are **not reasons based on an applicant's status as a member of a protected class**
- The less-than-perfect applicants **are offered ways to make the landlord feel comfortable** renting to them

# Tenant Resource Center

## Contact us:

- By Phone: 608-257-0006
- By Email: [asktrc@tenantresourcecenter.org](mailto:asktrc@tenantresourcecenter.org)
- By Stopping by:
  - **Main Office**, located in the Social Justice Center. Mon - Fri 9am - 6pm (no appointment necessary). 1202 Williamson Street, Suite 102, Madison, WI 53703
  - **Campus Office**, located in the Student Activity Center. Hours vary by semester (no appointment necessary). 333 East Campus Mall, Room 3156 Madison, WI 53703

## For more information:

So much information is on our website, about many tenant-landlord issues:

<http://www.tenantresourcecenter.org>