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Popular Threads on Solosez

Credit Check by Employer

Have any of you heard of this?!?

A client recently came to me after being unpleasantly surprised by a prospective employer. They called her out of the blue and wanted to ask about a couple items on her credit report. Needless to say, she was perfectly blind-sided by this, slightly embarrassed, and eventually moderately offended. She was expecting a criminal background check, but not a look into her credit history.

I didn't know exactly what to say to her as I haven't heard of such a thing.

Is this commonplace? Are employers permitted to pull a prospect's credit history without prior authorization?

James Travis

Neil Rowe to SOLOSEZ

Peter Yes, it is becoming more and more commonplace. No, and employer cannot pull the candidate's credit report UNLESS the candidate consents in writing. Almost all employment applications I have seen or heard about in the last few years include language about the credit report in the same release as for criminal background check. I bet your client signed one too.

She should check what permissions she gave them when she filled out an application. Many employers do have employees give permission to run both a criminal background check and a credit check. If they do not have permission to run a credit check, I believe it is a violation of (something federal - I am too lazy to check right now).

Michelle J. Rozovics, Esq.
Rozovics Law Firm, LLC

It's pretty common; however it's always been my understanding that you need prior authorization to pull a credit report. I'm guessing that whatever "release" she signed to authorize a criminal background check is broad enough to cover the credit report as well.

What she does about it will depend on how badly she wants or needs the job.

Back before I went to law school I interviewed for a position with a huge international media company - the release they wanted me to sign covered

every kind of check you can imagine, including credit. I crossed out the credit portion and when I was asked about it I said that I wasn't handling cash/credit and I saw no purpose for it. I was told that they had never had anyone refuse to allow them to pull a credit report before, but they offered me the job anyway. Of course, it was a very different time/economy then.

Laura
Laura McFarland–Taylor, Esq.

It's becoming more and more common especially in law enforcement and financial services industries. I'd be very surprised that she didn't sign an authorization. it might have been included on the employment application form. if in fact she didn't authorize the check, then that might be actionable.

Peter Turai, Esq.

Be careful about that statement "without prior authorization" You said that she was expecting a 'criminal background check' so maybe she signed something authorizing this. We use a third party search company for potential hires, and their 'authorization' includes criminal, credit, dmv and maybe others. It is very broad, and spells all of these out. It is a separate authorization to the one on the employment application, that is very broad also. I'd ask her to get a copy of what she signed, and take it from there.

Good luck

Robert N. Glasser

It is more common than not to run a credit check on prospective employees. I would be surprised if the authorization she signed to permit a criminal check did not include authorization for a credit check. The credit check measures how well the prospective employee manages their own resources and whether or not they keep their obligations. Useful information to an employer.

Duke Drouillard

The client probably signed a blanket authorization form when she applied for the position allowing a credit report check. They should not be running credit checks without authorization.

Eric Welter

This is becoming more common. Ask to see the employment application. She probably agreed to the credit check but wasn't aware.

Ryan McClure, Esq.

As everyone has already chimed in and said, many ERs now do this. Generally there is a release on the employment application. However, this is covered by the FCRA and ERs have things that are required of them if they are going to get a credit report -- basically providing notice to Ees on how they can get a copy if adverse action is taken, etc., etc., etc. (sort of similar to what credit card companies have to do). The ER might still be using a release that was developed prior to the new rules (just never got around to getting updated language) and is not in compliance. Get a copy of what the EE was given and signed, then look at the law to see if the ER is in compliance with what is required.

Sheila Aiken

I know of at least one organization investigating the disproportionate impact of employee credit checks on minority applicants. These applicants may be more likely, for a variety of reasons, to have either less credit reported to the agencies or negative reporting to the agencies, both of which are bad. Because of this, there is a movement (however small or insignificant) to eliminate or restrict this practice.

Something about the practice doesn't seem right to me. A criminal background is one things: one presumes that there was probable cause to arrest you, that you had an opportunity to cross examine those witnesses against you, that you had the right to an attorney, an impartial magistrate/judge/jury, etc. With credit reporting, anybody can report an event to the credit agencies, who then use a combination of *secret* factors to come up with your score. Most of time, you have zero notice, zero opportunity to object, zero opportunity to confront, and no meaningful way to dispute or prove the impact of a negative credit event. Can anybody convince me why credit reporting is fair? Not useful, as Duke perhaps rightly points out, but fair?

Chris

The one place that I saw credit checks as being very relevant was in job with access to money. I was involved in a lawsuit where an employee issued credit cards to herself. The claim was that the staffing company should have performed a credit check on her (one had allegedly been requested), which would have shown pages and pages of problems.

Eric Welter

It is very commonplace. and often well advised for companies to pull consumer reports. Employers do not have to ask for permission to pull consumer reports for many positions, particularly those with certain attributes such as "highly compensated individuals" which is still defined as anyone with a greater than $75K annual compensation (actual or potential). Also many employers place such permission in the boilerplate application forms that everyone either signs or ignores. If an employer takes _any_ adverse action based on item(s) in a consumer report then the employer must give the employee a copy (actual, in hand copy) of the report and the identity of the CRA (consumer reporting agency) used.

The consumer can request the information be corrected through the CRA if it's erroneous and has some potential for recovery depending on the item.

Roger Traversa

Another attorney referenced a federal law, and you don't cite anything. Where did you receive this information? Is it statutory, common law, a specific state law?

I would like to know the basis for the position that a putative employer must have some statutory or other authority to run a credit check on an applicant or an employee. And the same goes for the information you cited which suggests that an employer does not need statutory authority to run a credit check, but has specific obligations to an applicant/employee if the employer does run such a check. Does anyone have a specific statute they can cite? I would really like to read it.

And, there is the further potential of discrimination against an applicant based on credit history. In Illinois, I believe our human rights statute specifically prohibits making an adverse employment decision as to an applicant (and, I think, current employee) based on the applicant's/employee's credit history. At least I think it does - I have not read it in quite a while.

Valeree D. Marek

We're usually offering information based on our knowledge and expertise. This isn't generally a place for a well researched response (though some go above and beyond regularly).In this case I think we can all assume that the basis is the FCRA. If one is unfamiliar with the FCRA's expectations completely. Well then why are they even interjecting in this topic? With respect to my previous answer, the FCRA is where the basis lies that all requests for CR must be "authorized" or exempt from authorization. To wit, Section 605 provides the general exception that credit transaction over 150K and highly compensated individuals don't need to provide explicit authorization, as it is assumed and exempted from the otherwise all encompassing requirement to obtain authorization.

As to adverse action based on credit history, their is no federal protection for persons with issues on CR except in the case of BK where such information (in personal 7 (and possibly 11 and 13 IIRC)) cannot be used for an adverse action or otherwise the employer is subject to action under the BK Code, which I am sure explicitly makes such discrimination unlawful.

As to the state law about CR based discrimination I have never heard of that but would be more than willing to represent on employer shooting down such a law. It flies in the face of the federal laws regarding CR and, as recent cases demonstrate, where there is federal authority the states seem to have less authority. i.e., If I can't sue a manufacturer of an FDA "approved" drug why would I be able to sue for discrimination where the

federal law leaves it to employers to discriminate based on information in a CR? And, please, no response and no argument. I was trying to make a point and just don't have the available brain cells to handle this one this evening. I originally provided info that is correct, and now I've gone and provided a response to someone who doesn't even seem to be engaged in the issue based on their indignation that I did not BlueBook my response

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BlueBook my response

Roger

Hey - CALM DOWN Mr. "No Response and No Argument." I did not mean to be indignant, and I certainly did not intend to suggest that you were somehow wrong in your response. I am sorry that you were offended by my question. In my practice, I have very little cause to use the FRCA so I am not all that familiar with its provisions. I was simply asking if you, or anyone else who responded to the initial e-mail, could provide me with a cite to the provisions of the Act that were involved. And, I apologize again - I "intervened" in the discussion because I was genuinely curious and I thought that one of the reasons this forum exists was to exchange information and to ask other attorneys for assistance when one had questions.So, pardon me. Thank you for the cite. You are obviously very knowledgeable about the Act, which is why I posed the question to begin with.

No need to respond...

Not offended in the least. And I was pretty calm. But then I'm always pretty edgy. My comments in this instance were pretty restrained. Right now I'm working an appellate brief and lash out at pretty much everybody for everything. I find my left hand is getting sunburned because it pretty much stays outside the window of my car in the "You're number one" position. Fun for me… not so much for my targets. Maybe it's time to up the dosage.

I run credit reports on potential employees. Given the nature of my business, and the access to personal information of clients and opposing parties, and the access to money, etc., I do credit reports and criminal histories before offering jobs to anyone in my office it would be

irresponsible not to.

I have them sign an authorization before we pull this information. I also know a CBI is not the word of God, so yes, I have asked followup questions to applicants, and even made job offers contingent upon resolution of certain issues.

One of the problems I have with using temp agencies, is that they insist they can ONLY check for felonies (some even tell me "violent felonies") before they place someone in my office! Therefore, I keep not using them, despite their frequent efforts to woo me and the temptation to avoid all the trouble myself..

Mary Daniel

I agree with Mary. I run a credit and criminal check on potential employees, and tell all potential applicants to expect this. You can ask them to run their own, offer to reimburse them for costs (if any), if you're not set up to order it for a third party I agree with Mary. I run a credit and criminal check on potential employees, and tell all potential applicants to expect this. You can ask them to run their own, offer to reimburse them for costs (if any), if you're not set up to order it for a third party

Linda Freimark

Related question....

I've heard of apartment landlords pulling credit checks on potential tenants as well. Any truth to this? And is it kosher?

Seth Rogers

If the tenant consents, why not? The landlord needs to know that the tenant is solvent and will pay his rent on time.

Sasha

These days, if the landlord is going to pull a report on the tenant, the tenant should pull a report on the landlord. How can the tenant know thatthe landlord is up to date on his payments, or not already in foreclosure? Fair's fair.

Susan DiMaria

What about a commercial landlord (3 yr lease) who wants to see the following f/ his potential tenant:

- 2yrs of PERSONAL tax returns

- PERSONAL Financial Statement (disclosure of personal financial status)

- A Business Plan

Going too far?

Melissa Dacunha

Even assuming a corporate tenant (not stated in your hypo), I'd consider it somewhere between "irresponsible" and "malpractice" NOT to advise a commercial landlord to both see these things, and require PERSONAL guarantees on the lease...

Mary L. C. Daniel

Any time credit is being extended, a potential creditor may check a credit report of the potential debtor, under the FDCPA. (Some lawyers do it on their own potential clients.) Lease agreements are credit agreements.

Mary L. C. Daniel

What I was thinking of was a residential tenant.Apartment complexes have pulled credit reports on potential renters forever. It's getting to be common, though, for individual landlords to insist on credit reports from tenants. If the landlord wants assurance that the tenant pays her bills, and wants to see the report, fine. But if I were an individual renting from an individual landlord, and they wanted to be assured I pay my bills, I'd ask for theirs. They wouldn't want me to move in if I don't pay my bills, but if they don't pay their mortgage, I don't want to move my family in there either and have to deal with a foreclosing bank in 6 months.

Maybe I should ask the question this way. I represent a tenant about to sign a commercial lease. I don't know the landlord's finances from Adam's. Why wouldn't it be just as reasonable for the commercial tenant to be assured of the landlord's stability as it is for the landlord to be assured of the tenants? Why shouldn't a residential tenant have the same peace of mind when relocating their family? They'd never get it, of course, because the landlord would get huffy and think the tenant was prying - which is exactly how it feels to the tenant. If one party is supposed to take the other's word, why shouldn't both?

Susan DiMaria

Really, in the commercial landlord-tenant situation, it all depends. It comes down to relative bargaining power. Who is the landlord, who is the tenant, what kind of commercial rental market is it? When I have done leases in the Boston area for well-known publicly-traded corporate clients -- there weren't any personal guaranties. For the small business in corporate form renting space, personal guaranties are more the norm. But I've found that in a tenant's market, if tenant looks solid, you can successfully resist landlord's call for a PG. Cheers.

Bob Pomerene

Interestingly, I have a case with just the fact pattern you mention. Tenants living in house; house is lost to foreclosure despite owner continuing to assure tenants that everything was okay. While in the middle of moving, which was known by foreclosing bank, bank's real estate agents completely cleared out all of tenants stuff and got rid of it. Even though it was clear tenants were moving - packed boxed in garage,etc. The bank didn't respond to demand letter so we are suing.

Sharon Campbell

Actually, sauce for the goose is not sauce for the gander here.

If I were a residential tenant signing a lease for an apartment at current market rates, I wouldn't worry about the landlord's ability to pay the mortgage. Why? Let's say the landlord does not pay the mortgage and the lender forecloses. If the foreclosure extinguishes the lease, which is what you are concerned about, the lender would have the right to demand the tenant vacate. But the lender is not interested in occupying the apartment. The lender wants the cash flow from the building, and the last thing it's going to do is kick out tenants who are paying rent at market rates.

Obviously a single-family house may be different since the lender will probably want to sell the house ASAP, and it may prefer to market an empty house. But apartment buildings are valued on the basis of their cash flow, and even if the lender wants to sell the building, the buyer wants tenants in place paying rent at market rates. The lender is going to follow its own best financial interest, and that means keeping the building as occupied as possible with tenants paying market rents.

Turning to your question about the commercial tenant, the response is informed by the foregoing discussion. It is common in commercial lease transactions for the landlord, tenant, and lender to enter into an agreement that says that if the lender forecloses, the lender will not disturb the possession of the tenant so long as the tenant attorns to the lender and pays rent per the lease. Sometimes the parties agree that a new lease on the old terms will be signed. This tri-party agreement is called a subordination, non-disturbance and attornment agreement (or SNDA).

The SNDA is usually driven by the lender, but it is not surprising for a major tenant to ask for one. As Bob said, it all comes down to relative bargaining power. If your tenant is leasing a 2500 sq ft space in a 200,000 sq ft shopping center, the landlord and the lender may say, Don't bother us. If your tenant will be an anchor tenant, they'll be saying, Where do we sign?

In the absence of an SNDA, a tenant paying market rent, however, has a fairly good expectation that the lender, if it forecloses, will want the tenant to stay.

Robert Burt

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