



2021 Legal Update

Juana Watkins // General Counsel



FloridaRealtors[®]
The Voice for Real Estate[®] in Florida



Screening Tenants with Criminal Backgrounds

The Current Low Hanging Fruit AGAIN!

Fair Housing Act: An Overview

- ▶ Discrimination against a protected class can take many forms - it's not just a matter of avoiding certain words
 - ▶ Denying or limiting services
 - ▶ Setting different terms or conditions (requiring preapproval, identification)
 - ▶ ***Advertising a preference, limitation, or discrimination (no children, no felons)***
 - ▶ Steering based on racial composition of a neighborhood
 - ▶ Using coded language to do any of the above (schools, crime)

caseYear	courtId	firstName	caseNumberFull	caseTitle	dateDischarged	dateFiled	dateTermed
2019	flsdc	Joshua	9:2019cv80662	Chambers v.		5/17/2019	
2019	flsdc	Joshua	0:2019cv61238	Chambers v.		5/16/2019	
2019	flmdc	Joshua	2:2019cv00314	Chambers v.		5/13/2019	
2019	flmdc	Joshua	6:2019cv00899	Chambers v.		5/12/2019	
2019	flmdc	Joshua	8:2019cv01142	Chambers v.		5/12/2019	
2019	flsdc	Joshua	0:2019cv61142	Chambers v.		5/6/2019	
2019	flmdc	Joshua	8:2019cv01076	Chambers v.		5/5/2019	
2019	flsdc	Joshua	0:2019cv61138	Chambers v.		5/5/2019	
2019	flmdc	Joshua	6:2019cv00743	Chambers v.		4/19/2019	
2019	flmdc	Joshua	6:2019cv00742	Chambers v.		4/18/2019	
2019	flsdc	Joshua	0:2019cv60890	Chambers v.		4/4/2019	
2019	flmdc	Joshua	8:2019cv00796	Suarez et al v. Merlin Entertainments Group Florida, LLC		4/3/2019	
2019	flsdc	Joshua	0:2019cv60844	Chambers v.		4/1/2019	
2019	flmdc	Joshua	6:2019cv00620	Chambers v.		3/31/2019	4/18/2019
2019	flmdc	Joshua	8:2019cv00533	Walli v. Klement Family Dental, P.A.		3/2/2019	
2019	flmdc	Joshua	8:2019cv00474	Chambers v.		2/25/2019	4/30/2019
2019	flmdc	Joshua	2:2019cv00110	Chambers, Jr. v.		2/25/2019	4/2/2019
2019	flndc	JOSHUA	4:2019cv00094	DEMLER v. INCH		2/19/2019	
2019	flmdc	Joshua	6:2019cv00281	Chambers v.		2/11/2019	4/3/2019
2019	flmdc	Joshua	6:2019cv00255	Chambers v.		2/7/2019	3/21/2019
2019	flsdc	Joshua	9:2019cv80160	Chambers v.		2/4/2019	4/1/2019
2019	flmdc	Joshua	8:2019cv00188	Walli v. Adzeey, LLC		1/24/2019	4/30/2019
2019	flsdc	Joshua	2:2019cv14023	Chambers v.		1/23/2019	3/21/2019
2019	flmdc	Joshua	6:2019cv00144	Chambers, Jr. v.		1/23/2019	3/13/2019
2019	flmdc	Joshua	6:2019cv00129	Chambers v.		1/20/2019	3/20/2019
2019	flsdc	Joshua	0:2019cv60176	CHAMBERS, JR. v.		1/18/2019	3/4/2019
2019	flmdc	Joshua	6:2019cv00095	Chambers v.		1/16/2019	3/19/2019
2019	flmdc	Joshua	8:2019cv00060	Chambers v.		1/8/2019	2/21/2019
2018	flsdc	Joshua	1:2018cv24537	Rogers v.		10/30/2018	3/11/2019
2018	flsdc	Joshua	1:2018cv24512	Rogers v.		10/29/2018	12/13/2018
2018	flsdc	Joshua	0:2018cv62362	KRAUSE et al v.		10/4/2018	

2019 A picture is worth a thousand words
And tens of thousands of \$\$\$

27 Lawsuits filed in December 2020

Date Filed	Court	Plaintiff Party
12/26/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/26/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/25/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/25/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/24/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/24/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/23/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/23/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/23/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/22/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/22/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/21/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/21/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/20/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/20/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/17/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/16/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/16/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/16/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/15/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/15/2020	U.S. District Court for the Southern District of Florida	DELROY A. CHAMBERS, JR.
12/11/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/10/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/9/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/8/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.
12/7/2020	U.S. District Court for the Middle District of Florida	Delroy A. Chambers, Jr.
12/6/2020	U.S. District Court for the Southern District of Florida	Delroy A. Chambers, Jr.

Can I deny a tenant with a criminal history? Maybe...It depends

- ▶ April 4, 2016 HUD's Office of General Counsel issued **guidance** on the application of Fair Housing Act Standards to the use of criminal records by providers of housing.
- ▶ 10-page memo
- ▶ 1/3 of Americans have a criminal record
- ▶ Criminal is not a protected class. Disparate impact on protected classes is the issue.
- ▶ 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.

5-minute
internet
search =
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11,364 Rentals total rentals in Florida

10 “no felony” results

- ▶ Must make 3x the monthly income, **No felony convictions**, No evictions within the last 3 years. Credit score of 500 or higher, No previous balances owed to any landlords. Please be advised that We will pull your credit/background reports;
- ▶ Minimum FICO credit score of 600. **No** previous evictions or **felony convictions**. Six months of stable employment (offer letter for relocation). Credit check is required.
- ▶ **Do NOT apply** if you have a dogs or if you've had an eviction OR **violent felony within 7 years**.com. (sic)
- ▶ **Dealbreakers are felony charges** and evictions

1 “arrest”

- ▶ no records or **arrests**, please! No drugs or any illegal activity.

318 “criminal” results

- ▶ Most were fine, but not all. CONTEXT.

A new face in the fair housing sector Florida Fair Housing Alliance, Inc.

WHERE DISCRIMINATION HAS NO HOME

Here at Florida Fair Housing Alliance our goal is to lend accountability to the Fair Housing Act through investigatory testing to uncover discrimination in housing.



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Florida Fair Housing Alliance at a Glance

Florida Fair Housing Alliance knows that our strength lies not only in the words we stand by, but most importantly through the actions of our movement. Our Non-Profit Organization realized that by working together we could overcome our challenges much more efficiently, and that is why we ultimately decided to launch Florida Fair Housing Alliance..

Being incarcerated for a decade I had to expect many obstacles upon my return to society, however, one obstacle in particular was the reality that I could not get approved for housing and I was getting automatically denied over and over again like so many others. Frustrated at my situation, knowing the significant barrier in place with regard to housing and the countless lives being effected by discriminatory policies and practices it is imperative our Organization be born to breathe new life into the unfulfilled promises of the FAIR HOUSING ACT.

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10. Despite making up a fractional percentage of the United States population in comparison to Whites, Hispanic individuals, for example, are **three times more likely** to be convicted *and* incarcerated than that of White individuals.³

11. Refusing to *even consider* an individual for tenancy if the individual has *any kind* criminal history and/or background – **as exemplified by the below discussed interaction between Mr. Williams and Defendants** – is discriminatory in effect, as it subjects Black and Hispanic individuals to differential treatment due to disproportionate rate at which Black and Hispanic individuals are arrested, convicted and otherwise incarcerated when compared to White individuals.

12. On November 16, 2020, in response to an online advertisement for the Dwelling published by Defendant-Agent, Mr. Williams contacted Defendant-Agent and inquired about renting the Dwelling.

13. Prompted by an expectation of equal treatment or, *at minimum*, fair consideration as a prospective tenant of the Dwelling, Mr. Williams asked Defendant-Agent what effect his (Mr. Williams') prior criminal history would have on the decision process. Much to the surprise of Mr. Williams, however, Defendant-Agent promptly informed Mr. Williams that Defendant-Owner,

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16. The Listing, of which Defendants have since *modified* and/or *scrubbed* from the internet, originally stated:

Come see this well maintained second floor studio condo unit that has a breathtaking view and is in a desirable gated community located close to shopping, schools and restaurants. The studio has been remodeled and the roof was replaced in the last few years. There is direct access to the Hillsborough River, designated outdoor boat storage area, fishing pier and some of the other amenities include community pool, security, gated entrance, playground, trash and racquetball. We are looking for potential tenants who have over a 620 credit score with little to no credit history issues, **no criminal background** and no previous rental evictions. To move in - there is a credit, criminal background check and rental history check. The application fee costs \$75 per adult over 18 years of age that will be moving in. It will be first, last and security deposit to move in totaling \$2100 and there are no pets allowed. To apply for this property please visit baytobay.appfolio.com/listings then search the property address and click apply. The property is currently tenant occupied and requires at least a 24 hour notice. The tenant will be moving out on 12/7 and the unit will be available 12/15.

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COUNT 1

VIOLATION OF HILLSBOROUGH COUNTY HUMAN RIGHTS ORDINANCE

19. Mr. Williams realleges paragraphs 1 through 19 as if fully set forth herein.

20. Defendant-Owner and Defendant-Agent are each liable to Mr. Williams for all injuries caused by the unlawful discriminatory conduct committed by either of the Defendants individually, as such conduct was committed within the scope of the agency relationship that existed, at all times material, between Defendant-Owner and Defendant Agent

21. Defendant-Owner authorized its agent, Defendant-Agent, to act for it (Defendant-Owner) when Defendant-Agent committed the unlawful discriminatory conduct alleged herein.

22. Defendant-Agent accepted the undertaking of acting on behalf of Defendant-Owner when it (Defendant-Agent) committed the unlawful discriminatory conduct alleged herein.

23. Defendant-Owner had control over Defendant-Agent, and Defendant-Agent had control over its employees, when said Defendant-Agent engaged in unlawful discriminatory conduct as alleged herein.

24. Pursuant to § 30-19(b), as Article II, Chapter 30 of the Hillsborough County Code of Ordinances, the primary purpose of the therein codified Hillsborough County Human Rights

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COUNT 2

VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

33. The Alliance realleges paragraphs 1-19 and 21-31 as if fully set forth herein.

34. The stated purpose of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

35. Section 501.204(1), Fla. Stat., declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

36. Mr. Williams is a consumer within the meaning of FDUTPA. *See* Fla. Stat. § 501.203(7) (defining “consumer” as meaning “an individual; child, by and through its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated; or any other group or combination.” (emphasis added)).

37. The Dwelling that Defendant-Owner holds open for rent is subject matter, and/or otherwise a transaction, governed by FDUTPA. *See* Fla. Stat. § 501.203(8) (defining “trade or commerce” as meaning “the advertising, soliciting, providing, offering, or distributing, **whether by sale, rental, or otherwise**, of any good or service, or **any property**, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated,” and further stating that “[t]rade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.” (emphasis added)).

NAR list of best practices - DO

- ▶ Create *tailored* criminal history-based *policies/practices*
- ▶ Exclude individuals based on criminal convictions that present a *risk to resident safety or property*
- ▶ Consider the *nature and severity* of an individual's crimes
- ▶ Consider the *amount of time* that has passed
- ▶ Treat all applicants *equally- the process*
- ▶ Conduct *individualized* assessments that take into account
 - age at the time of the conduct
 - evidence of good tenancy
 - before/after the conduct, and
 - rehabilitative efforts

NAR list of worst practices - **DO NOT**

- ▶ Use criminal history as a *pretext* for unequal treatment
- ▶ Provide *inconsistent explanations for denial* of a tenant
- ▶ Create an exclusion based on *arrest records alone*
- ▶ Create an overly *broad or blanket exclusion* of any person with any conviction
- ▶ Use *comparable criminal history differently* for individuals of a protected class (vs. non-protected class)
- ▶ Make *exceptions for some individuals, but not others* based on the individual's inclusion in a protected class



Questions?

Juanaw@floridarealtors.org

407-587-1466 desk

407-627-9030 cell