



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

FAIR HOUSING PENALTIES & CASES

OVERVIEW & DISCUSSION



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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.



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”**



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OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY (FHEO)



Our Mission



FHEO'S MISSION



ENFORCEMENT



ENFORCERS

U.S. DEPT HUD

U.S. DEPT. OF JUSTICE

STATE AGENCIES

(FHAP)

PRIVATE ORGANIZATIONS

(FHCO, CITIZENS)

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WHO ENFORCES THE ACT?



➔ HUD FHEO:

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

FAIR HOUSING COMPLAINT PROCESS



Complaint filed with HUD, a state housing agency, or via a local fair housing organization.

Investigation to determine if **jurisdiction**

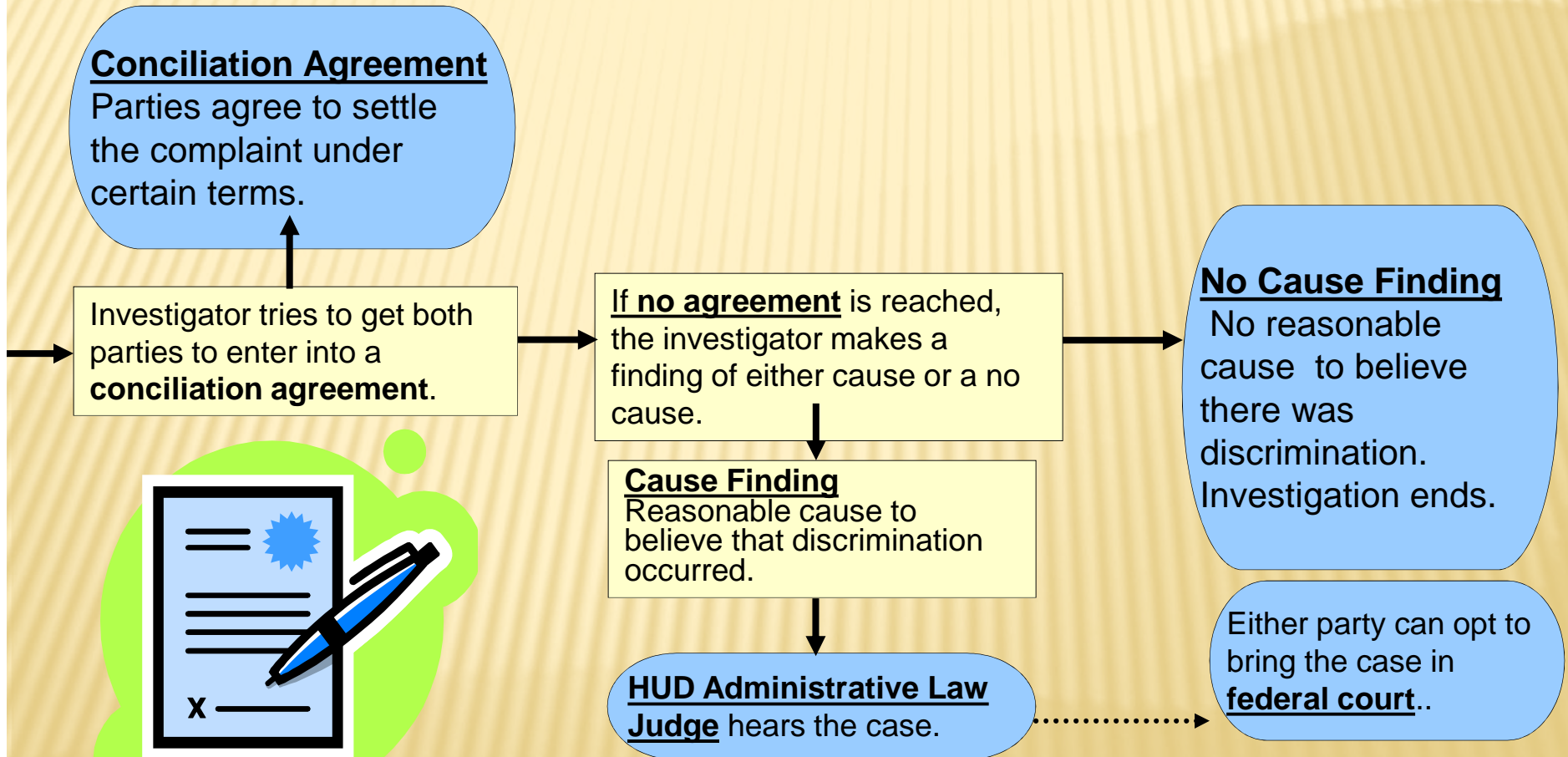
Investigator takes **statements and supporting papers** from both sides

continued



Throughout this process the investigator tries to get both parties to reach a settlement.

FAIR HOUSING COMPLAINT PROCESS *CTD.*



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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PROTECTED CLASSES

RACE

COLOR

NATIONAL ORIGIN

RELIGION

GENDER (SEX)

FAMILIAL STATUS

DISABILITY

+STATE AND LOCAL LAWS



INVESTIGATIONS

Generally

- Disability (reasonable accommodations & modifications)
 - Landlord starting point, ask: how can I approve this RA request? Is it cost-prohibitive?
 - Investigative Considerations: Specific allegations (strong v. weak medical proof, should med proof be required, SSDI) approval/ denial history by LL?
- Refusal to rent (FS, Race, Disability)
- Different terms & conditions (comparisons used) (Race, Disability)

INVESTIGATIONS

Common (Easy)

RA case 1:

- C applies for a unit has an ESA.
- R (LL) says no pets.
- C says not a pet, ESA.
- R says no pets, including ESAs.

[Issue: Are ESAs pets?]

INVESTIGATIONS

Common (Moderate)

RA case 2:

- C applies for a unit has an ESA.
- R (LL) says ok, need verification of medical need.
- C provides note from M.D. or psychologist dated 5 years ago (Major Depressive Disorder or PTSD).
- R says note not recent enough, required updated note.
- C says disability permanent no note needed.

[Issue: Shelf life of provider note?]

INVESTIGATIONS

Common (More Difficult)

RA case 3:

- C applies for a unit (no mention of ESA) no pets building.
- C moves in.
- R comes to know of C having a dog.
- R sends notice to enforce lease – no pets.
- C provides note from M.D. or psychologist asking for a RA
- R says you knew this was a no pets building. *Potential Outcomes* →

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INVESTIGATIONS

Common (More Difficult)

RA case 3:

Potential Outcomes...

- Version 1: R attempts to enforce no pets provision.
- Version 2: R evaluates the RA request as if C asked at application.

[Issue: What difference does it make – if verification is legit? R would have approved anyway.]

- Some R LLs have said if C was honest with R, R would have not rented this unit to them, because have other pet units available.

INVESTIGATIONS – CASE EXAMPLE

Refusal to rent

- Black/AA male applied to rent at complex and was rejected. C claimed he met the rental criteria and was discriminated against by race.
- Respondent provided rental screening reviews by 3rd party vendor showing adverse credit info on C.
- Respondent also provided successful comparator applicants showing they rented to other Black/AA males recently with better credit.

INVESTIGATIONS – CASE EXAMPLE

- Investigate same facts under different subsection:
Different terms & conditions (comparisons used)
- Black/AA male (C) applied to rent at complex and was rejected. C claimed he met the rental criteria and was discriminated against by race.
- R provided rental screening reviews by 3rd party vendor showing adverse credit info on C.
- R also provided successful comparator applicants showing they rented to other Black/AA males recently with better credit.

INVESTIGATIONS

Also common:

- Retaliation
- Statements of preference (statement re not renting to families with kids, “no Mexicans”, “no whites” “no disabled access” “prefer Christians”).

INVESTIGATIONS

Retaliation Case Example

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

INVESTIGATIONS

Statements of Preference & Refusal to rent

Familial Status Case Trend

Typical facts presented:

- Family of 5 applies or inquires about 2-bedroom apartment (i.e.: 2 adults, 3 kids 2, 8 & 10 years old)
 - Large apartment and/or with den or bonus room (i.e.: 2,250 sq. ft.) vs.
 - Smaller apartment (i.e. 750 sq. ft.)
- Parties agree on material facts
 - Family applied or inquired and were denied due to too many people (cf. too many kids)
 - Respondent claims a right to limit to 2 per bedroom.
 - Respondent makes statement that Cs have “too many kids for unit.”

INVESTIGATIONS

Statements of Preference & Refusal to rent

Familial Status Case Trend

What Respondent did wrong: Must account for Keating Memorandum factors:

- Size of bedrooms and unit
- Configuration of unit
- Additional rooms usable as sleeping quarters
- Age of children
- State and local law (good starting point, not definitive)
- HUD notes physical limits of housing systems (septic, sewer...)
 - Modern units usually not affected.
 - Other considerations: Illegal statements or rules (limit # of kids)? Unequal enforcement of rules?

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.

PENALTIES FINES

Penalties: (2018)

- \$20,111 for 1st offense.
- \$51,302 for 2nd in last 5 years.
- \$102,606 if 2 or more in last 7 years.

DAMAGES

- Compensatory

Out of pocket expenses/losses

- Emotional Distress

Pain & suffering

DAMAGES - CASE EXAMPLE 1

- RA for ESA- dog acquired from neighbor who moved and did not want him. Complainant (C) takes dog and realizes therapeutic effects on her mental health disability. C asks for RA and waiver of pet deposit. LL says pets cannot “convert” to ESA, then requires form with strict warnings to HC provider + specific training of animal. Complaint filed with HUD.
- C wants ESA approved and \$300 pet deposit back. LL hires atty. Atty: C needs to show ESA is trained to do something specific to ameliorate C’s disability...

DAMAGES – CASE EXAMPLE 1

- Case charged then settled: Damages:
- Compensatory
 - Example: \$300 pet fee + \$2k moving expenses = \$2300 in actual damages.
- Emotional Distress
 - Pain & suffering: C endured months of issues with management and worrying about her ESA and LL adverse treatment after HUD case filed.
 - \$17,700 Emotional Distress damages

DAMAGES – CASE EXAMPLE 2

- RA request to HOA- allow disabled access van for Cs with motorized wheelchairs to park in driveway or on street in front of home.
 - HOA: Van is too big, safety hazard & neighbors complained re appearance.
 - One C had heart attack symptoms night RA rejection letter received & was in emergency room all night and next day.
 - Conciliated.

DAMAGES – CASE EXAMPLE 2

- Compensatory
 - Example: \$8k Medical bills
 - = \$8k in actual damages.
- Emotional Distress
 - Pain & suffering: Complainant endured intense pain & suffering for short period.
 - \$17,000 Emotional Distress damages

DAMAGES – CASE EXAMPLE 3

- Facts: Cs requested a designated disabled parking space closer to their dwelling.
- Rs delayed granting Cs' request and C fell in the parking lot at the subject property.
- C died a week or so later of the injuries.

DAMAGES – CASE EXAMPLE 3

- Settlement: \$475,000
- \$415,000 payable to surviving wife, & on behalf of her husband's Estate.
- \$60,000 payable to the Oregon Department of Justice Client Trust Account on behalf of BOLI

AVOIDING/MINIMIZING PENALTIES

- Focus: Pre-HUD/enforcement interaction
 - Policies (review at least semi-annually)
 - Check for Fair Housing Updates
 - Practices & routine frequent training (annual or more frequent)
 - Staff turnover
 - Testing (FHIPs/Self Initiated Quality Control)

STATS (2018)

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

MORE STATS

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

FAIR HOUSING GUIDANCE

- 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).

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

CONTACT

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