



Consumer Protections in Admissions Cases

Ariel Nelson (NCLC)

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November 13, 2023

- Many landlords use reports purchased from specialized tenant screening companies
- Typical info on tenant screening reports includes:
 - Credit header info (e.g., address history, names)
 - Credit report (resold from one of the Big Three credit bureaus)
 - Background check info (criminal records, sex offender registry info, OFAC list info)
 - Housing court records (e.g., eviction records)
 - When available, rental history info
 - Income/employment verification
 - Recommendations

Some major tenant screening companies:

- Experian RentBureau
- TransUnion Rental Screening Solutions (a.k.a TransUnion SmartMove)
- SafeRent Solutions, LLC
- AppFolio, Inc.
- Leasing Desk (a RealPage Product)
- RP On-Site, LLC (a RealPage Product)
- Rentspre
- RentPrep
- TurboTenant
- First Advantage
- National Tenant Network
- RentGrow Inc. / Yardi Systems, Inc.
- See CFPB List (pp. 20–25; not exhaustive)

TENANT SCREENING REPORT

APPLICANT SUMMARY

APPLICANT INFORMATION

NAME

JOHN APPFOLIO

SSN	XXX-XX-1234	✓ VERIFIED
DOB	04/06/1975	
CURRENT ADDRESS	1951 MADISON ST., WITCHITA, KS 87278	
PREVIOUS ADDRESS	1016 HILL ST. TOPEKA, KS 66614	

CREDIT SUMMARY

FICO Score

480

The credit report includes 3 potentially negative items.

TRADES	ESTIMATED MONTHLY PAYMENT	DELINQUENCY HISTORY (2 YEAR)	COLLECTION ACCOUNTS
TOTAL 9	\$406	30+ DAYS 10	0
OPEN 0		60+ 10	
NEGATIVE 3	TOTAL PAST DUE AMOUNT \$880	90+ 5	COLLECTIONS BALANCE \$0

NEGATIVE TRADES SUMMARY (3)

CREDITOR	TYPE	LAST UPDATED	STATUS	HIGH BALANCE	PAST DUE AMOUNT	CURRENT BALANCE
BANK OF AMERICA	Revolving	01/12/2013	Past Due	\$3,173	\$468	\$3,173
BANK OF AMERICA	Revolving	01/27/2013	Past Due	\$2,706	\$289	\$2,706
CHASE	Revolving	02/04/2013	Past Due	\$8,200	\$123	\$1,789

RENT PAYMENT SUMMARY



4

The RentBureau report includes 4 potentially negative items.

TOTAL PROPERTIES

4

TOTAL NEGATIVE ITEMS

4

PAYMENT HISTORY (2 YEAR)

On-time 14

Delinquent 2

Write-offs 2

TOTAL AMOUNT OUTSTANDING

\$3,700

NEGATIVE TRADES SUMMARY (4)

CREDITOR	DATE	STATUS	TOTAL OUTSTANDING
Apartment Company	07/27/2012	Write-Off	\$500
Compliant Homes of Tomorrow	01/27/2012	Write-Off	\$1,100
Collection Agency Name	08/05/2012	In Collections	\$1,000
Collection Agency Name	03/07/2012	In Collections	\$1,100

[Showing 4 of 4](#)

EVICITION HISTORY



2

2 events reported.

FILING DATE	JUDGEMENT AMOUNT	ADDRESS	PLAINTIFF
09/16/2013	\$683	11459 N 28TH DR WITCHITA, KS 67278	REAL ESTATE, LLC
03/11/2011	\$0	8450 N 67TH AVE #207 WITCHITA, KS 67278	ONCE PROPERTY MGMT

CRIMINAL HISTORY



5+

5 or more events
reported.

DATE	OFFENSE	COURT/LOCATION	DISPOSITION
10/23/2013	VICTIM OVER 65 ENHANCEMENT	KS DEPT OF CORRECTIONS, KS	CONVICTED
10/23/2013	BATTERY CAUSING SUBST HARM	KS DEPT OF CORRECTIONS, KS	CONVICTED
10/23/2013	GRAND LARCENY	KS DEPT OF CORRECTIONS, KS	CONVICTED
10/23/2013	FRAUDULANT ACTION TO OBTAIN WELFARE	KS DEPT OF CORRECTIONS, KS	CONVICTED

[Showing 4 of 5 or more](#)

REPORT DETAILS

INFORMATION REPORTED BY EXPERIAN

701 Experian Parkway
P.O. Box 2002
Allen, TX 75013

Phone: 1-888-397-3742

<http://www.experian.com/reportaccess>

APPLICANT	JOHN APPFOLIO / JOHNATHAN APPFOLIO
DOB	04/06/1975
CURRENT ADDRESS	1951 MADISON ST., WITCHITA, KS 87278
PREVIOUS ADDRESS	1016 HILL ST. TOPEKA, KS 66614
PREVIOUS ADDRESS	
EMPLOYER	TARGET, INC.

FRAUD SEARCH

SSN Match	OK
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CREDIT SCORE FACTORS

Provided by Experian

CONTRIBUTING FACTOR 1	Serious delinquency and public record or collection filed
CONTRIBUTING FACTOR 2	Time since delinquency is too recent or unknown
CONTRIBUTING FACTOR 3	Number of accounts with delinquency
CONTRIBUTING FACTOR 4	Length of time accounts have been established

EVICTON AND CRIMINAL DATA SOURCES

Our nationwide criminal and eviction scans are pulled from hundreds of national, state and county courts across the U.S., including OFAC and Sex Offender Databases.

Please note that reporting of criminal and unlawful detainer records is based upon limited identification information and varies according to restrictions placed on reporting by the different court jurisdictions. While AppFolio has applied industry best practices in the attempt to accurately match and report the information, we cannot guarantee that the record match(es) definitively belong to the applicant. Because of this, it is highly recommended to cross-check against the applicant supplied information to verify the data prior to making decisions based on the data provided.

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EVICTIION SEARCH

1	DEFENDANT	APPFOLIO, JOHN (SSN: —)
	ADDRESS	11459 N 28TH DR., WITCHITA, KS 67278
	FILING DATE	09/16/2013
	CASE	763FAKE000
	COURT	KANSAS JUSTICE COURT
	JUDGEMENT AMOUNT	\$683
	NOTICE TYPE	CIVIL JUDGMENT
	PLAINTIFF	REAL ESTATE,LLC (Ph. —)

2	DEFENDANT	APPFOLIO, JOHN (SSN: —)
	ADDRESS	8450 N 67TH AVE., WITCHITA, KS 67278
	FILING DATE	03/11/2011
	CASE	222FAKE00
	COURT	KANSAS JUSTICE COURT
	JUDGEMENT AMOUNT	\$0
	NOTICE TYPE	FORCIBLE ENTRY/DETAINER
	PLAINTIFF	ONCE PROPERTY MANAGEMENT

CRIMINAL SEARCH

	FULL NAME	DATE	OFFENSE	CATEGORY	COURT/ LOCATION	DISPOSITION
1	JOHN APPFOLIO DOB: 04/06/1975	10/23/2013	VICTIM OVER 65 ENHANCEMENT	CRIMINAL	KS DEPT OF CORRECTIONS, KS	CONVICTED
2	JOHNATHAN APPFOLIO DOB: 04/06/1975	10/23/2013	BATTERY CAUSING SUBST HARM	CRIMINAL	KS DEPT OF CORRECTIONS, KS	CONVICTED
3	JOHNATHAN Q APPFOLIO DOB: 04/06/1975	10/23/2013	GRAND LARCENY	CRIMINAL	KS DEPT OF CORRECTIONS, KS	CONVICTED
4	JOHNATHAN Q APPFOLIO DOB: 04/06/1975	10/23/2013	FRAUDULENT ACTION TO OBTAIN WELFARE	CRIMINAL	KS DEPT OF CORRECTIONS, KS	CONVICTED
5	JOHNATHAN APPFOLIO DOB: 04/06/1975	10/23/2013	ASSAULT W/ A DEADLY WEAPON	CRIMINAL	KS DEPT OF CORRECTIONS, KS	CONVICTED

9

1

2013

2012

2011

[illegible]2

2013

2012

2011

[illegible]

RENT PAYMENT HISTORY

Provided by Experian RentBureau

	PROPERTY	STATUS	STATUS DATE	MOVE IN	MOVE OUT	RENT AMOUNT/ ORIGINAL AMOUNT	TOTAL OUTSTANDING	PAYMENTS (2 YEAR)
1	Apartment Company Alexandria, VA	Write-Off	07/27/2014		02/01/2013	\$1,000	\$500	On-time 3 Delinquent 1 Write-offs 1
24 MONTH PAYMENT HISTORY								
2012								
JUL JUN MAY APR MAR								
WO ✓ ✓ D ✓								
2	Compliant Homes of Tomorrow Orlando, FL	Write-Off	01/27/2013 LEFT EARLY, MONEY OWED		02/01/2012	\$1,100	\$1,100	On-time 11 Delinquent 1 Write-offs 1
24 MONTH PAYMENT HISTORY								
2012 2011								
JAN DEC NOV OCT SEP AUG JUL JUN MAY APR MAR FEB JAN								
WO ✓ ✓ ✓ ✓ ✓ ✓ ✓ D ✓ ✓ ✓ ✓ ✓								
3	HIGHLAND PARK APARTMENTS Agency: Collection Agency Name	In Collections	08/05/2012 PLACED WITH COLLECTIONS ON 08/05/2012		06/21/2012	\$1,000	\$1,000	
4	SUWNEE EMC Agency: Collection Agency Name	In Collections	03/07/2012 PLACED WITH COLLECTIONS ON 03/07/2012		02/15/2012	\$1,100	\$1,100	

A

Jon Snow, Daenerys Targaryen & 3 children

ACCEPT OR DECLINE



Applicants for Property
432 Park Avenue, New York, NY 10022

B

76% of landlords in New York have accepted applicants with this SafeRent score



C



Key Factors

- Rent to Income Ratio: 12%
- Credit Reports: 704; 576
- Eviction History
- Subprime Loans History
- Collection Agencies

SafeRent Score provides a comprehensive risk profile for tenants' ability for timely payment of their rent

D

Average SafeRent Score by Geography



The average score of all applicants screened by CoreLogic in this city and zip code

Alerts

Daenerys Targaryen Co-Applicant

Credit The credit file for this applicant is less than three years old

Reports

VIEW ALL

Jon Snow
Primary Applicant

Daenerys Targaryen
Co-Applicant

Credit Report	704	576
SafeRent™ Score	Complete	Complete
Eviction History	Record Found	No Record Found
Multi-state Criminal	No Record Found	Record Found
Multi-state Sex Offender	No Record Found	No Record Found
Previous Address History	Complete	Complete
Terrorist Check	Complete	Complete

E

F

G

H

I

In accordance with regulations, all reports will be unavailable 60 days after being released

Rental application denial statistics

FIGURE 2: TENANT SCREENING COMPLAINTS BY ISSUES, JAN. 2019 TO SEPT. 2022



Source: [CFPB](#)

Common Errors on Tenant Screening Reports

“Mixed files”

- Wrong person’s record
- Often happens with common names, fewer identifiers, “fuzzy” matching logic
- “Possible matches” (record may or may not relate to applicant)

Incomplete records

- Information that appears in is misleading because critical information is not included
- Most common with dismissed arrests, evictions, references
- Also common with outdated records

Misclassified/mislabeled records

- E.g., A misdemeanor misclassified as a felony

Obsolete information

- E.g., Eviction records or non-conviction records older than 7 years

Duplicates/repeated entries

- Same negative item reported multiple times
- Common with criminal records (arrest, charge, conviction, sentence)

Expunged/sealed records

- Happens with criminal and eviction records

Some Reasons for Errors on Tenant Screening Reports

- Outdated records/stale data
- Reliance on records not from the courthouse
- Automated scraping that ignores updated docket info
- Sloppy matching practices
- Clerical errors

- Federal law enacted to promote the accuracy, fairness, and privacy of consumer information contained in the files of Consumer Reporting Agencies (CRAs)
- In general:
 - Tenant screening companies are CRAs
 - Tenant screening reports are consumer reports
 - Landlords/housing providers are users with a permissible purpose
- For more detail, see NCLC Digital Library Article: [**FCRA Remedies When Criminal Records Lead to Rental Denials**](#)

FCRA consumer disclosure

- CRAs must provide disclosure on request (15 U.S.C. § 1681g)
- Consumer disclosure is only a small part of the consumer file (15 U.S.C. § 1681a(g))
- Reports provided to consumers typically do not contain scores or analytical information
- File disclosure v. report
 - FCRA requires LL to provide adverse action notice (15 U.S.C. § 1681m) – BUT no private right of action
 - Client can get report from tenant screener for free
 - Can also ask LL for copy of report
 - Report a LL gets is likely based on particular screening criteria that LL is using

Obtaining consumer disclosures can be difficult:

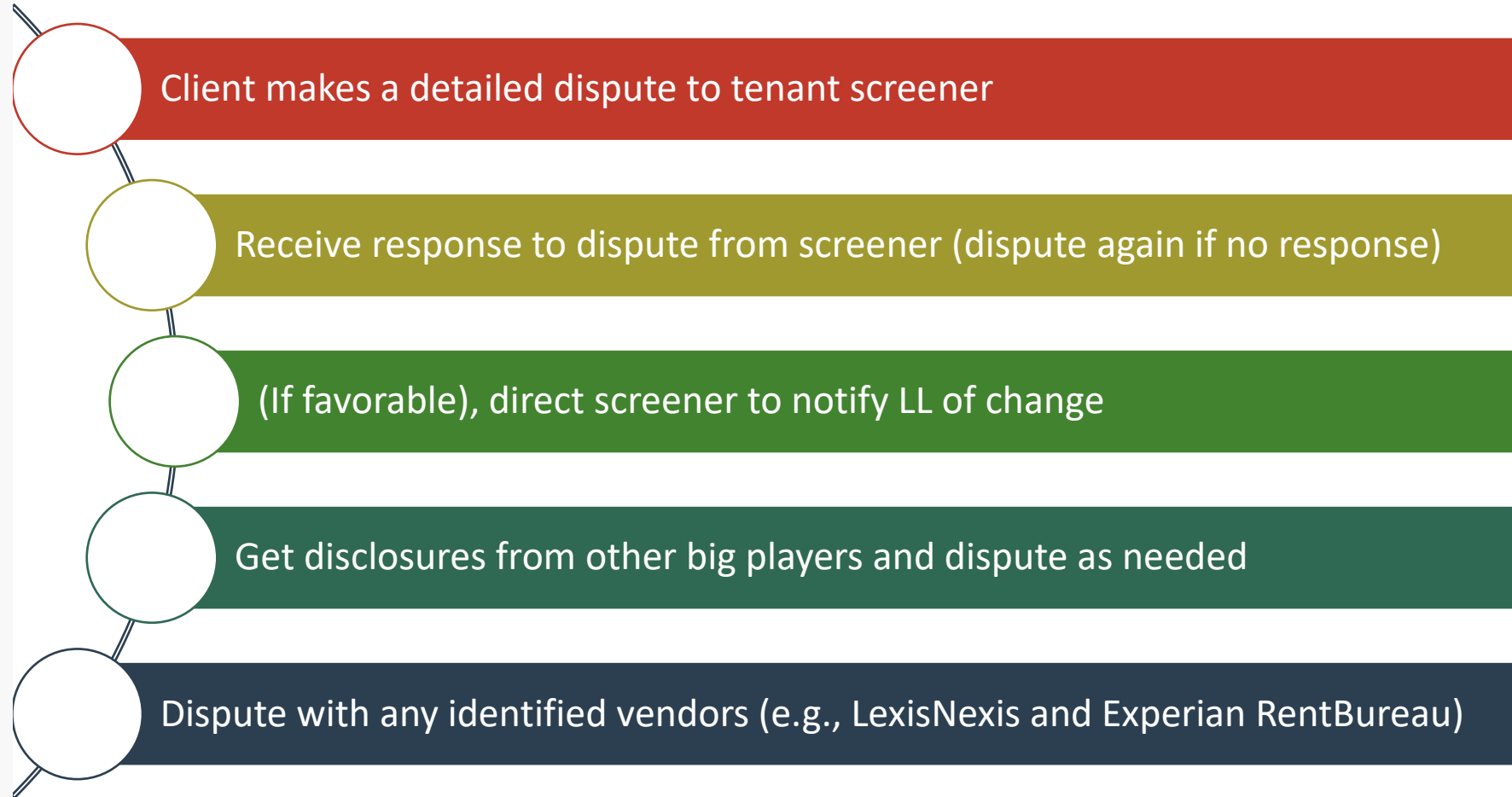
- Screening companies commonly insist on cumbersome identification requirements
- Companies often reluctant/unwilling to send paper disclosures to P.O. Box, relative, or friend
- Applicants often steered to oral, telephonic disclosures in lieu of written disclosures
 - Also be cautious of website requests because of arbitration clauses
- Some resellers still fail to disclose sources of data (e.g., will say they got eviction records from courthouse when they got them from LexisNexis)
 - Contrary to FCRA
 - CFPB is working on this (*TURSS* enforcement action)
- If consumer requests disclosure prior to rental app, may not get what potential LL will get

- Objective inaccuracy
 - FCRA claims are not the proper vehicle for collaterally attacking the legal validity of consumer debts (legal dispute v. factual dispute)
 - If it's not clear or requires a judge to decide, it's not an objective inaccuracy

FCRA: Get the Underlying Record

- If it's a criminal or eviction record, get the underlying record from the courthouse

FCRA: Initial Steps to Address Inaccuracies



Live Content Slide

When playing as a slideshow, this slide will display live content

Poll: 1) Have you ever disputed information on a credit report?

Live Content Slide

When playing as a slideshow, this slide will display live content

Poll: 2) If yes, have you disputed information on a prospective tenant's tenant screening report?

Live Content Slide

When playing as a slideshow, this slide will display live content

Poll: 3) How long did it take to resolve the dispute?

- Dispute & reinvestigation procedure under FCRA (15 U.S.C. § 1681i)
 - Client should send detailed dispute of any erroneous or otherwise improper info in writing
 - Tenant screener can delete or correct disputed info; that avoids duty to investigate underlying issue
 - Otherwise, tenant screener must conduct reasonable reinvestigation and complete within 30 days
 - Disputed info must be deleted or modified if CRA or data vendor determines info is inaccurate or no determination is made within 30 days
 - After tenant screener reports results of reinvestigation, consumer may request that CRA update “users”

- Resellers
 - Even if tenant screener relies on third-party data vendors, the screening company is a “reseller” and is still treated as a CRA subject to the FCRA (15 U.S.C. § 1671a(u))
 - Must determine within 5 days whether it’s responsible for error. If yes, must correct or delete within 20 days. If not, must provide data vendor with info about dispute and vendor must reinvestigate and delete or modify
 - Within 5 days of completion of reinvestigation tenant screener (even if reseller) must notify consumer of result and provide copy of corrected report

FCRA: Dispute and Reinvestigation

- If, within 35 days, client receive no response from tenant screener as to the dispute, consumer should resend the dispute letter
 - Ideally include additional info

FCRA: Time to file a case?

- Some circumstances when it could be time to litigate:
 - Inaccuracy not corrected after a dispute
 - Can't get file/report copy after multiple requests
 - Same fact pattern with same CRA (e.g., partial name matching, not picking updates to records)

FCRA: Common Claims Against Tenant Screening Companies

- 15 U.S.C. § 1681e(b): “reasonable procedures” to assure “maximum possible accuracy”
 - 15 U.S.C. § 1681c: adverse info/records older than 7 years other than “records of convictions of crimes”
 - 15 U.S.C. § 1681i: reasonable reinvestigation of a consumer’s dispute
 - 15 U.S.C. § 1681g: failure to provide file disclosure on request (§ 168ag(a)(2) is sources of info)
- Recommendation: Talk to experienced FCRA litigator!

- Willful (§ 1681n(a)): actual or statutory damages from \$100-\$1000 and punitive damages, plus court costs and attorney's fees
- Negligent (§ 1681o(a)), actual damages, court costs and attorney's fees

- Often housing unit is gone by the time error corrected
- Narrow challenge in that it's about errors and disclosures
- No strict liability
- SOL (§ 1691p): plaintiff must bring an FCRA claim within the earlier of:
 - 2 years after the plaintiff discovers the violation
 - 5 years after the violation occurred
- FCRA provides a limited qualified immunity for CRAs from liability under tort claims for defamation, invasion of privacy, or negligence with respect to the reporting of information unless the conduct involves malice or willful intent (§ 1681h(e))
- Some state statutory claims may be available, though these claims may implicate FCRA preemption
- No injunctive relief under the FCRA
- Can be issues with FCRA coverage (though the CFPB is working on that)

- Some unfavorable legal interpretations:
 - Some courts have said CRA has no duty to resolve “legal” disputes (only “factual” errors) (the CFPB is working on this)
 - *Safeco Insurance v. Burr*: for punitive damages/willful violation, plaintiff must demonstrate that defendant knew or should have known that their conduct violated the statute
 - *Ramirez v. TransUnion*: denial of info alone may not be sufficient for Article III standing (most relevant for disclosure claims; standing generally won’t be an issue where denial of housing happened)
 - Can be issues with FCRA coverage (though the CFPB is working on that)

Application Fees

- National average = \$50 (per [Zillow.com](https://www.zillow.com))
- Fees not refunded if application denied
- Significant racial disparities:
 - White & Asian renters average 2 applications, Black & Latinx average 3
 - 38% of Black and Latinx renters submit 5+ applications, vs. 21% of white renters
- Deterrent effect of rental application fees
 - Clients often reluctant to apply, especially to higher-quality rentals
 - Often try to suss-out likelihood of acceptance before formal application
- Probably contribute to residential segregation
 - Key impediments to housing admission more common among Black & Latinx renters
 - Likely steers Black & Latinx renters to lower-quality housing in areas of concentrated poverty

Portable Tenant Screening Reports

State Laws Vary

Example: Washington State

A comprehensive reusable report is “a report prepared within the previous 30 days by a consumer reporting agency at the request and expense of a prospective tenant and made directly available to a prospective landlord at no charge for use in the rental application process.”

Each report must contain the following:

- A credit report
- A criminal history check in all jurisdictions indicated as prior residence over the past 7 years
- An eviction history over the previous 7 years
- Income and employment verification
- Current address and rental history

Applicants can use this report as many times as they want within 30 days. After that, the report is no longer valid, and the applicants have to request a new one.

Portable Tenant Screening Reports

Notification Requirements:

Property owners must notify applicants whether they accept comprehensive reusable tenant screening reports. Several notification options, including:

- A statement on the listing
- A notice on the property manager's website
- On the rental application page
- Any other calculated manner to notify the renter

If a property owner operates a website, they must include a notification statement on the homepage.

Charging Applicants for Application Fees

If a rental owner accepts reusable reports, they can't charge the applicant for:

- Application fees
- Fees to access the report
- Fees for additional background checks

However, if the report is not comprehensive or valid it will not be eligible for protection. In that case, the property owner can charge the applicant for additional screening.

Certifying the Comprehensive Reusable Tenant Screening Report

A property owner may require a prospective renter to certify the reusable tenant screening report. This is to ensure that there have not been any changes to the applicant's name, address, bankruptcy status, criminal history, or eviction history to hide unfavorable reports.

Doing so allows the property owner to use the document in any case proceedings in the event of discovering an alteration of information.

- [FCRA Remedies When Criminal Records Lead to Rental Denials](#)
 - Detailed version of this presentation (focused on criminal records, but also applies more broadly)
- [Digital Denials: How Abuse Bias, and Lack of Transparency in Tenant Screening Harm Renters](#)
- [Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing](#)
- [Appendix H](#) of NCLC's *Fair Credit Reporting* (includes tenant screening laws in all 50 states and some major cities)
- PolicyLink: [Mapping the Growth of Eviction Record and Tenant Screening Protections](#)
- [CFPB webpage](#) on tenant screening (includes recent subregulatory guidance)