

# THE VANTAGE

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ATTORNEYS AND COUNSELORS AT LAW

## What Happens When a Discrimination Complaint Is Filed Against You

The Fair Housing Act (FHA) prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, disability or familial status.[1]

Last year, the United States Department of Housing and Urban Development (HUD) received 8,385 fair housing discrimination complaints against property owners/managers.[2] HUD investigates the majority of those complaints and will sanction entities and individuals not in compliance with the FHA.

HUD investigations can be both time-consuming and costly for multifamily housing providers. Knowing how the investigation process works and how you can respond appropriately helps reduce your risk of incurring the potentially hefty sanctions HUD can impose. This issue of The Vantage walks you through the HUD enforcement process step by step. Each phase includes multiple deadlines for the actions the different parties must or could take. See the Deadlines chart at the end for details on the deadlines.

## Bases of Complaints Filed with HUD and FHAP agencies, FY 2016

Basis of Complaint	Number of Complaints	Percentage of Complaints
1. Disability	4,908	58.5%
2. Race	2,154	25.7%
3. National Origin	917	10.9%
4. Familial Status	882	10.5%
5. Sex	800	9.5%
6. Retaliation	785	9.4%
7. Religion	204	2.4%
8. Color	143	1.7%
<b>Total</b>	<b>8,385</b>	<b>100%</b>

Source: HUD Enforcement Management Systems (HEMS)

The vast majority of discrimination complaints filed with HUD last year were for disability discrimination.

# HUD Investigation Procedures

## 1 Filing a Complaint

*Any individual or company that has witnessed or experienced housing discrimination may file a complaint with HUD free of charge. Complaints will often name individual property managers directly, in addition to the corporate entity or owner associated with the complainant's housing.*

In order for HUD to proceed with investigation, the following criteria must be met:



the complaint must be made within the specified time limits;



the complainant must have legal standing;



the respondent and the dwelling involved must be covered by the FHA; and



the subject matter or issue, and the bases of alleged discrimination, must constitute illegal practices as defined by the FHA.

If HUD determines that the complaint does in fact involve alleged housing discrimination, then the department *will* proceed forward investigating the complaint.

**Complaints will often name individual property managers directly, in addition to the corporate entity or owner associated with the complainant's housing.**

## Responding to a Complaint

*If a complaint has been filed against you, you will be notified by HUD, and you will have 10 days to respond.*

### Recommended Actions



**Prioritize mail from HUD** - Due to the tight window a company has for responding to a complaint, make sure anyone responsible for collecting mail at your facilities is trained to give mail from HUD priority attention and to forward it to the appropriate person immediately.



**Respond to complaints** - Although filing an answer is not mandatory, it is strongly encouraged. Responding gives you an opportunity to give your version of the story and provide sufficient information that will convince HUD that it should not pursue the matter further.



**Involve legal counsel early** - Because your answer will become part of the official case record and any representations can and will be used against you in future proceedings, it is strongly encouraged that you seek the assistance of legal counsel in responding to a HUD complaint. In addition, legal counsel can likely negotiate an extension of time to respond.



**Notify your insurance company early** - As soon as you know a complaint has been filed, you should notify your insurance company. There may be insurance to cover the allegations of the complaint. If there is coverage, the insurance company will only be there to help you if they are notified early.

**Responding to a complaint gives you an opportunity to give your version of the story and provide sufficient information that will convince HUD that it should not pursue the matter further.**

### 3

## Investigation

*Once you have filed your answer with HUD (or ten days have lapsed without any response), HUD will begin its investigation in earnest. The HUD Handbook outlines this process as follows: “Investigators gather evidence by interviewing complainants, respondents and witnesses, and analyzing their respective statements; collecting, organizing and analyzing related documents and records; and inspecting and/or measuring the subject dwelling and environment.”[3]*



HUD has the authority to take depositions, issue subpoenas and interrogatories, and compel testimony and documents.

### 4

## Conciliation

*Conciliation is an informal dispute resolution process that allows the parties to resolve the matter without further investigation and without going to court. The FHA requires HUD staff to bring the complainant and respondent(s) together to attempt conciliation, or mediation, of a complaint, although the choice to conciliate the complaint is completely voluntary on the part of both parties. About forty-five percent (45%) of the cases nationally are resolved without going to court.[4]*

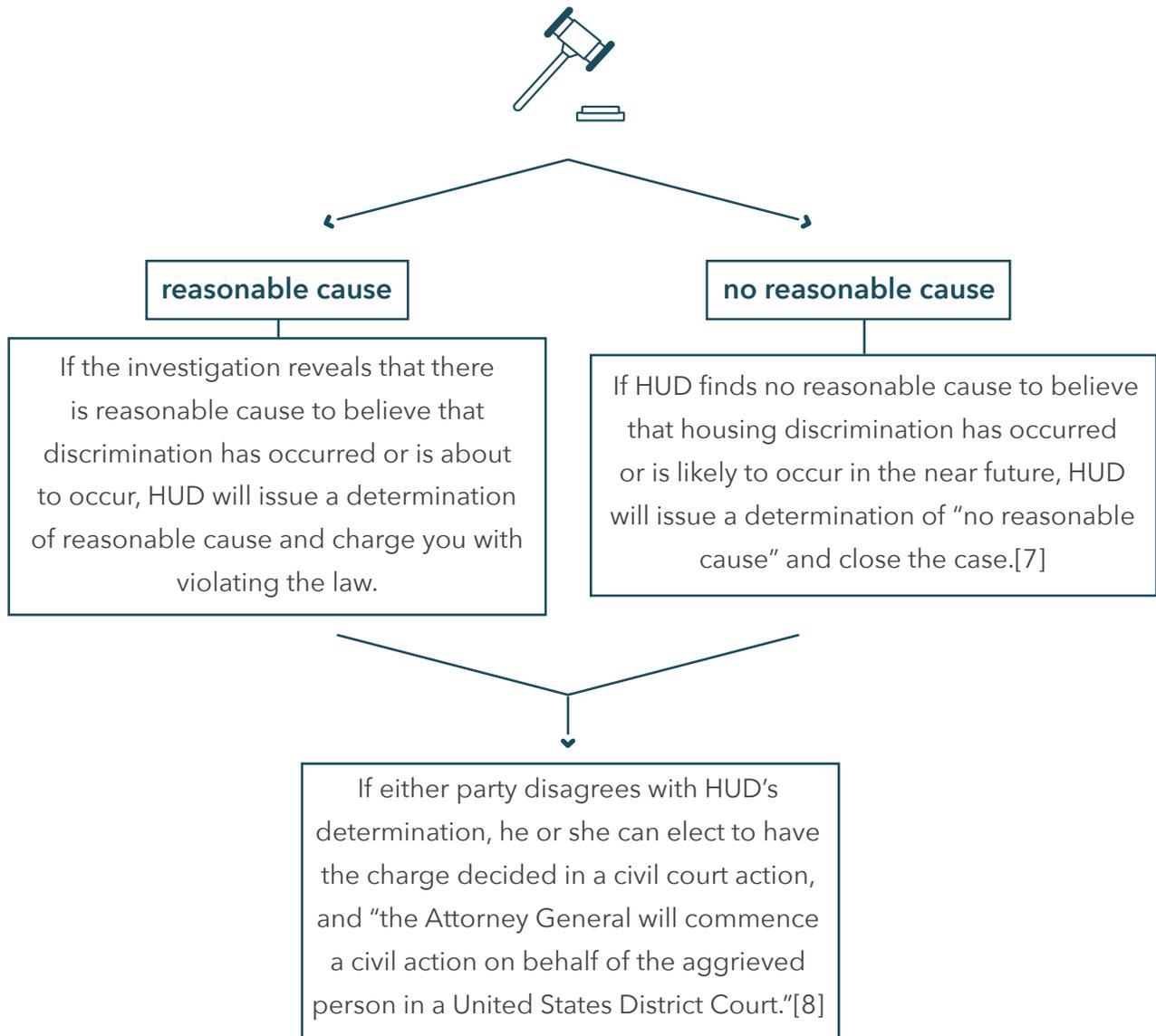
If the parties sign a conciliation agreement (agreeing to resolve the case), HUD will end the investigation and close the file. Successful conciliation typically requires some form of monetary payment made by the respondent to the complainant. While nothing that is said or done during the conciliation process can be made public, a final conciliation agreement will be released to the public unless one of the parties requests nondisclosure.[5]



Publication of any housing discrimination could result in reputational damage and encourage others to file complaints.

## Determination

*If efforts to settle the issue during the investigation and conciliation phases fail, HUD will make a determination of “reasonable cause” or “no reasonable cause” and conclude its investigation.[6]*



# Charge of Discrimination Procedures

## 6 Administrative Proceedings

*After HUD issues a charge of violation, a HUD Administrative Law Judge (ALJ) will hear the case unless one of the parties elects to have the case heard in federal civil court (see discussion below).*

Any party adversely affected by the ALJ's initial decision can petition the Secretary of HUD for review. After HUD has issued a final decision, any party aggrieved by the Department's final decision can appeal to the appropriate court of appeals.

## 7 Federal Court Litigation

*If any party to the case elects to go to federal court, HUD transfers the case to the United States Department of Justice (DOJ) for prosecution. The DOJ will commence a civil action on behalf of the aggrieved person in a United States District Court.[9]*

Additionally, an individual may file a fair housing lawsuit in a federal or state court on his or her own behalf.[10] The Attorney General may also commence his own civil action in any appropriate district court if he believes any person or group is engaged in a pattern of behavior and practice in direct opposition to the purpose of the FHA, or if the action is commenced with respect to a breach of a conciliation agreement.

Under any of the above scenarios, the court has substantial flexibility in awarding damages, and granting relief as the court deems appropriate, which may include permanent or temporary injunction, temporary restraining order, or an order enjoining the defendant from engaging in such practice(s).[11]

## Potential Damages/Sanctions

*If the ALJ finds that housing discrimination has occurred or is about to occur, or it is proven at trial in federal court, then the ALJ or the federal court have the authority to award damages to the complainant and to penalize the respondent(s). The potential sanctions are much the same regardless of the forum (ALJ versus federal court).*

### Civil Monetary Penalties

The ALJ may assess a civil monetary penalty against each respondent for each separate and distinct discriminatory housing practice. In determining the amount to assess, the ALJ will consider the following six factors:

- |   |  |   |   |
|---|--|---|---|
| 1 | previous housing discrimination;           | 4 | degree of the respondent's culpability; |
| 2 | respondent's financial resources;          | 5 | goal of deterrence;                     |
| 3 | nature and circumstances of the violation; | 6 | other matters as justice may require.   |

**The maximum amounts are: [12]**

#### Administrative Law Judge [13] or Federal Court

First FHA violation:

**\$19,897.00**

FHA violation in the previous five years:

**\$49,467.00**

Two or more FHA violations in the previous seven years:

**\$98,935.00**

#### Enforced by Attorney General[14]

First FHA violation:

**\$50,000**

Any subsequent violation:

**\$100,000**

The ALJ may assess a civil monetary penalty against each respondent for each separate and distinct discriminatory housing practice.

## Other Damages

### Compensatory Damages

These are actual damages suffered by the complainant as a result of discrimination. They could include out-of-pocket expenditures made in search of alternate housing and rent fees associated with alternative housing. The amount of compensatory damages awarded is at the court's discretion for private claims, administrative claims, and "pattern" claims initiated by the Attorney General.

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### Non-economic Damages

These damages are in addition to out-of-pocket expenses and include damages for pain and suffering, mental anguish, and psychological injuries.

### Punitive Damages

These are damages assessed in order to punish the respondent and deter wrongful behavior. There are no caps on punitive damages for private claims or those brought under an administrative proceeding.[15]

**There are no caps on punitive damages for private claims or those brought under an administrative proceeding.[21]**

### Attorney's Fees/Costs

The ALJ or federal court may, at its discretion, award all reasonable attorney's fees and associated costs to the prevailing party (unless the prevailing party is the United States). Additionally, the United States shall be liable for such fees as if it were a private person.[16]

### Injunctive/Equitable Relief

The court may order such relief as necessary for the elimination of discriminatory housing practices. This could include a permanent or temporary injunction, temporary restraining order, or other order.[17]

## Outcomes in 2016 for Fair Housing Act Cases Sent to DOJ

Name	Outcome	Compensatory Damages	Civil Penalty	Victims' Fund	Other
US v. Kent State University	Consent Degree or Settlement	\$130,000.00	\$15,000.00	\$0.00	\$0.00
US v. Encore Management	Consent Degree or Settlement	\$110,000.00	\$10,000.00	\$0.00	\$0.00
US v. Twin Oaks (Gutzmer)	Consent Degree or Settlement	\$45,000.00	\$10,000.00	\$45,000.00	\$0.00
US v. Loecher (Westland Apts)	Consent Degree or Settlement	\$45,000.00	\$5,000.00	\$25,000.00	\$0.00
US v. Noble Homes, Inc.*	Consent Degree or Settlement	\$20,000.00	\$40,000.00	\$0.00	\$5,000.00
US v. Nals Apartments Homes, LLC	Consent Degree or Settlement	\$20,000.00	\$0.00	\$25,000.00	\$0.00
US v. Applewodd of Cross Plains	Consent Degree or Settlement	\$40,000.00	\$0.00	\$0.00	\$0.00
US v. Brinson	Consent Degree or Settlement	\$14,000.00	\$12,000.00	\$10,000.00	\$0.00
US v. Brooklyn Park 73 <sup>rd</sup> Leased Housing Assoc., LLC	Consent Degree or Settlement	\$35,000.00	\$0.00	\$0.00	\$0.00
US v. Avatar Properties,	Consent Degree or Settlement	\$25,000.00	\$0.00	\$0.00	\$0.00
US v. Cecil Collier	Consent Degree or Settlement	\$10,000.00	\$0.00	\$0.00	\$0.00
US v. Hillside Park Real Estate, LLC	Consent Degree or Settlement	\$9,000.00	\$0.00	\$0.00	\$0.00
US v. Christensen, Robert and Linda	Consent Degree or Settlement	\$6,000.00	\$0.00	\$0.00	\$0.00
US v. Pendygraft	Consent Degree or Settlement	\$5,000.00	\$0.00	\$0.00	\$0.00
US v. Blass	Consent Degree or Settlement	\$5,000.00	\$0.00	\$0.00	\$0.00
US v. Schimnich	Consent Degree or Settlement	\$2,000.00	\$0.00	\$0.00	\$0.00

# Deadlines

## Deadlines for complainant actions

### Filing a complaint

Discrimination complaints must be filed with HUD within one year (365 calendar days) of the alleged discrimination, and the clock starts running the day after the discriminatory act.[18] However, the complainant may hire a private attorney and file a civil suit up to two years after the last discriminatory action. Additionally, a longer time frame for filing may be allowed under a different federal, state, or local statute.

### Filing a fair housing lawsuit in a federal or state court

An individual may file a fair housing lawsuit in a federal or state court on his or her own behalf "no later than 2 years after the occurrence or termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement." [20]



## Deadlines for the government

### Notice of complaint

You will receive notice from HUD that someone has filed a complaint of discrimination within 10 days of the filing.



### Civil Action by Attorney General

The Attorney General may commence his own civil action no later than 18 months in any appropriate district court if he believes any person or group is engaged in a pattern of behavior and practice in direct opposition to the purpose of the FHA, or no later than 90 days if the action is commenced with respect to a breach of a conciliation agreement.

### Administrative hearing

The FHA requires that the administrative hearing take place within 120 days of issuance of a charge, and then within 60 days, the ALJ will issue an initial decision.

## Deadlines for you (respondant)

### Responding to the complaint

You have 10 days of receiving the notice to submit an answer to the complaint.

### Contesting HUD's determination regarding reasonable cause

If either party disagrees with HUD's determination, he or she can elect to have the charge decided in a civil court action, and "the Attorney General will commence a civil action on behalf of the aggrieved person in a United States District Court" no later than 30 days after the election is made.[19]

### Requesting to have the case heard in federal civil court

After HUD issues a charge regarding reasonable cause, either party has 20 days to elect to have the case heard in federal civil court rather than by a HUD ALJ.



### Petitioning the Secretary of HUD for Review

Within fifteen 15 days of the issuance of the ALJ's initial decision, any party adversely affected by the ALJ's initial decision can petition the Secretary of HUD for review.

# Conclusion

“An ounce of prevention is worth a pound of cure.” This famous saying certainly applies to fair housing discrimination. Educating your management and staff on avoiding discrimination is the best way to avoid a HUD investigation. However, if you do find yourself in hot water with HUD, consider carefully how to proceed. Minimizing your company’s exposure to sanctions and bad press should be the top priority. This is best accomplished through familiarizing yourself with the HUD investigation process and seeking legal counsel when appropriate.

[For more help staying compliant, check out our latest mini course: Fair Housing & Limited English Proficiency.](#)

## Notes

[1] 42 U.S.C.A. § 3604. Currently absent from the Act is the inclusion of sexual orientation, and/or gender identity as a protected class, though in 2012 HUD published a rule implementing a policy that LGBT individuals enjoy the same access to core HUD programs regardless of sexual orientation, gender identity, or marital status. 77 C.F.R. 5661.

[2] Office of Fair Housing and Equal Opportunity, Annual Report to Congress FY 2016 (2017).

[3] U.S. Department of Housing and Urban Development, Title VIII Complaint Intake, Investigation, and Conciliation Handbook 7-1 (2005), <https://portal.hud.gov/hudportal/documents/huddoc?id=80241c7FHEH.pdf>.

[4] Tim Blackwell, HUD Compliance: Fair Housing Complaints Should be Taken Seriously, Property Management Insider (April 30, 2012), <https://www.propertymanagementinsider.com/hud-compliance-fair-housing-complaints-should-be-taken-seriously>.

[5] 42 U.S.C.A. § 3610(d)(1).

[6] Title VIII Complaint Intake, Investigation, and Conciliation Handbook at 7-3.

[7] 42 U.S.C.A. § 3610(g)(1).

[8] 42 U.S.C.A. § 3612(o)(1).

[9] 42 U.S.C.A. § 3612(o)(1).

[10] *Id.* at § 3613(a)(1)(A).

[11] *Id.* at § 3613(c)(1).

[12] All figures are adjusted annually subject to inflation.

[13] 24 C.F.R. § 180.671

[14] 42 U.S.C.A. § 3614(d).

[15] Rethinking Conciliation Under the Fair Housing Act, 67 *Tenn. L. Rev.* 425, 434 (2000).

[16] *Id.* at § 3612(p).

[17] *Id.* at § 3613(c)(1).

[18] 42 U.S.C.A. § 3610(a).

[19] 42 U.S.C.A. § 3612(o)(1).

[20] *Id.* at § 3613(a)(1)(A).

[21] Rethinking Conciliation Under the Fair Housing Act, 67 *Tenn. L. Rev.* 425, 434 (2000).

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