



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HUD Office of Fair Housing and Equal Opportunity

FAIR HOUSING CASES & SETTLEMENTS

OVERVIEW



U.S. Dept. of HUD
<james.d.kordich@hud.gov>

1



50
EQUAL HOUSING OPPORTUNITY
1968-2018



U.S. Dept. of HUD
<james.d.kordich@hud.gov>

2

WHAT IS FAIR HOUSING?

Fair housing is the right of all people to be free from discrimination in the rental, sale or financing of housing.



U.S. Dept. of HUD
<james.d.kordich@hud.gov>

FAIR HOUSING ACT **(42 U.S.C. §3601...)**

- ◆ **Title VIII of the Civil Rights Act of 1968**
amended 1988 (the Fair Housing Act)
- ◆ **Prohibits discrimination**
- ◆ **In housing-related transactions**
- ◆ **Based on “protected class”**



U.S. Dept. of HUD 2/13/2020
<james.d.kordich@hud.gov>

OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY (FHEO)




Our Mission

5

5

2/13/2020

FHEO'S MISSION



Our Enforcement Of The Law Covers Virtually Every Housing Transaction In The United States

U.S. Dept. of HUD
<james.d.kordich@hud.gov>

6

6

2/13/2020

ENFORCEMENT



ENFORCERS
U.S. DEPT HUD
U.S. DEPT. OF JUSTICE
STATE AGENCIES
(FHAP)
PRIVATE ORGANIZATIONS
(FHCO, CITIZENS)

U.S. Dept. of HUD <james.d.kordich@hud.gov>

7

7

2/13/2020

WHO ENFORCES THE ACT?



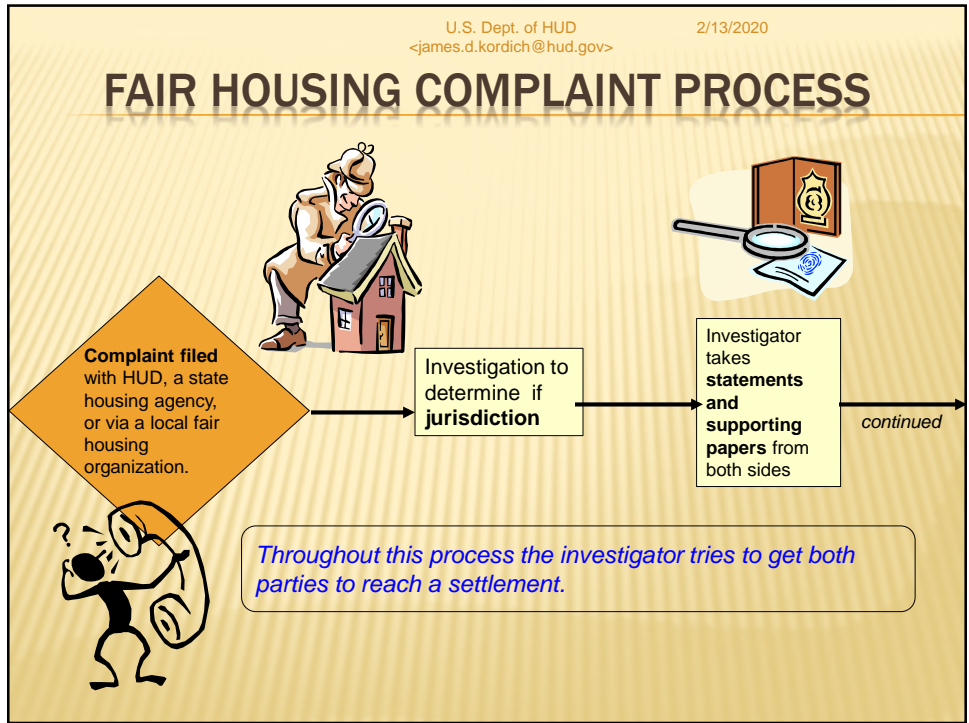
➔ HUD FHEO:

- ◆ Not Advocates...
- For either party.

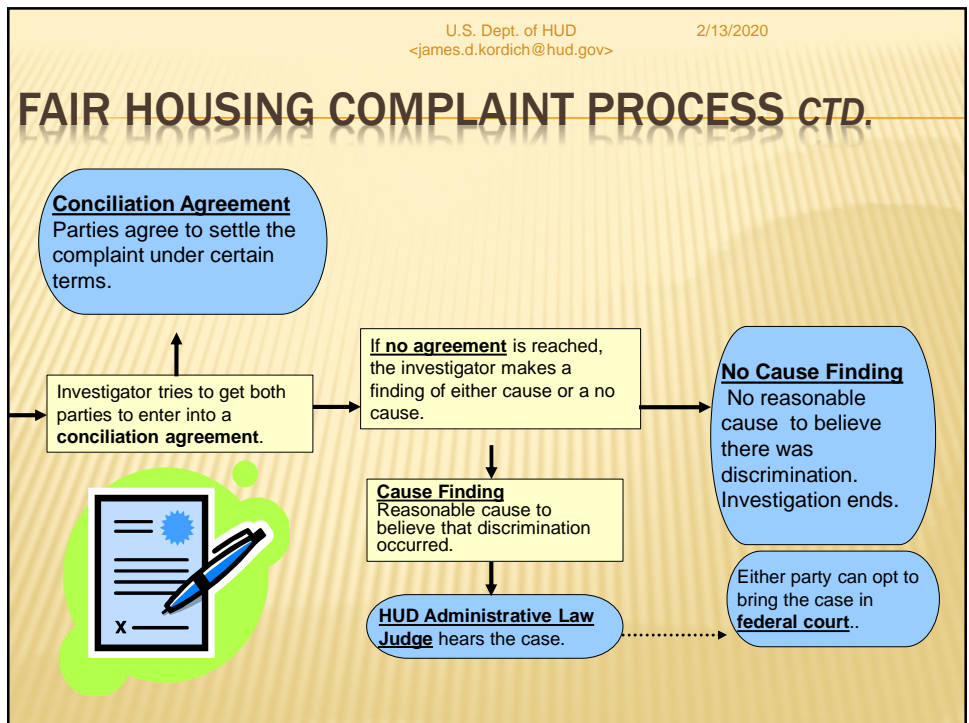
U.S. Dept. of HUD
<james.d.kordich@hud.gov>

8

8



9



10

2/13/2020

DAMAGES

If you settle...

- Compensatory
Out of pocket expenses/losses

- Emotional Distress
Pain & suffering

U.S. Dept. of HUD <james.d.kordich@hud.gov>

11

11

2/13/2020

PENALTIES FINES

Penalties: (2019)

- \$21,039 for 1st offense.
- \$52,596 for 2nd in last 5 years.
- \$105,194 if 2 or more in last 7 years.


U.S. Dept. of HUD <james.d.kordich@hud.gov>

12

12

U.S. Dept. of HUD 2/13/2020
<james.d.kordich@hud.gov>
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PROTECTED CLASSES



- RACE
- COLOR
- NATIONAL ORIGIN
- RELIGION
- GENDER (SEX)
- FAMILIAL STATUS
- DISABILITY
- +STATE AND LOCAL LAWS

13

13

2/13/2020

STATS (2018)

- HUD 1100-1200 cases nationwide
- (FHAPs ~6,000 cases nationwide)
 - Charges ~ 1%
 - Conciliations ~43%
 - Withdrawal w/Res. ~ 9%
 - No Reas. Cause ~29%

U.S. Dept. of HUD <james.d.kordich@hud.gov>

14

14

2/13/2020

MORE STATS

- × Types of cases (Protected class - Estimates)
- × Disability ~50%
- × F.S. ~23%
- × Retaliation ~20%
- × Gender ~20%
- × N.O. ~15%
- × Race ~15%

U.S. Dept. of HUD <james.d.kordich@hud.gov>

15

15

2/13/2020

CASES & SETTLEMENTS

Disability

One common type of disability discrimination:

- Failure to allow a Reasonable Accommodation Request (RAR).
 - Often involving a service, assistance or emotional support animal (ESA).

U.S. Dept. of HUD <james.d.kordich@hud.gov>

16

16

CASES & SETTLEMENTS

Overview of Reasonable Accommodation Request process (RAR):

- ➔ Changes in housing rules, policies, practices or services.
 - Private LL & PHAs usually required to absorb costs.
- ➔ Enable disabled person to have equal opportunity to use & enjoy dwelling unit & common areas.

CASES & SETTLEMENTS

Reasonable Modifications:

- ◆ Physical changes to a dwelling/common area.
- ◆ Necessary for tenant to use and enjoy space.



2/13/2020

CASES & SETTLEMENTS

Best practice:

Ask:

- 1. How can I approve this request?**
- 2. Do I need documentation (is disability obvious/apparent)?**
 - ◆ **If yes, no verification is needed.**

U.S. Dept. of HUD <james.d.kordich@hud.gov>

19

19

2/13/2020

CASES & SETTLEMENTS

Note new HUD guidance on ESAs:

<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

U.S. Dept. of HUD <james.d.kordich@hud.gov>

20

20

2/13/2020

CASES & SETTLEMENTS

Easy

Complainant acquires puppy as ESA and LL objects stating a puppy is not able to be trained to assist the Complainant. LL forces Complainant to move.

- Summary: ESAs are not required to be trained. If applicant/tenant has medical/therapeutic need, LL must grant the reasonable accommodation. (Case settled)

U.S. Dept. of HUD <james.d.kordich@hud.gov>

21

21

2/13/2020

CASES & SETTLEMENTS

Fair Housing testers call PM Company regarding rental units stating they have service animals and are told \$500 deposit is required for all ESAs.

Audio recordings confirm allegations.

- Summary: Charging a fee for ESA/SA is unlawful. So are pet/animal rent or fees. Recording and maintaining calls is optimal as objective evidence to support or refute allegations. Important for PM professionals too. (Case settled)

U.S. Dept. of HUD <james.d.kordich@hud.gov>

22

22

2/13/2020

CASES & SETTLEMENTS

Complainants ask for a RA to allow their disabled access van for Complainants with motorized wheelchairs to park on HOA roadways or in driveway (disabilities obvious). HOA rules prohibit large vans like Complainants'. HOA denies RAR because van is too big, safety hazard & neighbors complained about appearance.

- Summary: RAR is reasonable and HOA rule must be waived. HOA denial reasons fall short of distinct safety hazard (drivers' views blocked). (Case settled)

U.S. Dept. of HUD <james.d.kordich@hud.gov>

23

23

2/13/2020

CASES & SETTLEMENTS

Medium

Complainant moves to property with ESA. Complainant did not notify LL he has ESA and lease required all animals to be documented. LL observed Complainant's dog in his unit and sends him eviction notice. Complainant informs LL dog is ESA. LL requires verification letter from medical provider (disability is not apparent) with required information listed: Tenant is patient & treated by Dr., disabled, medical/therapeutic need for animal. Complainant submits therapist letter 1 year old. LL sends EM acknowledging doctor note (no formal approval). Complainant filed HUD complaint: LL discriminated based on 1. TMI required in note 2. LL not approved ESA.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

24

24

2/13/2020

CASES & SETTLEMENTS

Medium

- Summary:

1. LL may require this information. (Here, Dr. letter included all information anyway).
2. LL claimed to have sent Complainant letter approving ESA. Coupled with LL EM and no adverse action taken regarding ESA, no violation. (Case settled)

U.S. Dept. of HUD <james.d.kordich@hud.gov>

25

25

2/13/2020

CASES & SETTLEMENTS

Established tenant acquired dog from neighbor who moved and did not want dog. Tenant realizes therapeutic effects on her mental health disability. Asks for LL for RA. LL says pets cannot “convert” to ESAs, then required form with criminal warnings to HC provider + specific training of dog. Complaint filed. Complainant wanted ESA approved and \$300 pet deposit back. LL hires atty. Atty: C needs to show ESA is trained to do something specific to ameliorate Complainant’s disability.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

26

26

2/13/2020

CASES & SETTLEMENTS

- Summary:

ESAs are not required to be trained. ESAs may be acquired at any time and may “convert” from pet with supporting documentation. If applicant/tenant has documented medical/therapeutic need, LL must grant the reasonable accommodation. (Case charged, then settled \$25,000)

U.S. Dept. of HUD <james.d.kordich@hud.gov>

27

27

2/13/2020

CASES & SETTLEMENTS

Harder

Upon move in, Complainant has ESA, LL requests note, Complainant submits note from PhD psychologist licensed on east coast. Complainant met with Dr. several times via skype and phone re her mental health issues. LL says provider must be licensed in state and questions legitimacy of appointments not conducted in person.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

28

28

2/13/2020

CASES & SETTLEMENTS

- Summary: Cannot require provider to be licensed in state. May consider nature of contacts with patient, i.e. quality and quantity of such contacts. On these facts, must accept provider's recommendation. Ask: 1. Is disability apparent? (If yes, stop here) 2. Is documentation reliable? Contrast verification from website with no or limited contact with customer v. licensed healthcare professional delivering services remotely, including via internet. (Case settled)

U.S. Dept. of HUD <james.d.kordich@hud.gov>

29

29

2/13/2020

CASES & SETTLEMENTS

LL has questions re ESAs and pets on application form. Complainant has a service animal however Complainant indicates on application she does not have a service animal. LL approved application but at lease signing Complainant states she has a service animal. LL refuses to lease to Complainant because she made false statement on lease.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

30

30

2/13/2020

CASES & SETTLEMENTS

- **Summary:** LL may consider truth and accuracy of information provided during the leasing process, to the extent lease requires truth/accuracy of other material information. If LL prior screenings show prior adverse actions taken due to false/inaccurate info on application/lease, then this would support LL's actions. (i.e. lying about prior evictions/crim. hist.). If LL has history of letting things slide... weakens LL position.
- **Compare:** case where application only asks about "pets" or is silent on ESA. Probably different outcome.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

31

31

2/13/2020

CASES & SETTLEMENTS

Complainant requested a designated disabled parking space closer to his dwelling.

- LL delayed granting Complainant's request and during snowstorm he fell in the parking lot at the subject property, injuring himself.
- Complainant died a week or so later of the injuries.
- **Case Settled: \$475,000**

U.S. Dept. of HUD <james.d.kordich@hud.gov>

32

32

2/13/2020

CASES & SETTLEMENTS

Familial Status

Overview:

- Case trend: Parties usually agree on material facts, so questions of law remain.

Best practice: ask:

1. Am I familiar with the Keating Memorandum factors?
2. Can I justify the occupancy limitations at my properties?

U.S. Dept. of HUD <james.d.kordich@hud.gov>

33

33

2/13/2020

CASES & SETTLEMENTS

Familial Status

Keating Memorandum:

https://www.hud.gov/sites/documents/DOC_7780.PDF

U.S. Dept. of HUD <james.d.kordich@hud.gov>

34

34

2/13/2020

CASES & SETTLEMENTS

Family of 9 (2 adults, 7 kids (one is < 2 YOA)) applies or inquires about 4-bedroom home (w/office) 2600+ sq. ft..

- Respondents claim only 2 per bedroom allowed (lease says 2 adults & 4 children max occupancy).
- Respondents also state in a text that that is too many “kids” per the lease.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

35

35

2/13/2020

CASES & SETTLEMENTS

- Summary: Case charged. Then settled: \$15,000.
 - Limiting occupancy in lease specifically to 2 adults & 4 children max occupancy, is on its face violation of the Act.
 - Limiting occupancy without considering the Keating memo factors (size of home/rooms, ages of kids, other possible sleeping rooms), is a violation of the Act.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

36

36

2/13/2020

CASES & SETTLEMENTS

Family of 5 (2 adults, 3 kids (one is 2 YOA)) applies or inquires about 2-bedroom condo (w/office) 2,200 sq. ft unit.

- Respondent claims only 4 people allowed in unit (lease says 4 people max occupancy).
- Summary: Case recommended for charge.
 - Limiting occupancy in lease specifically to 4 people max occupancy, not on its face violation of the Act. However,
 - Must still consider the Keating memo factors (size of rooms/home, ages of kids, other possible sleeping rooms), under the Act.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

37

37

2/13/2020

CASES & SETTLEMENTS

Case 2.

- Smaller apartment example: (750 sq. ft.)
- Parties agree on material facts.
- Complainants were family of 6 (2 adults, 4 kids 7, 10, 12 (one is infant). Family applies or inquires about 2-bedroom apt. 750 sq. ft
Respondent claims only 4 people allowed in unit (lease says 4 people max occupancy).

U.S. Dept. of HUD <james.d.kordich@hud.gov>

38

38

2/13/2020

CASES & SETTLEMENTS

Case 2.

- Summary: No reasonable cause disposition.
 - Limiting occupancy in lease specifically to 4 people max occupancy, not on its face violation of the Act. *However,*
 - Must still consider the Keating memo factors (size of rooms/home, ages of kids, other possible sleeping rooms), under the Act.
 - This case, unit is too small for family composition – no office or other room to consider as another sleeping space, overall size of dwelling is small, kids ages.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

39

39

2/13/2020

CASES & SETTLEMENTS

Sex/Gender Discrimination

Overview: 1. Quid Pro Quo Harassment
2. Hostile Environment Harassment

U.S. Dept. of HUD <james.d.kordich@hud.gov>

40

40

2/13/2020

CASES & SETTLEMENTS

Sex/Gender Discrimination

Best practice: ask:

1. Do I understand what sexual harassment is?
2. Does my staff understand?
3. When did we last receive sexual harassment training?

U.S. Dept. of HUD <james.d.kordich@hud.gov>

41

41

2/13/2020

CASES & SETTLEMENTS

1) Quid Pro Quo Harassment

Definition (24 C.F.R. § 100.600(a)(1)):

- An unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to any aspect of housing:
- E.g., the sale or rental of a home/apartment, the terms or conditions of a sale or rental, or the provision of housing-related services, including financing.
- Even if victim acquiesces to demand, may still be violation.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

42

42

CASES & SETTLEMENTS

- [Quigley v. Winter](#), 598 F.3d 938, 947-48 (8th Cir. 2010) (holding landlord violated the Act by implicitly conditioning the return of tenant's security deposit on seeing more of her body or receiving a sexual favor).
- [Woods v. Foster](#), 884 F. Supp. 1169, 1175 (N.D. Ill. 1995) (court held quid pro quo claim should not be dismissed where female residents of a homeless shelter were subjected to unwelcome requests for sexual favors and coerced into providing sex in exchange for maintaining their housing).

U.S. Dept. of HUD <james.d.kordich@hud.gov>

43

43

CASES & SETTLEMENTS

HUD Complaint Case:

LL lowered rent for Complainant who submitted to his sex-related requests. When Complainant stopped submitting to LL, he evicted her.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

44

44

CASES & SETTLEMENTS

2) Hostile Environment Harassment

Definition (24 C.F.R. § 100.600(a)(2)):

- Unwelcome conduct because of a protected characteristic that is sufficiently severe or pervasive as to interfere with the sale, rental, availability, use, or terms or conditions of a dwelling or a real estate-related transaction.

CASES & SETTLEMENTS

Case Example:

- Salisbury v. Hickman, 2013 U.S. Dist. LEXIS 137003, *23-25 (E.D. Cal. 2013) (property manager created a hostile environment by subjecting resident to unwelcome sexual conduct outside her home by grabbing her hand and repeatedly saying he had “urges,” entering her home uninvited, blocking her in the home with his body, and demanding unwelcome sexual favors).

CASES & SETTLEMENTS

- Analysis is fact-specific assessment of the totality of the circumstances, which includes, but is not limited to: the nature of the conduct; the context in which the conduct occurred; the severity, scope, frequency, duration, and location of the conduct; and the relationships of the persons involved. (Reasonable person standard applies)

CASES & SETTLEMENTS

Liability

- Traditional principles of tort liability and agency law apply:
 - Direct liability (24 C.F.R. § 100.7(a))
 - Vicarious liability (24 C.F.R. § 100.7(b))

CASES & SETTLEMENTS

Liability

- Direct liability case example (agent/employee): Williams v. Poretsky Mgmt., 955 F. Supp. 490, 496 (D. Md. 1996) (landlord directly liable for maintenance employee's sexual harassment where plaintiff informed property managers of harassment and management failed to correct it).

CASES & SETTLEMENTS

Liability

- Vicarious liability case example: Glover v. Jones, 522 F. Supp. 2d 496, 507-08 (W.D.N.Y. 2007) (property owner may be vicariously liable for agent's sexual harassment of tenant, even when agent acts outside the scope of employment and without the owner's knowledge).

2/13/2020

CASES & SETTLEMENTS

Also common:

- Retaliation
- Statements of preference (statements re not renting to families with kids, “mature tenants,” “no Mexicans,” “no men,” “no service animals,” “prefer Christians”).

U.S. Dept. of HUD <james.d.kordich@hud.gov>

51

51

2/13/2020

CASES & SETTLEMENTS

Retaliation Case Example

- Complainant filed 3 HUD complaints; 2 had been dismissed, 1 still pending for retaliation.
- Property manager wrote HUD investigator in response to complaint stating the prior HUD complaints by Complainant amounted to “harassment” of her staff, so that was why LL decided not to renew Complainant’s lease.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

52

52

2/13/2020

CONCILIATION

- ➔ Early settlement lowers costs, increases goodwill (does the complainant still live there? (Consider effects of word of mouth via social media & reviews too)
- ➔ Consider legal expenses, staff time responding v. conciliation.

U.S. Dept. of HUD <james.d.kordich@hud.gov>

53

53

2/13/2020

FAIR HOUSING TREND

- Notable Fact Patterns
 - Window Air Conditioners v. Portable ACs.
 - Go through normal RA protocol.
 - It may be medically necessary for disabled tenant
 - Maintenance: Draining unit reservoir, moving it, operating.
 - Health & Safety exceptions must be manifest or statistically supportable (not likely able to meet).

U.S. Dept. of HUD <james.d.kordich@hud.gov>

54

54

2/13/2020

FAIR HOUSING GUIDANCE

- HUD-DOJ Joint Statements:
 - Reasonable Accommodations:
https://www.hud.gov/sites/documents/DOC_7771.PDF
 - Reasonable Modifications:
https://www.hud.gov/sites/documents/DOC_7502.PDF

U.S. Dept. of HUD <james.d.kordich@hud.gov>

55

55

2/13/2020

CONTACT

James D. Kordich

HUD Investigator & Conciliator
U.S. Department of Housing & Urban Development
(971) 222-2631
james.d.kordich@hud.gov



U.S. Dept. of HUD <james.d.kordich@hud.gov>

56

56