

What is conviction record?

Madison General Ordinance (MGO) 39.03(2)(f), the Equal Opportunities Ordinance defines conviction record as including, “but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority. In addition, ‘conviction record’ as used in Sec. 39.03(4)(d), relating to discrimination in housing, shall also include information indicating that a person has been convicted of a civil ordinance violation (forfeiture).”

This ordinance does not prohibit eviction or refusal to rent or lease residential property because of the conviction record of the tenant or applicant or a member of the tenant’s or applicant’s household, **if the circumstances of the offense bear a substantial relationship to tenancy.** (MGO 39.03.(4)(d)(1))

Who has to follow the Ordinance?

Any tenant, landlord, owner of rental property or property for sale in the City of Madison and his/her agent(s). The Ordinance does not include room-sharing. (MGO 39.03(4) & MGO 39.03(4)(e))

Can a landlord ask if I have ever been convicted of any offense?

Yes, landlords can ask for information regarding your or members of your household conviction record.

There is no limit to how far back the landlord can go. However, the landlord **cannot** deny you rental if more than “two (2) years have elapsed since the applicant or member of the tenant’s or applicant’s household was placed on probation, paroled, released from incarceration or paid a fine, unless the circumstances of the offense(s) bear a substantial relationship to tenancy.” (MGO 39.03(4)(d)(2))

The landlord **must** use a written, uniform inquiry process and keep **all** applications for 2 years, along with the reason for each rejection. Each tenant **must** be informed in writing at the time of application that a criminal background check may be part of the screening process. (MGO 39.03(4)(d)(4))

A landlord may not evict a tenant or refuse to rent because a tenant or applicant or a member of the tenant’s or applicant’s household has been or may be a victim of domestic abuse or a crime under Chapter 948, Wis. Stats. (MGO 39.03(4)(d)(3))

What does “circumstances of the offense bear a substantial relationship to tenancy” mean?

This means that the offense is such that, given the nature of the housing, a reasonable person would have a justifiable fear for the safety of landlord or tenant property or for the safety of other residents or employees. Such offenses **may** include **but are not limited** to the following (MGO 39.03(4)(d)(1)):

- At least two or more misdemeanor drug-related convictions related to the manufacture, delivery or sale of a controlled substance or any drug-related felonious criminal activity.
- Criminal activity involving violence to persons such as murder, child abuse, sexual assault, battery, aggravated assault, assault with a deadly weapon.
- At least two or more civil ordinance violation (forfeiture) convictions within a twelve (12) month period for violations relating to disturbance of neighbors or injury to persons or property.
- Criminal activity involving violence to or destruction of property, such as arson, vandalism, theft, burglary, criminal trespass to a dwelling.
- Disorderly conduct involving destruction of property.

- Disorderly conduct involving disturbance of neighbors.
- The landlord received written notice from the Madison Police Department that a drug nuisance under Sec. 823.113, Wis. Stats. exists.

To establish a “**substantial relationship**” the landlord may interview you about the facts and circumstances of your or your household members’ conviction(s); request a copy of court documents, interview other individuals with direct knowledge of the facts and circumstances of the conviction, talk to the parole officer, etc. Generally, **IT MAY NOT BE SUFFICIENT** for a landlord to rely **solely** on the mere identification of a conviction charge, such as a list of convictions obtained through the Wisconsin Court Automation Program (CCAP) website or a background check report.

Can I be denied rental, evicted or non-renewed because of an arrest or pending charges?

No. The Ordinance does not allow for an exception for the arrest record of a prospective tenant or members of his/her household. Arrest record or pending charges **MAY NOT** be considered when making a decision to sell or rent, even when a conviction on a pending charge could ultimately result in the eviction of the tenant.

How do I file a housing discrimination complaint?

You may file at the Madison Equal Opportunities Division (EOD) office, located at:

210 Martin Luther King, Jr. Blvd., Room 523
Madison, WI 53703-3346

You may also contact us at (608) 266-4910 or (866) 704-2314 (TTY/Textnet), or you may visit our website at www.cityofmadison.com/dcr.

What are the time limits for filing a housing discrimination complaint?

A housing discrimination complaint must be filed with the EOD within 1 year of the discriminatory act (MGO 39.03(10)(c)(1)).

What types of information will the EOD look at to determine whether conviction record discrimination has occurred?

When investigating allegations of conviction record discrimination, the EOD will look at the whole record: the questions asked; the information provided; the substantial relationship of the charges to tenancy and how the landlord established the substantial relationship. The EOD will also look at whether or not the landlord has other reason(s) for his/her actions.

If I file a discrimination complaint, what types of relief are available?

If it is determined that you have been discriminated against on the basis of conviction record, you may be entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may be entitled to such things as economic and non-economic damages including damages for emotional injuries. You may also be entitled to attorney's fees. (MGO 39.03.(10)(c)(5))

Can the landlord retaliate against me for complaining with the EOD?

It is unlawful for a landlord or other covered entity to retaliate against someone who opposes any discriminatory practices under Madison's Equal Opportunities Ordinance, or because he or she has made a complaint, testified or assisted in any proceeding under Madison's Ordinance (MGO 39.03(9)). Individuals who believe that they have been retaliated against should contact the EOD immediately.

What laws does the EOD enforce?

The EOD has jurisdiction only in the City of Madison and enforces the MGO 39.03, the Equal Opportunities Ordinance. The Equal Opportunities Ordinance prohibits discrimination based on race, sex, religion, color, national origin/ancestry, age, handicap/disability, marital status, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status¹, domestic partners², refusal to disclose social security numbers^{1 & 2}, the fact that such person is a student, or retaliation.

¹ Applies to housing issues

² Applies to public accommodations issues

Who can advocate for me?

The EOD is an enforcement agency and does not advocate on your behalf or provide legal advice. Before a complaint is filed, we will provide technical assistance and answer questions. Once a complaint is filed, we will investigate the complaint.

A list of attorneys is available on our website or it may be mailed to you upon request.

The following agencies may provide you with guidance and assistance in addressing problems directly with the other party:

Tenant Resource Center

Phone: (608) 257-0006

Toll-free Outside of Dane County: (877) 238-7368

Fair Housing Center of Greater Madison

Phone: (608) 257-0853

Toll-free: (877) 647-FAIR (3247)

Arrest and Conviction Record and Housing Discrimination in the City of Madison

City of Madison Department of Civil Rights

DCR

Equal Opportunities Division

David J. Cieslewicz, Mayor
Lucía Nuñez, Director
210 Martin Luther King, Jr. Blvd., Rm. 523
Madison, Wisconsin 53703-3346
(608) 266-4910 (Voice)
(866) 704-2314 (TTY/Textnet)
(608) 266-6514 (FAX)
dcr@cityofmadison.com
www.cityofmadison.com/dcr

If you need an accommodation in order to access this service or need materials in Braille, large print or an alternate format, please contact our office.