

When Can a Realtor Obtain a Credit Report of a Customer or Client?

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When real estate licensees are acting on behalf of a landlord to bring a tenant to the premises, it is commonplace for the real estate licensee to obtain a credit report regarding the prospective tenant. The right of a real estate agent to obtain such a report was set forth long ago in a Federal Trade Commission "Staff Commentary" on section 604 of the Fair Credit Reporting Act ("FCRA").

The FTC Analysis

The FTC's commentary regarding the FCRA states in part:

"6. Agents

A. General. An agent of a party with a "permissible purpose" may obtain a consumer report on behalf of his principal, where he is involved in the decision that gives rise to the permissible purpose. Such involvement may include the agent's making a decision (or taking action) for the principal, or assisting the principal in making the decision (e.g., by evaluating information). In these circumstances, the agent is acting on behalf of the principal. In some cases, the agent and principal are referred to as "joint users." . . .

B. Real estate agent. A real estate agent may obtain a consumer report on behalf of a seller, to evaluate the eligibility as a prospective purchaser of a subject who has expressed an interest in purchasing property from the seller."

Obligations of Real Estate Licensees When Obtaining Credit Reports

There are three nationwide consumer credit reporting companies, i.e. Equifax, Experian and TransUnion. The FCRA places substantial obligations on the persons who obtain credit reports. In most instances, consumers authorize a person to obtain a credit report because they are requesting financing, employment or other services. Even when a consumer does not authorize the request of a report and the consumer is seeking to rent an apartment, the entity granting credit or the landlord and his or her agent can obtain a credit report. When a consumer's application for an apartment or financing is rejected in part because of the consumer's credit report, certain obligations accrue to the person who obtained the report. The consumer must be advised:

- I. that an adverse action has been made with respect to that consumer in whole or in part because of the report from the consumer reporting agency;
- II. of the name, address and telephone number of the consumer reporting agency that provided the report (including a toll-free telephone number);
- III. that the consumer reporting agency did not make the decision to take the adverse action with respect to the consumer and will be unable to provide the consumer with the reasons why the adverse action was taken; and
- IV. that the consumer may, upon providing proper identification, request a free copy of the report and may dispute with the consumer reporting agency, the accuracy or completeness of any information in the report.

A real estate agent is permitted to provide to the consumer a copy of the report that formed the basis of or a partial basis of the adverse decision against the consumer.

What Are The Rights of The Consumer?

The FCRA now requires that the three nationwide reporting companies, Equifax, Experian and TransUnion, provide a free copy of any consumer's credit report once every twelve months. The reports can be obtained using a computer website, a toll-free telephone number or a mailing address as follows:

- a) www.AnnualCreditReport.com,
- b) 1-877-322-8228; or
- c) Mail an Annual Credit Report Request Form to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, Georgia 30348-5281. (A copy of the form required, can be obtained from <http://ftc.gov/credit>).

Contacting the three nationwide consumer reporting companies individually will not result in a consumer obtaining a copy of his or her report. In order to obtain a report, the individual must provide his or her name, address, social security number and date of birth. Other information may be requested if a person has moved or there are anomalies in the information. The reports are usually available instantaneously by using the online website or within fifteen days using the telephone number or Annual Credit Report Request Form.

Adverse Actions

Under Federal law, every consumer is entitled to a free report if a company takes an adverse action against a consumer such as denying an application for a mortgage or for a rental. The free report is obtainable from the Credit Reporting Agency within sixty days of the receipt of the notice of action by the lender or landlord, etc.

Errors, Errors, Errors!

Many consumers have found their credit to be impaired because of errors made by credit reporting companies. Under the FCRA, the consumer reporting company must upon receipt of a written notification that an entry on a report is disputed, investigate the items and if an inaccuracy is determined, remove the disputed item from the report. The consumer reporting company must also notify all three nationwide consumer reporting companies so that the information is corrected by each of them. Moreover, the consumer reporting company must provide to the consumer a report of written results and a free copy of a report reflecting the removal of the disputed item if the consumer is correct. There are strict requirements for the reinsertion of such information in a report once it has been removed.

When a consumer reporting company refuses to correct the information or disputes the viewpoint of the consumer, the consumer is permitted to ask that a statement setting forth the dispute be included in his or her file and in all future reports. The consumer reporting agency does have the right to charge a fee for the inclusion of the statement of dispute.

Who Can Obtain Copies of a Person's Credit Report?

The only persons permitted to obtain copies of a person's credit report are creditors, insurers, employers and other businesses that use the information in order to evaluate applications for credit, insurance, employment, for renting a home or for similar purposes. Employers may not obtain a credit report about their employees unless the employee agrees. Lawyers cannot obtain a credit report for purposes of considering whether or not to commence litigation. If an actual claim exists on behalf of a client, the client can, based upon there being a balance due to the client, seek a credit report regarding the non-paying debtor.

For More Information . . .

Anyone interested in obtaining copies of the FCRA or other commentary from the FTC regarding the rights of debtors and creditors under the Act, can seek same from the FTC Website at: <http://www.FTC.gov/bcp/edu/pubs/consumer/credit/cre34.sthm>.