NATIONAL MULTIFAMILY HOUSING COUNCIL

Transcript
Code 53
Insight on Rent Payment Reporting

Jay Harris:
It's a fairly dynamic space in the way that a credit card loan, a car loan, will be underwritten two, three, five years from now when today's renter wants the benefit of that.

Alison Johnson:
Welcome back to Code 53, The Apartment Podcast. I'm your host, Alison Johnson with NMHC. On this show, we bring you into conversation with department industry executives, leading experts in the multifamily sector, and a diverse group of practitioners, all to help you learn everything it takes to create communities, from business strategy to design to finance and leadership.

Today on Code 53, we're going to explore a hot topic in the multifamily space right now, rent payment reporting. It represents a great opportunity for both operators and renters, and new statutes and regulatory activities suddenly are encouraging it. We'll dig into how it creates economic mobility, improves household affordability, and the impact that provider innovations are making to make it easier for property managers to implement and reliably sustain.

Coming up, everything you ever wanted to know, but were afraid to ask, about rent payment reporting with Attorney Jay Harris.

Announcer:
The Code 53 Podcast is brought to you by NMHC, the National Multifamily Housing Council, the place where the leaders of the apartment industry come together to guide their future success. From owners to managers and developers, NMHC's members create thriving communities by providing apartment homes for 40 million people, contributing $3.4 trillion annually to our nation's economy.

Alison Johnson:
Our guest today is the principal attorney with Harris Crystal Advisors, where he represents multifamily housing operators and vendors. Jay Harris is a former general counsel to two publicly-traded industry vendors, and he has advised the rental housing industry for three decades. He is also the author of a recent NMHC resource publication for members on the topic of rent payment reporting. Jay, welcome to Code 53.

Jay Harris:
Thanks, Alison. It's great to be here on Code 53.

Alison Johnson:
Well, we're delighted to have you dig into a very weedy topic and legal, so we're always good to have a counsel like yours here to explain it all to us. Jay, as I said, rent payment reporting is a popular topic right now, and it's ripe for innovation and a lot of potential in the business areas. But most importantly, it benefits consumers who need the reporting to show up for improved terms on car purchases and loans, on their credit card rate and on mortgage loan offers.

Let's start with a 30,000-foot view of rent payment reporting. What's the history here?

Jay Harris:
Sure. So it's a complex topic. It's one where property management companies have been reporting renter payment history to consumer reporting agencies for decades. It's getting new attention now because in this Biden administration in particular, there's more attention to ways in which more renter history can show up in credit decisions that are made, whether it's in the mortgage or the auto or credit card context, so that a renter who's paid renter history on time, lease obligations on time is able to get the credit, get better terms for that credit card, auto, or mortgage loan.

There's some new innovations that we'll talk about in terms of both consumer reporting as well as consumer-permissioned renter history sharing, both of which can help a consumer qualify for better terms in the credit grading process if the lender is using a score or a tool that includes that renter payment history.

Alison Johnson:
As I understand the process, renter payment reporting is voluntary. Every furnisher of information must develop their own policies and protocols.

Jay Harris:
That's right. It's a voluntary program. So sometimes the question is, well, what's in it for the furnisher, in this case, the property management company? There's two ways to look at it with some of the innovations that have come along in the last several years. There's the traditional model, which is one in which the property management company can furnish data to a credit bureau with the help of a facilitator.

Either the property management company can do it itself or can work with a facilitator to make that information available to some of the consumer reporting agencies, the three principal credit bureaus being Experian, TransUnion, and Equifax. Or increasingly, there have been innovations around consumer permission reporting, and this is one where it's more resident-driven in that the resident is saying it would like to share its account information with a credit grantor, a lender of some sort.

And then the lender will use an intermediary to review the actual account information directly rather than going through the credit bureau and make its credit assessment for a credit card loan or auto, mortgage loan through that consumer-permissioned approach. So two ways now to get to the result and ones that have different operational implications for property operators.

Alison Johnson:
All right. Great. I would like to talk about the operational implications, but let's touch first legislation and regulatory agencies looking anew at the financial wellbeing of underserved communities, making sure that all people who are participating economically in markets are getting recognized and good credit for that participation. Can you bring us up to speed of what's happening that is giving multifamily operators a fresh look at this process?

Jay Harris:
So one of the key drivers more recently on the regulatory front has been worked by the Federal Housing Finance Administration, FHFA, to validate credit scores for mortgage lending that include renter payment history. In the past, while some leading-edge property management companies have reported this information and made it available, there wasn't always a connection between that work they were doing for the renter and the benefit showing up with better terms because what a mortgage lender, for

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example, might use in making its credit decision was a credit score that didn't include some of that renter payment history.

So it may be available, but it may not be used by that particular credit decision. So what's changed here is the FHFA's efforts in October after an extensive process to validate some of the credit scores that are out in the market, in particular a version of the FICO score and a version of Vantage score for mortgage lending and say those are valid, are well-supported and inclusive, and they include the renter payment history that has been available in some numbers in the system for a while.

That's a step in the right direction. It won't happen overnight. But what the FHFA has done is said, over the next few years as systems are updated on the mortgage lending side, that a mortgage lender in order to sell a loan to Fannie Mae or Freddie Mac will have to include one of these mortgage scores that includes renter payment history in order to sell the loan as a condition of selling the loan.

Ag, there will be a couple years for that to fully take on that side. But now for those property management companies who have been reporting that information, there's now more need for it, a requirement on the mortgage side. There's some voluntary adoption in other types of credit granting, like auto and credit card and other sorts. But this step on the mortgage side, I think, is really a strong move on the regulatory for support of this practice.

And then the other part I've mentioned with that has been parallel work, both on the research front and the operations front, for Fannie Mae and Freddie Mac to put into their equitable housing finance plans specific commitments to encourage and educate the market around how to report renter payment history through the credit reporting process and also through the consumer-permissioned process with new incentives for some of their borrowers to work with facilitators that they've identified for reporting more renter payment history.

Alison Johnson:
So the GSEs and their regulator are looking at this and they're researching the benefits of how to get it done. But there is housing finance research out there. Can you shed some light on some of the evidence this is more than just a political worthwhile, this is an economic worthwhile?

Jay Harris:
That's absolutely right. This is good data-driven policy making, and that was one of the reasons why the National Multifamily Housing Council several years ago was talking to federal regulators to say, "Hey, look, wider adoption by credit granters of the renter payment data that property management companies are already providing and have done for some decades has a strong consumer benefit, and we encourage wider regulatory support for that."

So NMHC deserves some kudos for taking that research early on in their policy process and encouraging the path forward, which the FHFA has taken. So yes, there are probably two areas to look at for people that are interested in the research on the benefits of renter payment history. What does it do for the resident herself? One is work that was done by the Policy and Economic Research Council and released by HUD, Department of Housing and Urban Development, early in 2020, still available on the HUD website Policy Development and Research section.

It looked at residents in public housing authorities, a small sample of those, and looked at what benefit would come from this credit-challenged environment. These are not market rate renters. These are public housing authority residents in the 2019, 2020 study and had found that in two areas there were significant benefits for consumers who would report their payment history in the housing authority. One was that a significant proportion of them could now be scored in a way that they didn't have a deep enough credit file without the renter payment history to generate a reliable credit score to evaluate their credit risk. And then also the second category of those that had a credit score, the pluses far outweighed the minuses. Those that had an improved score by adding the renter payment history and the housing authority were a significantly greater group than those for whom it had a derogatory effect to add in that housing authority renter payment history.

Depending on the model, it was two to one or more, in some cases, 16 to one. 16 would benefit for every one that saw a decrease in their credit score. So it's really some significant gains, depending on how the risk was modeled. That was one bit of good research that supported some of the other research that had come before it. More recently, the end of 2021, the Urban Institute's Housing Finance Policy Center released a very good comprehensive study on rent as well as utility and telecom data, what are called alternative data sources, and the benefits of including those in credit underwriting.
And again, credit underwriting not just for mortgage but also for credit card, auto, and other types. So a good thorough study about the benefits of including that. And again, similar conclusions, more of these what were called credit invisibles could be scored. Similarly, credit scores were increasing for the substantial majority of those that were in the added pool. We're glad to see it's driving some of the policy making that comes out of it.

Alison Johnson:
Right. Thinking through credit scoring and how people spend their money, it's difficult to get a holistic picture. Rent payment for many households is the largest expenditure. So there is a lot to be said for why it's good and what the positive outcomes are for both the owner operator and the resident.
But there are devils in the details here in how it gets operationalized or implemented, particularly as companies are looking to develop better policies around DEI, not only in their organization but in their operations. As companies look through that lens, what are the costs and the risks that an operator needs to think through as we encourage them to consider this kind of activity?

Jay Harris:
That's a good question. I think the COVID experience played up a little bit more some of the risks because some of the regulatory bodies became more active in highlighting those risks and their interest in enforcing in that area with some of their enforcement bulletin guidance. Those firms that have been doing it for a while saw new complexity in all the local ordinances that addressed the point at which a payment would be late under some localities, COVID-related moratoria or other conditions.
This is why we wrote the whitepaper. We don't have slides on the podcast to show pros here, cons there, but we do in the whitepaper to tee it up. So there is some exposure that needs to be managed where a property management company decides they want to be a furnisher into the consumer reporting environment. They're subject to the Fair Credit Reporting Act. They and their vendor need to work out, on an implementation basis, the right policies and procedures they need for making sure that this is accurate information that's being furnished about the person paying on time or paying late.
They need to have a way to handle these disputes if there are questions about something where the resident is disputing something that's been reported about them. That's a new level of consumer interaction and a new level of liability exposure that a furnisher faces if they decide to take that step to give the resident that benefit. Obviously, there are costs associated with that.

Now, there are some new entrants into the field that help with the expertise and the management of that. So it is possible for a property management company who says, "We don't have this as a core competency, but we'd like to play a role in helping the residents and we'd like to do it out of the payment history in our property management software," to work with some of the vendors in that space and get not only the benefit of renter history reporting, but also some of the other benefits, some of the innovations that have come on in the space in the last few years, such as short-term loans that some facilitators are also providing to help late-paying renters carry over and handle short-term problems they may have with cash flow.

They're also getting credit card points and other benefits for renter payment history. So new features as well as a new expertise to outsource the reporting competency are available to property management companies now that weren't there five years ago. That's good and valuable, but it's important that they need to manage the risk to make sure the information is accurate, make sure somebody's doing the QA on this, make sure there's a good consumer response, not just for enrollment and unenrollment when the tenant wants to come off, which happens sometimes, but also, as I mentioned, around disputes that they may have when they go someplace else.

So that's where things are today on pros and cons of the traditional consumer reporting. That's where, as I mentioned, when COVID came along, some firms that have been doing this for a while said, "Wait a second. Now we are tracking at the local county level. What's the due date for an individual who hasn't paid in some months and reporting that accurately?"

For larger firms, they said, "We think we have a pretty good handle on this, but we also know there's some exposure if we're not getting this right. So we need to look carefully at how we run this. We really need to stay on top at a very local level at at what point is a past due payment really due if Los Angeles County has said you've got another three months or four months before it's actually due because of the COVID problem?"

So I think that raised some concerns for experienced, savvy property management companies and their providers about looking at do they need to report on-time payment and late payment information or should they just be reporting on-time payment information, positive-only reporting as it's called? So I think that led to firms, in some cases, to rethink whether they would provide only on-time payment information or derogatory late payment information, too.

So that's a consideration, something to think through as you evaluate your ability to manage. The answer to that question really varies if you are a property operator that's in a relatively small set of jurisdictions that you're on top of versus a highly diversified firm where you have some significant exposure and you have a fairly dynamic local regulatory scheme. So that's one area of considerations. The evaluation is a little different in the consumer-permissioned space because here the property management company is facilitating this or encouraging this, but plays more of a marketing role and is not a furnisher of record for the purposes of litigation exposure under the Fair Credit Reporting Act. So here with a consumer-permissioned approach, they are making the renter aware of ways in which the renter can share its account information directly with a firm that facilitates the use of that information by mortgage lenders and auto lenders and credit card lenders and the like.

So that consumer-permissioned evaluation of account payment information, cash flow risk evaluation different from the traditional consumer reporting system is one that is getting increasing attention, one in which there are several providers out there. There's some overlap between those that facilitate consumer-permissioned reporting and those that facilitate traditional consumer credit reporting of renter payment history.

But that consumer-permissioned approach with cash flow risk evaluation, as there are more lenders that can perform that kind of risk evaluation, we see that there will be more adoption of that approach by residents who are aware of this. So there, the property management company's playing more of an educational role and encouraging residents to look at that approach as well.

What's interesting, I think, in terms of what's better between the two is that you see under both the equitable housing finance plans from Freddie Mac and Fannie Mae, that they both have initiatives on both those areas because it's a fairly dynamic space in the way that a credit card loan, a car loan will be underwritten two, three, five years from now when today's renter wants the benefit of that is one in which I think we'll see more consumer-permissioned approaches, wider acceptance, wider understanding of that among residents as well as the traditional consumer reporting system model. So interesting times ahead and one in which potentially that's a way for property management companies that are a little more risk averse in managing their litigation exposure to facilitate and point to solutions to educate renters about consumer-permissioned approaches that can work.

Alison Johnson:
Jay, you've described, in my mind, something that is highly specific and somewhat complicated. Where's your first point of entry if you were going to give anyone some guidance on your first point of entry of how to perform an internal analysis of which strategy works best for you?

Jay Harris:
I think the first step is to think through what role do you want to play. I think the answer is different if you are in several jurisdictions that are very dynamic in terms of their regulatory process. I think we see more of those today given just trends in the marketplace, the White House announcement even this week, pointing to more renter-centric solutions, advocacy blueprint for renter rights.

I think we'll continue to see a fairly dynamic picture of what kind of rights are expected for residents and properties. So as companies think about their appetite for risk and they think about the role that they want to play, they can look at which of those models, the consumer reporting or the consumer-permissioned, make more sense for how they run their business.

And then secondly, I think they're looking at vendors in the market, several of them are NMHC members, but looking at facilitators who can help with this process to help develop the policies and procedures that a company would need as a furnisher and help think through how to staff this and the collateral that's needed and so forth. Again, these are the baseline questions that are in the whitepaper that would be in the consideration for any property management company that's thinking about providing any new service and its ability to execute on that.

I think being honest about the role they want to play, the staff capability to do that, and then the trust level in the vendor and the oversight of the vendor are all good places to start to see really where are you on this. That can be a very diverse set of considerations if you're a small operator in one state versus a bi-coastal operator with a large or very large portfolio.

Alison Johnson:
Jay, thank you so much for your time today. I think definitely a lot to consider. Jay Harris, principal attorney with Harris Crystal Advisors, thank you for being on the podcast.

Jay Harris:
My pleasure.

Alison Johnson:
Wonderful. And for everyone listening, if you are a member of NMHC, this document is accessible to you on our website at nmhc.org. If you're not a member, please go to nmhc.org and you can see other whitepapers there as well. And again, thanks to everyone downloading and sharing this podcast. With this episode, we mark our first year anniversary of Code 53. So thank you to everyone who weighed in on the why and the how of a podcast about the business of multifamily and how communities are created. Subscribe, meet us right back here on Code 53, The Apartment Podcast.