



# Cook County Commission on Human Rights

## Just Housing Amendment Frequently Asked Questions for Landlords\*

### 1. Why did the Cook County Board of Commissioners pass the Just Housing Amendment (JHA) to the Human Rights Ordinance?

In most cities, people with any kind of criminal record, even just an arrest, can be unfairly denied housing. The JHA was passed to help these individuals access safe, stable and affordable housing. The JHA:

- 1) Prohibits landlords from denying a housing application based on juvenile or adult arrest records; and
- 2) Requires that landlords considering an individual's covered criminal history perform an individualized assessment prior to denying any application for housing.

### 2. What is an individualized assessment?

An individualized assessment is a questionnaire that considers all relevant factors from an individual's conviction in the previous three (3) years. The following list provides a list of factors that can be considered. This list does not include all factors a landlord can consider.

- The nature and severity of the criminal offense and how recently it occurred.
- The nature of the sentencing.
- The number of criminal convictions.
- The length of time that has passed since the applicant's most recent convictions.
- The age of the individual at the time the criminal offense occurred.
- Evidence of rehabilitation.
- The individual history as a tenant before and/or after the conviction.
- Whether the criminal conviction(s) was related to the applicant's disability.
- If the applicant is a person with a disability, whether any reasonable accommodation could be provided to lessen any demonstrable risk.

### 3. When does the JHA go into effect?

The JHA went into effect on January 1, 2020. However, the Cook County Board of Commissioners has delayed enforcement of the Amendment until after January 31, 2020.

### 4. Who does the JHA apply to?

It applies to persons engaged in "real estate transactions." Real estate transactions include the sale, rental, lease, and sublease renewal of residential properties.

### 5. Can having a criminal background result in automatic denial of a housing application?

No. A landlord cannot consider criminal history that is more than three (3) years old.

\*See Part 700 of the Cook County Just Housing Interpretive Rules for more information.

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### 6. Are there any exceptions to the Just Housing Amendment?

Yes. A landlord may deny an applicant for a new lease or lease renewal of residential properties based on any of the following:

- The applicant or a household member is a current sex offender required to register under the Sex Offender Registration Act (or similar law in another jurisdiction);
- The applicant or a household member is a current child sex offender under residency restriction; or
- The applicant or a household member has a criminal conviction from the past three years. Before denying the application, the landlord must first perform an individualized assessment, and show denial based on a criminal conviction is necessary to protect against a demonstrable risk to personal safety and/or property.

### 7. May I say, “no sex offenders” or something similar when advertising for the unit?

No. However, it is lawful to say, “no registered sex offenders or persons under a current child sex offender residency restriction.”

### 8. What can I no longer say when advertising for the unit?

Landlords may not say “no felons,” “no sex offenders,” “no convicted drug dealers,” “no criminal history,” or “no arrest history.”

### 9. Are landlords required to conduct criminal background checks?

No, the JHA does not require landlords to conduct a criminal background check.

### 10. If an applicant was arrested but not convicted in the past three (3) years, can the arrest be a basis for denying the housing application?

No. Arrests and convictions are very different. An arrest without a conviction cannot be considered when evaluating rental applications.

### 11. What are the new and/or different requirements for processing housing applications?

Landlords can **no longer include a check box** on housing applications that asks whether an applicant has a criminal background.

Before accepting an application fee, a landlord or landlord must provide the following information:

- Tenant Selection Criteria, which describes how an applicant will be evaluated.
- Notice of the applicant’s right to dispute inaccuracies relevant to criminal history and to provide evidence of rehabilitation or other mitigating factors related to their criminal background.
- A copy of Part 700 of the Commission’s procedural rules or a link to the Cook County Commission on Human Rights’ website, with the address, email address, and phone number of the Commission.

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### 12. What is the process required by the JHA tenant screening process?

#### **Step One: Prequalification**

During this step, a landlord may screen a tenant to determine whether the tenant satisfies all the application criteria such as income, rental history, credit score, pets, etc. Criminal background checks cannot be performed during Step One.

When this first step is completed, the landlord must either: 1) pre-qualify the applicant based on all criteria except those related to criminal history; or 2) deny the application based on failure to satisfy the prequalification criteria.

#### **Step Two: Criminal Background Check**

Only after the landlord prequalifies an applicant may a landlord conduct a criminal background check and individualized assessment.

#### **Step Three: Approval or Denial and Right to Dispute**

### 13. If I have two applicants apply on the same day and both are “pre-qualified,” may I select the one without a criminal record?

No, denial of a housing application cannot be based on an applicant’s criminal history prior to completing the two-step process and individualized assessment.

### 14. What if my municipality also has a crime free or housing nuisance ordinance?The Commission encourages landlords and housing providers to seek legal guidance on how a crime free or nuisance law in their municipality interacts with the JHA. A determination of whether a specific crime free or nuisance law impacts the JHA requires an individualized review of the relevant law's provisions.

### 15. Do I have to hold a unit off the market while an applicant disputes?

No. You do not have to hold a unit off the market.

### 16. Is the landlord required to consider evidence of rehabilitation when completing an individualized assessment?

Yes. The following are examples of evidence of rehabilitation:

- Completion of a returning citizens program.
- Job readiness training.
- Supportive services that assist with the transition back to society.
- Completion of a GED or other education programs.
- Report from correctional facility.
- Employment.
- Personal recommendations.

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### **17. May a landlord verify any evidence of rehabilitation?**

Yes, however, a landlord must still complete the evaluation and then approve or deny a housing application within three (3) business days as required by the JHA.

### **18. What happens if the criminal background check reveals a conviction from the last three (3) years?**

The JHA requires the landlord to complete an individualized assessment before denying housing. Landlords cannot consider convictions more than three (3) years old.

### **19. Does an applicant who is denied housing have the right to dispute the information contained in the criminal background check?**

Yes. The JHA includes Conviction Dispute Procedures as described below.

Within five (5) business days of receiving a criminal background check, the landlord must deliver a copy to the applicant. A copy of the background check can be delivered in person, by certified mail, or by text or email.

Once the applicant receives the results of the background check, the applicant has five (5) business days to provide evidence that disputes the accuracy or relevance of information related to the criminal background check.

The landlord then has three (3) business days from receipt of the dispute information to accept or deny the application.

### **20. How does a landlord provide notice of its final decision?**

The landlord has three (3) business days from receipt of the dispute information to accept or deny the application.

Any denial of a housing application or continued lease based on a conviction must be in writing and provide the applicant with an explanation of why the application denial was necessary to protect against a demonstrable risk of harm to personal safety and/or property.

### **21. What if an applicant does not challenge the accuracy or relevance of convictions?**

Even if the applicant does not challenge the accuracy or relevance of his/her convictions, the landlord must still conduct an individualized assessment.

A landlord is not required to conduct an individualized assessment when the applicant is a sex offender or child sex offender under residency restrictions.

A landlord can only deny the housing application after reviewing the applicant's convictions from the past three years and determining the applicant poses a demonstrable risk.

### **22. What are the penalties for violating the JHA?**

For cases investigated by the Cook County Commission on Human Rights, the penalties for violating the Just Housing Amendments may include complainant's compensatory damages and attorney fees and Commission fines.