

803 CMR 5.00: CRIMINAL OFFENDER RECORD INFORMATION (CORI) - HOUSING

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5.01: Scope and Purpose

- (1) 803 CMR 5.00 sets forth requirements for the use of CORI for evaluating applicants for the rental or lease of housing, as well as for the storage and dissemination of CORI.
- (2) 803 CMR 5.00 applies to landlords, real estate agents, public housing authorities, and property management companies that request CORI for the purpose of screening applicants for the rental or lease of housing.
- (3) Nothing contained in 803 CMR 5.00 shall be interpreted to limit the authority granted to the Criminal Record Review Board (CRRB) or to DCJIS by the Massachusetts General Laws.

5.02: Definitions

All definitions set forth in 803 CMR 2.00: *Criminal Offender Record Information (CORI)*, 7.00: *Criminal Justice Information System (CJIS)*, 8.00: *Obtaining Criminal Offender Record Information (CORI) for Research Purposes*, 9.00: *Victim Notification Registry (VNR)*, 10.00: *Gun Transaction Recording* and 11.00: *Consumer Reporting Agency (CRA)* are incorporated by reference in 803 CMR 5.02. The following additional words and phrases as used in 803 CMR 5.00 shall have the following meanings:

Copy or Hard Copy. A physical or electronic version of the CORI that is available to a subject or subject's attorney or legally designated representative. This shall not include a summary of the CORI. Allowing a subject or his or her attorney or legally designated representative to view and/or copy down the subject's CORI does not qualify as providing a copy of the CORI.

Housing Applicant. An individual who applies to rent or lease housing, including market rate and subsidized housing.

Landlord. An individual that owns and rents or leases housing to another individual or business entity.

5.02: continued

Market Rate Housing. Housing that is privately owned and not subsidized by any federal or state housing program. Market rate housing shall include housing for which the landlord or property management company receives a subsidized housing voucher.

Public Housing Authority. A federal, state, or local governmental entity charged with administering any federal or state-funded subsidized housing program.

Property Management Company. A business entity that owns housing property to rent or lease or acts on behalf of an owner of housing to rent or lease housing property. Property Management Company, as referenced in 803 CMR 5.00 shall include, but not be limited to, a condo association where such condo association self-manages the rental or lease of housing.

Real Estate Agent. An individual or business entity that acts as an agent on behalf of a landlord or property management company to rent or lease housing.

Subsidized Housing. Any program of rental assistance funded by the state or federal government. However, subsidized housing shall not include market rate housing for which the landlord or property management company receives a subsidized housing voucher.

5.03: iCORI Registration

To access the iCORI system, a requestor must first register for an iCORI account as outlined in 803 CMR 2.04: *iCORI Registration*.

5.04: Access to CORI by Landlords, Property Management Companies, and Real Estate Agents to Evaluate Housing Applicants for Market Rate Housing

(1) A landlord, property management company, or real estate agent may request standard access CORI, as defined in 803 CMR 2.05(4), on a housing applicant who is applying for market rate housing owned or controlled by the landlord, property management company, or real estate agent for the purpose of evaluating the housing applicant for housing.

(2) CORI shall only be requested for a housing applicant as the final step in the application process.

(3) No landlord, property management company, or real estate agent shall use standard access CORI, accessed pursuant to 803 CMR 2.05(4), to evaluate an individual seeking to buy or sell real property or for the purpose of screening other household members.

(4) A landlord, property management company, or real estate agent may request open access CORI, as defined in 803 CMR 2.05(5), for the purpose of screening an individual other than the housing applicant.

5.05: Access to CORI by Public Housing Authorities and Certain Property Management Companies to Evaluate Housing Applicants for Subsidized Housing

(1) Prior to accessing CORI to evaluate a housing applicant for subsidized housing, each public housing authority and property management company that administers a subsidized housing program for qualifying subsidized housing units shall register for an iCORI account pursuant to 803 CMR 5.03.

(2) A public housing authority or property management company that administers a subsidized housing program for qualifying subsidized housing units may request required CORI access, as defined in 803 CMR 2.05(3), regarding a housing applicant who is applying for subsidized housing owned or controlled by the public housing authority or property management company that administers a subsidized housing program for qualifying subsidized housing units for the purpose of evaluating a housing applicant.

5.05: continued

(3) Public housing authorities and property management companies that administer a subsidized housing program for qualifying subsidized housing units shall screen housing applicants for subsidized housing only as provided by state and federal law. CORI shall only be requested for a housing applicant as the final step in the application process.

(4) A property management company that administers a subsidized housing program for qualifying subsidized housing units that also manages or owns market rate housing shall not use required access CORI to evaluate housing applicants for market rate housing. Said entities may access standard or open CORI access, as provided in 803 CMR 5.04, for this purpose.

(5) A public housing authority may qualify to receive national criminal history information from the Federal Bureau of Investigation by executing a memorandum of understanding with the local police department.

(a) National criminal history information received under 803 CMR 5.05(5) shall be used only as permitted by federal and state laws for the purpose of determining suitability for subsidized housing programs.

(b) Improper access to, or dissemination of, national criminal history information may result in both criminal and civil sanctions.

5.06: Procedures for Requesting CORI to Evaluate a Housing Applicant

(1) Prior to submitting a CORI request to evaluate a housing applicant, a landlord, property management company, real estate agent, or public housing authority shall obtain a signed CORI Acknowledgment Form and follow all procedures related to the CORI acknowledgment form and verification of identity procedures as set forth in 803 CMR 2.11: *Requirements for Requestors to Request CORI*.

(2) A CORI Acknowledgment Form may be collected electronically in accordance with the provisions of 803 CMR 2.12: *Electronic Submission of CORI Acknowledgment Forms*.

(3) Nothing in 803 CMR 5.00 shall be construed to prohibit a landlord, property management company, real estate agent, or public housing authority from making an adverse housing decision on the basis of a subject's refusal to consent to a lawful request for CORI.

(4) CORI Acknowledgment Forms must be retained for a minimum of one year from the date of the housing applicant's signature.

(5) Subsequent CORI requests for a housing applicant's CORI may only be submitted as authorized by applicable state or federal law.

When subsequent CORI requests are authorized under applicable state or federal law, procedures related to subsequent verification of identity are set forth in 803 CMR 2.13: *Identity Verification Exemption for Subsequent CORI Checks* shall apply to the request.

5.07: CORI Policy Requirement for Certain Requestors and Need to Know Requirements

(1) Any landlord, property management company, real estate agent, or public housing authority shall maintain a CORI policy and need to know list as provided in 803 CMR 2.18: *CORI Policy Requirement for Certain Requestors and the Need to Know Requirements*.

5.08: Storage and Retention of CORI

(1) Hard copies and electronic copies of CORI shall only be retained and stored as provided in 803 CMR 2.14: *Storage and Retention of CORI*.

(2) CORI shall not be retained for longer than seven years from the last date of residency of the housing applicant in the housing unit or the date of a housing decision regarding the housing applicant, whichever is later.

5.09: Destruction of CORI

Hard and electronic copies of CORI shall only be destroyed in accordance with the provisions of 803 CMR 2.15: *Destruction of CORI and CORI Acknowledgment Forms*.

5.10: Required Dissemination of CORI or other Criminal History Information by a Landlord, Property Management Company, Real Estate Agent, or Public Housing Authority

(1) Each landlord, property management company, real estate agent, or public housing authority shall provide a copy of a housing applicant's CORI or other criminal history information, and shall disclose the source of the information, to him or her:

- (a) before asking the applicant any questions about the criminal history; and
- (b) before making an adverse housing decision based on the housing applicant's CORI or other criminal history information.

(2) Each property management company or public housing authority that is overseen, regulated, or supervised by a governmental entity shall, upon request, disseminate CORI to that governmental entity's staff.

5.11: Permissive Dissemination of CORI by a Landlord, Property Management Company, Real Estate Agent, or Public Housing Authority

(1) A landlord, property management company, or real estate agent may disseminate a housing applicant's CORI to the housing applicant.

(2) If a landlord, property management company, real estate agent, or public housing authority is a party to a complaint or legal action as a result of any decision based on CORI, the landlord, property management company, real estate agent, or public housing authority may disseminate CORI in the tenant appeals process or to an administrative agency or court for the purpose of defending its decision.

(3) A property management company or real estate agent may disseminate a housing applicant's CORI to the owner of the housing unit for which the housing applicant is applying. A public housing authority may disseminate a housing applicant's CORI to the owner of the housing unit for which the housing applicant is applying unless the public housing authority, in lieu of the owner of the housing unit, is responsible for determining compliance with CORI requirements for renting or leasing such housing.

(4) A property management company or public housing authority may disseminate a housing applicant's CORI to its staff who have been authorized to request, receive, or review CORI for the purposes of determining whether to rent or lease housing.

(5) Each public housing authority may disseminate a housing applicant's CORI to the applicant's attorney or legally designated representative. However, before receiving the housing applicant's CORI, an applicant's attorney or legally designated representative shall provide a release, signed by the housing applicant, authorizing the attorney or legally designated representative to receive or review the CORI.

5.12: Requirement to Maintain a Secondary Dissemination Log

(1) CORI shall not be disseminated except as otherwise provided in 803 CMR 5.11 and 5.12, or as otherwise authorized by the law, regulation, or accreditation requirement that allows for CORI access.

(2) In the limited circumstances under which CORI may be lawfully disseminated outside of the landlord, property management company, real estate agent, or public housing authority's organization, the entity shall record such dissemination in a secondary dissemination log.

(3) The dissemination of information must be logged in accordance with the requirements set forth in 803 CMR 2.19: *Requirement to Maintain a Secondary Dissemination Log*.

5.13: Limitation on Dissemination and Use of CORI

- (1) CORI accessed pursuant to 803 CMR 5.04 by a landlord, property management company, or real estate agent shall be used solely for determining whether to rent or lease real property to the housing applicant.
- (2) CORI accessed pursuant to 803 CMR 5.05 by a property management company or public housing authority shall be used solely to determine whether the housing applicant qualifies for a subsidized housing program.
- (3) Except as provided in 803 CMR 5.11 and 5.12, a landlord, property management company, real estate agent, or public housing authority shall not disseminate CORI received pursuant to 803 CMR 5.04 or 5.05.

5.14: Adverse Housing Decision Based on CORI or Other Criminal History Information

- (1) Before taking adverse action on an individual's application for housing based on CORI or criminal history information, a landlord, property management company, or real estate agent shall:
 - (a) comply with applicable federal and state laws and regulations;
 - (b) notify the housing applicant in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse housing action.
 - (c) if the CORI or other criminal history information was received from a CRA, provide the housing applicant with a pre-adverse action disclosure that includes a copy of the housing applicant's consumer report and a copy of A Summary of Your Rights Under the Fair Credit Reporting Act, published by the Federal Trade Commission and obtained from the CRA, by meeting the housing applicant in person, by telephone, by electronic communication, by fax, or by hard copy correspondence.
 - (d) provide the applicant with a copy of his or her CORI or other criminal history, and disclose the source of the criminal history information;
 - (e) provide a copy of the entity's CORI Policy, if applicable;
 - (f) identify the information that is the basis for the potential adverse action;
 - (g) provide the applicant with the opportunity to dispute the accuracy of the information;
 - (h) when CORI is considered as a part of a potential adverse action, provide the applicant with a copy of DCJIS information regarding the process for correcting CORI; and
 - (i) document all steps taken to comply with 803 CMR 5.14(1).
- (2) A public housing authority or property management company that administers a subsidized housing program for qualifying subsidized housing units that takes an adverse housing action based on CORI or criminal history information shall:
 - (a) comply with applicable federal and state laws and regulations pertaining to suitability for subsidized housing;
 - (b) notify the housing applicant in person, by telephone, fax, or electronic or hard copy correspondence of the adverse housing action.
 - (c) if the CORI or other criminal history information was received from a CRA, provide the housing applicant with a pre-adverse action disclosure that includes a copy of the housing applicant's consumer report and a copy of A Summary of Your Rights Under the Fair Credit Reporting Act, published by the Federal Trade Commission and obtained from the CRA, by meeting the housing applicant in person, by telephone, by electronic communication, by fax, or by hard copy correspondence.
 - (d) provide a copy of the housing applicant's CORI or criminal history information and disclose the source of the criminal history information;
 - (e) provide a copy of the entity's CORI Policy, if applicable;
 - (f) identify the information that is the basis for the potential adverse action;
 - (g) provide information regarding the process to appeal the adverse decision;
 - (h) when CORI is considered as a part of a potential adverse action, provide DCJIS information concerning the process for correcting a criminal record; and
 - (i) document all steps taken to comply with 803 CMR 5.14(2).

5.15: Use of a Consumer Reporting Agency (CRA) to Make Housing Decisions

(1) A landlord, property management company, real estate agent, or public housing authority may utilize the services of a CRA to request CORI regarding a housing applicant.

(a) Before a CRA can request CORI from DCJIS on behalf of a landlord, property management company, real estate agent, or public housing authority, the housing entity shall:

1. Register for an iCORI account and designate the CRA as an entity authorized to perform CORI checks on its behalf;
2. Notify the housing applicant, in writing and in a separate document consisting solely of this notice, that a consumer report may be used in the housing decision making process;
3. Obtain the housing applicant's separate written authorization to conduct background screening before asking a CRA for the report about the subject. A landlord, property management company, real estate agent, or public housing authority shall not substitute the CORI Acknowledgment Form for this written authorization; and
4. Obtain a signed CORI Acknowledgment Form and follow all requirements pertaining to verification of identity as set forth in 803 CMR 2.11: *Requirements for Requestors to Request CORI*.

(b) A landlord, property management company, real estate agent, or public housing authority shall also provide required information to the CRA before requesting CORI through the CRA.

1. The housing entity shall certify to the CRA that it is in compliance with the Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681;
2. The housing entity shall certify to the CRA that it will not misuse any information in the report in violation of federal or state laws or regulations; and
3. The housing entity shall provide accurate identifying information for the housing applicant to the CRA and the purpose for which the subject's CORI is being requested.

5.16: Audits by the Department of Criminal Justice Information Services (DCJIS)

Any landlord, property management company, real estate agent, or public housing authority that obtains CORI from DCJIS shall be subject to audit as described in 803 CMR 2.23: *Audits by DCJIS*.

5.17: Landlord, Property Management Company, Real Estate Agent, or Public Housing Authority Access to CORI for Purposes Other than the Evaluation of a Housing Applicant

Nothing in 803 CMR 5.00 shall limit the ability of a landlord, property management company, real estate agent, or public housing authority to access CORI pursuant to any other section of 803 CMR 2.00: *Criminal Offender Record Information (CORI)* including, but not limited to, access as an employer or member of the general public.

5.18: Waiver of Certain Fees for Veterans Organizations

Pursuant to M.G.L. c. 6, § 172A, and 803 CMR 2.04(10), no fee shall be assessed for a CORI or self-audit where any veterans organization is requesting information relative to employees, volunteers, or veterans for which such organization provides housing.

5.19: Severability

If any provision of 803 CMR 5.00, or the application thereof, is held to be invalid, such invalidity shall not affect the other provisions or the application of any other part of 803 CMR 5.00 not specifically held invalid and, to this end, the provisions of 803 CMR 5.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 5.00: M.G.L. c. 6, §§ 167A and 172.