



## Legal Opinion: Court Records on EXISTING Tenants?

### Question:

I screen my potential renters through Orca exclusively. May I also request a court record search on existing tenants?

### Answer:

*Fair Credit Reporting Act*, § 7.2.3.3, describes one of the permissible purposes for which a consumer report can be obtained is:

**“...involving review of an account. Thus, a creditor may obtain a report on a current customer to determine whether the consumer continues to meet the terms of the account, or for the purpose of deciding to retain or modify current accounts.”**

Thus, the concept of the “ongoing review” is well established.

### Limitations on Review:

This memo discusses investigative searches generally and no reference is made in the question presented or in this responsive memo to a particular case or circumstance.

Credit reporting laws are complex. Complete analysis of this question would require hours of research, which is beyond the scope of the requested analysis.

I base my opinion primarily upon the book, *Fair Credit Reporting*, published by the National Consumer Law Center. No supplemental or independent research has been performed.

Another question is whether the authorization for the release of information used by AHA is sufficiently descriptive to encompass the concept of an ongoing review.

I recommend to clients that their authorizations for an “ongoing review” be included in their lease documents. The following example is from the lease form I use.

**“Resident authorizes owner to obtain supplementary credit and/or screening reports at any time during and up to one year following Resident’s occupancy of the premises at owner’s expense. Except as disclosed on resident’s application, resident warrants that they have never been convicted nor pleaded guilty or no contest to a felony (whether or not resulting in a conviction) and that residents have never been convicted or pleaded guilty or no contest to a misdemeanor involving sexual misconduct, or a crime against a child (whether or not resulting in a conviction). Resident agrees to promptly notify owner in case of any change in this status during tenancy. Resident represents and warrants the accuracy of all information contained on resident’s rental application. A subsequent determination that resident provided false or inaccurate information on the rental application is a breach of the terms of this agreement and owner may take legal action to terminate this agreement in such case.”**

I have not found authority indicating that this language is necessary or required to permit an ongoing review. However, in an abundance of caution, I have seen fit to use this language in my own lease forms to resolve any ambiguity in my favor.

As a recommendation for the future, AHA may wish to modify their Release of Information form to include similar language.

### Executive Summary:

Provided all other requirements of the Fair Credit Reporting Act and similar laws are complied within a given instance, it is my opinion that it is a permissible practice to request ongoing reports for the purpose of performing an “account review.”

*From Christopher T. Benis, Attorney at Law Office of Harrison, Benis & Spence, LLP.*

*This article contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer.*



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### What our client’s are saying about Orca...

*“Thank you so much, you guys are awesome!!!”*  
S.W. - Wenatchee, WA

*“Thanks for fast, thorough work.”*  
C.C. - Anacortes, WA

*“THANK YOU FOR YOUR PROMPT RESPONSE. We will post a big thank you on Facebook and you’ll be listed on our website as a donor.”*  
Habitat for Humanity  
- Mt. Vernon, WA

### ORCA \*WISDOM\*

*“Persistence guarantees that results are inevitable.”*  
-P.G.

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*HAPPY VALENTINE’S DAY  
FROM THE ORCA POD!!*





## Quick Facts: Family Medical Leave Act

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The Family Medical Leave Act of 1993 (FMLA) was created “to balance the demands of the workplace with the needs of families”. Although this federal law is only applicable to businesses with more than 50 employees. Yet many smaller businesses choose to follow similar procedures for the benefit of their employees. A complete summary of the FMLA can be found at <http://www.dol.gov/whd/fmla/index.htm>. Below are basic facts:

1. The law entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.
2. A covered employer is defined as:
  - a. Private-sector employer with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
  - b. Public agency, including a local, state or Federal government agency, regardless of the number of employees it employs; or
  - c. Public or private elementary or secondary school, regardless of the number of employees it employs.
3. Eligible employees are defined as:
  - a. Works for a covered employer (as defined above);
  - b. Has worked for the employer for at least 12 months;
  - c. Has at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave\*; and
  - d. Works at a location where the employer has at least 50 employees within 75 miles.

\*Special hours of service eligibility requirements apply to airline flight crew employees.
4. Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following reasons:
  - a. The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
  - b. To care for a spouse, son, daughter or parent who has a serious health condition;
  - c. For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
  - d. For any qualifying exigency arising out of the fact that a spouse, son, daughter or parent is a military member on covered active duty or call to covered active duty status.
5. An eligible employee may also take up to 26 workweeks of leave during a “single 12-month period” to care for a covered servicemen with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the service member. The “single 12- month period” for military caregiver leave is different from the 12-month period used for other FMLA leave reasons.
6. Employees may be eligible to take FMLA leave on an intermittent or reduced schedule basis dependent on circumstances. This may include taking leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying purpose. In the case of planned medical leave, the employee must make a reasonable effort the schedule treatment so as not to unduly disrupt the employer’s operations. If the leave is for birth, adoption or foster placement of a child, use of intermittent or reduced schedule leave requires the employer’s approval.
7. Under certain conditions, FMLA leave may run concurrently with accrued paid leave such as sick or vacation time. Whether this occurs as the employee’s choice or is required by the employer is dependent on the terms and conditions of the employer’s leave policy.
8. Employees must follow the employer’s customary requirements for requesting leave, and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. When the need for leave is foreseeable, employees must request leave at least 30 days in advance. If the need for leave arises without 30 days notice, employees must provide notice as soon as possible and practicable under the circumstances.
9. When an employee requests leave for a qualifying FMLA reason for the first time, the employee is not required to specifically request FMLA leave/rights, or even mention the FMLA. Covered employers are responsible for the following:
  - a. Post a notice explaining rights and responsibilities under the FMLA (and may be subject to a civil money penalty of up to \$110 for willful failure to post);
  - b. Include information about the FMLA in their employee handbooks or provide information to new employees upon hire;
  - c. When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA-qualifying reason, provide the employee with notice concerning his or her eligibility for FMLA leave and his or her rights and responsibilities under the FMLA; and
  - d. Notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employee’s FMLA entitlement.
10. When an FMLA leave request is due to an employee’s own serious health condition or that of a covered family member, the employer may require certification in support of the leave from a health care provider.
11. Upon returning from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits and other terms and conditions of employment. An employee’s use of FMLA leave cannot be counted against the employee under “no-fault” attendance policy.
12. Employers are required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave.

As a covered employer, it your responsibility to ensure compliance with the FMLA.

(Information for this article was obtained from the U.S Department of Labor, Wage and Hour Division website.)

*This article is intended as information, and is not a substitute for legal or other professional advice.*