

Survivors with Criminal Records Applying for Housing

Can landlords find out if I have a criminal record?

- Yes, criminal records are usually public, so landlords can look up your criminal record.
- Many landlords use consumer reports to help choose their tenants.¹ Consumer reports can be tenant screening reports and background checks and often have information about criminal history.

What criminal information can be on my consumer reports?

- Consumer reports may have information about convictions when your disposition, release, or parole was in the last seven years.² A disposition is the final resolution or outcome of a criminal case.
- Reports should not have information about arrests, indictments, or misdemeanor complaints that did not result in a conviction and convictions that were fully pardoned.³ This means a consumer report can show arrests, indictments, and misdemeanor complaints for ongoing criminal cases, but the information should be removed if the case ends without a conviction.

May a landlord use my criminal record when deciding to rent to me?

- A landlord may use your criminal record to help them decide if they will rent to you. However, landlords may not:
 - Automatically ban everyone with a criminal record;⁴ or
 - Have a criminal record screening policy or practice that has an unjustifiable discriminatory effect on people who share a certain protected characteristic or trait (like race, gender, disability etc.).⁵

¹ Learn more about consumer reports with FVAP's information sheet at <https://fvaplaw.org/resource/credit-consumer-reports-info-for-survivors-looking-for-housing/>

² Civ. Code, §§ 1785.13 subd. (a)(6); 1786.18, subd. (a)(7); *Kemp v. Superior Court* (2022) 86. Cal.App.5th 981, 992.

³ Civ. Code, § 1785.13 subd. (a)(6); 1786.18, subd. (a)(7).

⁴ Cal Code Reg. Tit. 2, §§ 12269 (a)(5).

⁵ Cal Code Reg. Tit. 2, §§ 12265. Sex, gender, gender identity, gender expression, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, genetic information, source of income, veteran or military status are protected characteristics. (Gov. Code, § 19255.)

Can a landlord deny my application because of any criminal record?

- No, landlords should not refuse to rent to an applicant based on:⁶
 1. Criminal history that did not result in a criminal conviction.
 2. Any infraction or criminal conviction – which includes guilty pleas and no contest pleas – that was sealed, dismissed, vacated, expunged, invalidated, pardoned, or otherwise no longer legally recognized or for which you received certificate of rehabilitation⁷.
 3. Any criminal history from the juvenile justice system unless the housing provider must do so because of a court order.

How may a potential landlords use my criminal record?

- When reviewing your rental application, the landlord should only consider criminal convictions that directly relate to your ability to be a good tenant.⁸
- Also, landlords should consider mitigating information about your criminal history.⁹

What is “mitigating information” about my criminal history?

- Mitigating information is reliable information that helps show your criminal conviction is not related to your ability to be a good tenant.
- Mitigating information can be:
 1. You have a criminal history because you experienced domestic violence, sexual assault, dating violence, stalking, or similar.
 2. Your conviction was from a while ago.
 3. Your conviction is from when you were a minor or young adult.
 4. You have a good tenant history.
 5. You have “evidence of rehabilitation efforts.” For example, you completed parole or probation or maintained steady employment.
 6. You have a criminal history because of your disability and there is little chance you will do the same thing again.¹⁰

⁶ Cal. Code Reg. Tit. 2, § 12269 (a).

⁷ Applies to certificates of rehabilitation granted pursuant to Penal Code § 4852.01 et seq.

⁸ Cal. Code Reg. Tit. 2, §§ 12266 & 12269 (a)(5).

⁹ Cal. Code Reg. Tit. 2, § 12266 (d) & (e).

¹⁰ Cal. Code Reg. Tit. 2, § 12266 (e).

What laws can help me get rental housing when I have a criminal conviction because I experienced abuse?

- Under California law it is illegal for landlords to reject a housing application or offer an applicant worst lease terms because the applicant, their household member or immediate family member experienced abuse or violence.¹¹ Learn about this in [Legal Rights of Survivors Applying for Housing](#).¹²
- Under California regulations information showing you have a conviction because you experienced abuse is mitigating information landlords should consider when considering your criminal history.¹³
- The Violence Against Women Act bans most federally subsidized housing providers from denying housing to a qualified applicant because they experienced domestic violence, sexual assault, dating violence or stalking.¹⁴ Meaning your housing application shouldn't be denied because of a criminal history caused by abuse. Learn about this in [Legal Rights of Survivors Applying for Subsidized Housing](#).¹⁵

Will I know if a landlord denied my application because of my criminal record?

- Maybe. Before a landlord denies you housing because of your criminal record, they should ask you for mitigating information. If they asked for mitigating information then denied your application, you know you were likely denied because of your criminal record.¹⁶
- A landlord must tell you if they deny your housing application because of your criminal history when they *learned about it in a consumer report*.¹⁷
- If your application is denied and you do not know why, ask the landlord why they decided not to rent to you.

¹¹ Abuse or violence is domestic violence, sexual assault, stalking, human trafficking, elder or dependent adult abuse, crime that caused injury, crime that involved a gun or other deadly weapon, crime that involved force or threat of force. Civ. Code, § 1946.9.

¹² <https://fvaplaw.org/resource/legal-rights-of-survivors-applying-for-housing/>

¹³ Cal. Code Reg. Tit. 2, § 12266 (e).

¹⁴ 34 U.S.C. § 12491(b).

¹⁵ <https://fvaplaw.org/resource/legal-rights-of-survivors-applying-for-subsidized-housing/>

¹⁶ Cal Code Reg. Tit. 2, § 12266, subd. (d).

¹⁷ 15 U.S.C. § 1681m (a); Civ. Code, §§ 1785.20, subd. (a), 1786.40, subd. (a); Cal Code Reg. Tit. 2, § 12269, subd. (c).

What can I do if my housing application is illegally rejected because of my criminal record?

1. **Find legal help.** Find your local legal aid at www.lawhelpca.org. You may take the steps below without an attorney.
2. **Assert your rights by educating your landlord.** With or without legal help, you can assert your rights with one of the template letters listed below. Each template tells the landlord to follow different laws about criminal histories. Access each temple by clicking on its name.
 - [Private Housing & Criminal Convictions](#): For people denied rental housing because of a criminal conviction.
 - [Illegal Use of Criminal History](#): For people denied rental housing because the landlord considered criminal history they were not allowed to consider.
 - [Survivor's Legal Protections in Housing Screenings](#): For people whose housing application was denied or were offered worst lease terms because they, or their household or immediate family member experienced abuse or violence.
 - [Demand a VAWA Covered Housing Provider Rethink Your Denied Application](#): For people denied federally subsidized housing for having a criminal history, when they have a criminal record because they experienced domestic violence, dating violence, stalking and sexual assault abuse.
3. **Filing a complaint against the landlord.**
 - You may file a complaint with California's Civil Rights Department (CRD) if the housing provider violated fair housing laws. Learn about CRD's complaint process at <https://calcivilrights.ca.gov/complaintprocess/>.
 - You may also sue the housing provider for violating the law.

Template Private Housing & Criminal Convictions:

Instructions

1. You can download this template in a word document by clicking this [link](#).
2. Delete instructions, highlights and brackets i.e. [] before giving your letter to the landlord.
3. Fill out the highlighted sections.
4. Date and sign the letter.
5. Save a copy or picture of the letter and attachment(s) for your records.
6. Give or send the completed letter and attachment(s) to the landlord.
7. If the landlord does not respond to you, reach out to them.

[Insert Date]

[Property Manager/Landlord]

[Property Manager/Landlord Address]

[Property Manager/Landlord Addressee's Address]

Re: Criminal History and Rental Application

Dear [Property Manager/Landlord]:

On [insert date], I applied to be a tenant at [insert address]. My application was denied because I have a criminal history. Because of the reasons explained below I respectfully request you re-consider my tenancy application.

California law prohibits landlords from blanketly denying tenant applicants because they have criminal histories. (Cal. Code Regs., tit. 2, § 12269, subd. (a).) If a landlord considers an applicant's criminal history, they may only look at criminal convictions that were *not* sealed, dismissed, vacated, expunged or otherwise rendered inoperative. (*Id.*) Additionally, when assessing a criminal history, the housing provider may only consider an applicant's criminal convictions to the extent they show the applicant would not be a good tenant. (*Id.* at § 12266, subd. (b)-(c).) Landlords must also consider mitigating information that shows the applicant would be a good tenant, regardless of the criminal conviction. (*Id.* at § 12266.) California law gives examples of mitigating information that decrease the chance that an applicant's criminal conviction indicates that they would be a bad tenant. (*Id.* at § 12266, subd. (e).) Mitigation information includes:

- The crime occurred a long time ago and/or the applicant was a minor or young adult when they were convicted.
- The applicant has a good tenant history.

- The applicant has a criminal history because they experienced domestic violence, sexual assault, stalking, dating violence or similar types of crime.
- The applicant has evidence of rehabilitation, for example, they completed parole or probation, or are maintaining steady employment.
- The applicant has a criminal history because they have a disability, or a reasonable accommodation could reduce or eliminate risk of the behavior that resulted in the criminal conviction. (*Id.*)

If the applicant gives the landlord mitigating information, the criminal conviction should not cause the landlord to deny the application.

My criminal history does not indicate that I will be a bad tenant. Also, I have mitigation information that shows I will be a great tenant. [Explain why criminal history does not show that you would be a bad tenant and why you would make an excellent tenant. Example:

- I have a criminal history because I experienced domestic violence. The person who abused me forced and coerced me to commit the crime. Having a criminal history because I experienced abuse is mitigating information that shows my criminal history does not diminish my ability to be a good tenant.
- I have this criminal history, but I am a changed person. I have not done anything criminal for a long time. I pay my rent timely, am a courteous neighbor and do not want to be around crime.]

Thank you for the opportunity to explain my criminal history and reconsidering my application. [OPTIONAL: If you still decide to decline my application, I have several legal remedies, including filing a complaint with the California Civil Rights Department for violations of California's Fair Employment and Housing Act. To avoid liability please reconsider my housing application.]

Sincerely,

[Survivor/Applicant's Signature]_____

[Survivor/Applicant's Name Printed]

Attachment(s): [Attach documents that support your claims. For example, a restraining order, letters from previous landlords or neighbors, bank statements showing rent payments, letter from a DV advocate etc.]

Template Illegal Use of Criminal History

Instructions

8. You can download this template in a word document by clicking this [link](#).
9. Delete instructions, highlights and brackets i.e. [] before giving your letter to the landlord.
10. Fill out the highlighted sections.
11. Date and sign the letter.
12. Save a copy or picture of the letter and attachment(s) for your records.
13. Give or send the completed letter and attachment(s) to the landlord.
14. If the landlord does not respond to you, reach out to them.

[Insert Date]

[Property Manager/Landlord]

[Property Manager/Landlord Addressee]

[Property Manager/Landlord Addressee's Address]

Re: Illegal Use of Criminal History

Dear [Property Manager/Landlord]:

On [insert date], I applied to be a tenant at [insert address]. My application was denied because I have a criminal history. Because landlords are not supposed to consider my type of criminal history when deciding when to rent to someone, I respectfully request you re-consider my tenancy application.

To ensure all communities have equal access to housing, California law prohibits housing providers from blanketly denying tenant applicants because they have criminal histories. (Cal. Code Regs., tit. 2, § 12269, subd. (a).) This means housing providers cannot ban all individuals with a criminal record, all individuals with prior convictions all individuals with prior misdemeanors, or all individuals with prior felonies. (*Id.* at § 12269, subd. (a)(5).) Housing providers that consider criminal histories may only consider an applicant's criminal convictions to the extent they show the applicant would not be a good tenant. (*Id.* at § 12266, subd. (b)-(c).) The housing provider may not deny someone housing because of an arrest that has not resulted in a criminal conviction, or information that shows law enforcement questioned, detained, or held the applicant for investigation. (*Id.* at § 12269, subd. (a)(1).) Also, housing providers may not deny someone housing because of criminal convictions that were sealed, dismissed, vacated,

expunged, otherwise rendered inoperative or adjudications in the juvenile justice system. (*Id.* at § 12269, subd. (a)(3)-(4)).

My tenancy application was rejected because I was [state criminal history], which you considered in violation of California law. [OPTIONAL: Explain why you would be a good tenant. Examples, I always pay my rent on time, I will not bother other tenants, I am quite, I have stable employment history, etc.]

Thank you for the opportunity to explain my criminal history and reconsidering my application. [OPTIONAL: If you still decide to decline my application, I have several legal remedies, including filing a complaint with the California Civil Rights Division for violations of California's Fair Employment and Housing Act. To avoid liability please reconsider my housing application.]

Sincerely,

[Survivor/Applicant's Signature]_____

[Survivor/Applicant's Name Printed]

Attachment(s): [Attach documents that support your claims. For example, letters from previous landlords or neighbors, bank statements showing rent payments, letter from a DV advocate etc.]]