

PARK WATCH

LEGAL DEVELOPMENTS NEWSLETTER

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THIS NEWSLETTER CONVEYS GENERAL INFORMATION, NOT LEGAL ADVICE: CONSULT AN ATTORNEY BEFORE RELYING HEREON

HEAD'S UP! TENANT SOLICITATION UNDERWAY IN CALIFORNIA FOR FCRA CLASS ACTION CLAIMS

New Attorney Solicitation To Tenants Concerning Tenancy Rejections is Afoot in Southern California. Use a Proper Rejection Notification!

By: Terry R. Dowdall, Esq.

▲SYNOPSIS:

It has come to our attention that a law firm in the City of Glendale is **actively soliciting** California tenants to launch **legal for claims against property owners** for improper or incomplete notification of an **"adverse action"** (*rejection of a tenancy application*) in dealing with prospective tenants. A copy of the solicitation is attached.

While Civil Code section 798.74 requires written notification of acceptance or rejection of the prospective purchaser with the stated reasons for the managerial decision-making, the federal law requires additional disclosures when the management has procured a consumer credit report.

It is VERY important to ensure that proper notification of the rejected prospective purchaser (or renter for a park-owned coach) is systemically applied to all prospective tenants.

▲BACKGROUND:

The Fair Credit Reporting Act provides users of

credit reports must inform an individual when they take adverse action (such as denial of credit or insurance for personal, family or household purposes, or denial of employment) on the basis of such reports and must identify the names and addresses of the sources of all such information.

The Act appears to apply, for notification purposes in any case, to landlords who use credit reporting agencies to determine acceptability of a prospective tenant. The Act's protections extend only to individuals, however, and not to corporations, partnerships, or other entities.

An individual who has been damaged by any negligent or willful noncompliance with the Fair Credit Reporting Act by a supplier or user of a credit report may sue in any court for these claims. *The individual may recover actual damages, costs, and attorney fees (and, in case of willful noncompliance, punitive damages). Actual damages may include mental anguish, damage to reputation, embarrassment and humiliation, as well as loss of employment and other financial loss.*

Section 1681m of the Fair Credit Reporting Act has been amended to **prescribe new duties** for a person who takes an adverse action with respect to a consumer when that action is based in whole or in part on any information contained in a consumer report. Section 1681m(a) provides:

- (a) *Duties of users taking adverse actions on the basis of information contained in consumer reports.--If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall--*
- (1) *provide oral, written, or electronic notice of the adverse action to the consumer;*
 - (2) *provide to the consumer orally, in writing, or electronically--*
 - (A) *the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and*
 - (B) *a statement that the consumer reporting agency did not make the decision to take the*

adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(3) provide to the consumer an oral, written, or electronic notice of the consumer's right--

(A) to obtain, under section 1681j of this title, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under section 1681i of this title, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

Subsection (b) of section 1681m has been amended to prescribe new duties for a person who takes certain actions with respect to a consumer when that action is based in **whole or in part** on information obtained from third parties other than consumer reporting agencies.

There is also a new subsection defining "**adverse action**" for purposes of the Fair Credit Reporting Act. Section 1681a(k) provides:

(k) Adverse action.

(1) Actions included.--The term "adverse action"--(A) has the same meaning as in section 1691(d)(6) of this title; and

(B) means--

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 1681b(a)(3)(D) of this title; and

(iv) an action taken or determination that is--(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 1681b(a)(3)(F)(ii) of this title; and

(II) adverse to the interests of the consumer.

▲ LIABILITY

Section 1681n sets a limit on civil liability for willful noncompliance with the Fair Credit Reporting Act. The provision **no longer applies just to consumer reporting agencies and users of information. Any person** who is in willful noncompliance with the act is liable for "any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000." 15 U.S.C.A. § 1681n(a)(1). Section 1681q has been amended to increase the penalty for a person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses to a fine under Title 18 and imprisonment for not more than

2 years, or both.

▲ CONSUMER CLASS ACTION RISK

As a class action, such claims may be extremely serious. A class action case imposes a "multiplier" effect. If one claimant of the class proves a violation, all other similarly situated class claimants are entitled to equal relief. **If one claimant proves \$1000 in damages and there are 100 claimants in the class, the multiplier effect results in rendition of judgment for \$100,000.** The class action treatment of a law suit is an extremely serious concern for the park management. **We believe the attached solicitation is a "fishing expedition" for class action claims.**

A necessary element to a suit for a violation of the Fair Credit Reporting Act by **failing to "maintain reasonable procedures"** before providing a credit report to an insurance company is that the disclosure itself was improper. There is a **two-year statute of limitations** period under the FCRA.

The upshot of all this regulatory "committee think"?

The FCRA requires landlords who deny a lease based on information in the applicant's consumer report to provide the applicant with an "adverse action notice."

▲ SO WHAT IS A CONSUMER REPORT?

A consumer report contains information about a person's credit characteristics, character, general reputation, and lifestyle. A report also may include information about someone's rental history, such as information from previous landlords or from public records like housing court or eviction files. To be covered by the FCRA, a report must be prepared by a CRA - a business that assembles such reports for other businesses. The most common type of CRA is the credit bureau.

Landlords often use consumer reports from The UD Registry, Credit Bureau Associates, Trans Union, Experian, and Equifax or an affiliate or other tenant-screening service that describes a rental history based from past landlords or court files. Included are also reports from tenant-screening services that describe rental history, and credit reports such service obtained from a credit bureau; and reports from a reference-checking service that contacts previous landlords or other parties listed on the rental application on behalf of the property owner.

Management asks applicants to provide personal, employment and previous landlord references on their rental applications. Whether verifying such references is covered by the FCRA depends on who does the verification. A reference verified by the landlord's employee is not covered by the Act; a reference verified by an agency hired by the landlord to do the verification is covered.

▲ WHAT IS AN “ADVERSE ACTION”?

“Adverse actions” include: Denying the application; Requiring a co-signer on the lease; Requiring a deposit that would not be required for another applicant; Requiring a larger deposit than might be required for another applicant; and Raising the rent to a higher amount than for another applicant.

▲ THE “ADVERSE ACTION” NOTICE

When an adverse action is taken that is based solely or partly on information in a consumer report, the FCRA requires you to provide a notice of the adverse action to the consumer. The notice must include: the name, address and telephone number of the CRA that supplied the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide; a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and a notice of the individual's right to dispute the accuracy or completeness of any information the CRA furnished, and the consumer's right to a free report from the CRA upon request within 60 days.

(For the courtesy of the clientele of DOWDALL LAW OFFICES, A.P.C., a sample of a notice which meets the FCRA criteria is available on request at nominal charge).

Disclosure of this information is allegedly important because some consumer reports contain errors. The adverse action notice is required even if information in the consumer report was not the main reason for the denial. In fact, even if the information in the report plays only a small part in the overall decision, the applicant still must be notified. While oral adverse action notices are allowed, written notices provide proof of FCRA compliance.

▲ EXAMPLES: TAKE THE CASE OF . . .

1. A landlord who orders a consumer report from a CRA. Information contained in the report leads to further investigation of the applicant. The rental application is denied because of that investigation.

Since information in the report prompted the adverse action in this case, an adverse action notice must be sent to the consumer.

2. An applicant with an unfavorable credit history, like past-due credit accounts, who is denied tenancy. Although the credit history was considered in the decision, the applicant's poor reputation as a tenant in his current location played a more important role.

The applicant is entitled to an adverse action notice since the credit report played a part, albeit minor, in the denial.

3. A person with an unfavorable credit history, like a bankruptcy, but no other negative indicators, who applies for an apartment. Rather than deny the application, the

landlord offers to rent the apartment, requiring a security deposit more than usual or where none is usually required, or conditions acceptance on advance payment of rents covering several months.

The applicant is entitled to an adverse action notice because the credit report influenced the landlord's decision to require a higher security deposit from the applicant.

4. A landlord who hires a reference-checking service to verify information included on a rental application. Because the service reports that the applicant does not work for the employer listed on the application, the rental application is denied.

The applicant is entitled to an adverse action notice. The report is a consumer report from a CRA (the agency checking the references provided by the consumer on the application), and its report influenced the landlord's decision to deny the application. This is NOT the case if the landlord himself called the employer.

5. A landlord who makes it a practice to approve an application if the prospective tenant shows an adequate income or has a favorable credit report, is dealing with an applicant who has an inadequate income and a bad credit report.

The applicant is entitled to an adverse action notice because the credit report influenced the denial, even though income was another factor.

▲ NON-COMPLIANCE WITH THE FCRA

Remember, management that fails to provide required disclosure notices faces legal consequences. The FCRA allows individuals to sue landlords for damages in federal and any other courts.

In addition, the Federal Trade Commission (FTC), other federal agencies and the states may sue landlords for non-compliance and get civil penalties.

Again, this risk is **real**. Attached you will see a two page tenant solicitation seeking out violations of the FCRA.

It is strongly advised that immediate efforts be made to check on and ensure compliance with the federal requirements of disclosure of adverse decisions as required by the FCRA.

PLEASE FEEL FREE TO CALL TERRY R. DOWDALL FOR QUESTIONS OR COMMENTS ABOUT THE FOREGOING ISSUES.