

# Using Federal, State and Local Administrative Complaints to Pursue Fair Lending and Fair Housing Claims

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**Rachel Geballe, Brooklyn Legal Services**  
**Amy Hammersmith, Queens Legal Services**

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# Fair Lending and Fair Housing – What's the Big Deal?

- Often below the surface of other typical interactions
- Identify discrimination, bring it to the attention of administrative agencies, gain relief for your client
- Assist your client in remedying related issues –
  - L&T
  - disability access
  - servicing abuses
  - Mortgage modifications
  - Etc.

# Examples of Discrimination - Housing

- Physical and verbal threats or harassment related to a protected characteristic
- Differential treatment (i.e. performing repairs for young tenants, but not for elderly tenants)
- Steering applicants for housing to particular communities or dwellings
- Repeated and baseless litigation
- Uneven enforcement of building rules

# Examples of Discrimination - Lending

- “reverse redlining” – predatory lending
- Targeted one-stop shops
- Targeted deed thefts
- Targeted loan mod scammers
- Servicing practices

# Choice of Forum – Court versus Administrative Forum

- Court fees and other costs
- Burden on parties and on you
- Discovery
- Settlement/conciliation
- Damages (injunctive, actual, punitive, civil penalties) and awards
- Other considerations

# Some Reasons to File an Administrative Complaint

- No fee to file
- Agency expertise in the subject
- Agency will often conduct some investigation, allowing you to conserve resources
- Administrative complaint require less intensive up front preparation than litigation
- Your client may be particularly nervous about the formality of a court proceeding
- Complaints help to demonstrate to agencies and lawmakers that a problem exists and, in theory, the agency can initiate systemic investigations into widespread discrimination
- You want the benefit of tolling the litigation SOL while the administrative complaint is pending

## Some reasons you may not want to pursue an administrative complaint

- The process can be lengthy (average time frame has recently been 497 days from opening to closing of a HUD case)
- Litigation offers the potential for punitive damages and higher awards
- Complex claims may be better suited to Federal or State court
- Statue of Limitations for Admin Complaints is 1 year from discrimination: most lawsuit limits are longer

*Attorneys fees and injunctive relief are available under both administrative complaints and litigation*

# Choice of Forum – Federal, State, City

- Statutes of Limitation
- Covered characteristics
- Investigator receptivity
- Damages and fines
- \*HUD refers NY complaints to NYSDHR

# Who is Covered?

While each law defines the universe of protected categories more or less broadly, the strategies for identifying discrimination and demonstrating it to a fact-finder are fairly similar across forums.

The following slides take a closer look.

# Fair Housing Act (Title VIII)

Protects against discrimination based on the following characteristics:

**Race**

**Color**

**Religion**

**Sex**

**Familial Status**

**National origin**

**Disability**

# Fair Housing Act

## Prohibits:

- The refusal to sell, rent or negotiate, or otherwise make unavailable or deny, a dwelling to any person *because of* their membership in a protected category
- Discrimination in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities connected therewith *because of* membership in a protected category
- Making unavailable or altering the terms or conditions of a real estate-related transaction *on the basis of* a protected category

# What Counts as a Dwelling Under the FHA?

**The Act itself does not define dwelling. A 1975 case, *US v. Hughes Mem'l Home* provides the most frequently cited definition of a dwelling under FHA:**

“a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit.”

*396 F. Supp. 544 (W.D. Va. 1975)* (citing Webster's Third New International Dictionary)

**Since then, courts have tended to look at the occupants intended length of stay and whether occupants view the place as one to which they will return.** *Hunter ex rel. A.H. vs. Dist. of Columbia*, *64 F. Supp. 3d 158 (DDC 2014)* (finding a homeless shelter to be a dwelling under the FHA).

# What is a Dwelling, Cont'd

**HUD Subsequently promulgated a regulation which gave some direction, but did not resolve the question entirely:**

“Dwelling unit means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a *residence* for homeless persons. [24 C.F.R. § 100.201](#)”

# What is a Dwelling? Cont'd

The following is not an authoritative list , but offers some guidance

## **Almost certainly a dwelling**

Homeless Shelter – *Hunter ex rel AH v. DoC*, 64 F. Supp. 3d 158 (D.D.C. 2014)

## **Probably a dwelling**

Hospice - *Baxter v. City of Belleville*, 720 F. Supp. 720, (S.D. Ill. 1989)

Nursing Home - *Hovsons v. Twnshp of Brick*, 89 F.3d 1096, (3<sup>rd</sup> Cir. 1996)

## **Almost certainly NOT a dwelling**

Prisons - *Garcia v. Condarco*, 11 F. Supp.2d 1158 (D.N.M. 2000)

Hotel or Motel - *Patel v. Holley House Motels*, 483 F. Supp. 374 (S.D. Ala, 1979)

## **Really depends on the forum**

Halfway House - *Jason Abdus-Sabur vs. Hope Village*, 2016 WL 7408833 (2016) (*finding a halfway house is not a dwelling under the FHA*) **But see**

*Schwarz v. Treasure Island City* 544 F.3d 1201 (11<sup>th</sup> Cir 2008)(*finding a halfway house IS a dwelling under the FHA*)

# Equal Credit Opportunity Act (ECOA)

Protects against discrimination in the approval and/or terms of credit transactions (including mortgages) on the following grounds:

**Race**

**Color**

**Religion**

**Age**

**Sex**

**Marital Status**

**National origin**

**Lawful income source**

# NY State Human Rights Law

Protects against discrimination:

**Race/Color**  
**Religion/Creed**  
**Sex**  
**Familial Status**  
**Marital Status**  
**National origin**  
**Age**  
**Sexual Orientation**  
**Military Status**

# NYC Human Rights Law

Protects against discrimination on the following grounds:

**Age**  
**Alienage/Citizenship**  
**Color**  
**Disability**  
**Gender**  
**Gender Identity**  
**Marital Status and Partnership Status**  
**National Origin**  
**Pregnancy**  
**Race**  
**Religion/Creed**  
**Sexual Orientation**

## What Makes it Discrimination?

**The complained-of act must be “because of” the protected characteristic.**

**If everyone in a building is being harassed, or a broker offers everyone the same bad loan terms, it is very unlikely that a fact-finder will find discrimination.**

# The Complaint – Investigation

- Know your client's story
- Collect documents
- Background research –
  - Internet research on the wrongdoers – internet, public records, newspapers
  - ACRIS
  - Court filings
  - Network of advocates
  - Bank examinations
- HMDA
- Mapping
- Testing
- QWR
- Origination files

# The Complaint – Investigation

- Potential testimony (of your clients or others)
- Written policies (“no kids allowed”, restrictions on source of income, servicing policies)
- Advertising (Craig’s list and other online outlets, handwritten signs, notices targeting particular linguistic groups, neighborhood papers)
- Posted policies
- Rent rolls

# The Complaint – Drafting

- Narrative
  - Your client's story
  - Supporting details
    - Pattern and practice Information about the parties
    - Citations to articles, public sources of information, etc.
  - Can be the same for each complaint
- Maps/Charts
- Think about which parties you want to name in your complaint?

# The Complaint Process

## **The Complaint Process Is Very Similar Across All Agencies, We Will Use the HUD Process as the Primary Example**

- HUD accepts complaints online, via mail or by phone – NYSDHR only accepts complaints via phone or mail
- Once the complaint is filed a specialist should contact the complainant and conduct an interview, generally by phone
- The agency will draft a formal version and send it to the complainant for signature. If the complaint is in writing, detailed enough and verified, some agencies (NYCCHR) will simply use that.
- A copy is then sent within a specified timeframe to the subject of the complaint and they have a specified number of days to answer (this is commonly extended).

- In states with comparable laws (like NY) HUD generally refers the complaint. In NY it is referred to the NY State Division of Human Rights, who is supposed to begin working with the complainant within 30 days of referral
- Refer to the text of each law to determine the important time frames

# HOW to FILE a COMPLAINT with HUD

## ONLINE

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process)

## BY PHONE

**1-800-669-9777**

# HOW TO FILE A COMPLAINT WITH THE NY STATE DIV. of HUMAN RIGHTS

## Download the Form From

<http://www.dhr.ny.gov/how-file-complaint>

## Mail To:

333 E Washington St  
Syracuse, NY 13202

65 Court St  
Buffalo, NY 14202

259 Monroe Ave  
Rochester, NY 14607

44 Hawley St  
Binghamton, NY 13901

250 Veterans Hwy # 2B-49  
Hauppauge, NY 11788

175 Fulton Ave  
Hempstead, NY 11550

7-11 South Broadway, Suite 314  
White Plains, New York 10601

One Fordham Plaza,  
Fourth Floor  
Bronx, NY 10458

55 Hanson Place  
Brooklyn, NY 11217

163 W 125th St  
New York, NY 10027

## Visually Impaired

Contact John Herrion  
718-741-8332 or [jherrion@dhr.ny.gov](mailto:jherrion@dhr.ny.gov)

# How to File a Complaint with the NYC DHR

## **CALL:**

311 or (718) 722-3131 and ask for the NYC Commission on Human Rights

## **Go to the website and click the link**

<https://www1.nyc.gov/site/cchr/enforcement/steps-in-the-complaint-process.page>

***Once the process is started, attorneys tend to accept emailed submissions of complaints and replies***

# Discovery – How to Move Your Case Forward

- Rebuttal (your response to the respondent's answer)
- Get to know your investigator
- Illuminate key aspects of the law
- Shape discovery
- Defend your damages

# Hearings and Conferences

- Do not expect strict adherence to the Federal Rules of Evidence, the State evidentiary laws, or other formal requirements.
- Be creative.

# Conciliation, Mediation and Settlement

- All agencies have a conciliation or mediation process which they offer to parties. Neither party is compelled to sign an agreement, but if the parties do come to an agreement, it must also protect the public's interest. Generally, whatever happens in conciliation remains confidential and cannot be shared with the public or used later.
- The agreement is enforceable. For example, a breach of an agreement made under the HUD process can result in the Department of Justice enforcing the agreement.

# The Complaint Process

## Findings After Investigation

### *Where Reasonable or Probable Cause Found*

- Reasonable or Probable Cause is generally found when the relevant evidence supports a conclusion that a violation may have occurred
- If reasonable cause is found, the case will either go to a an Administrative Law Judge (ALJ) for a hearing OR either party may choose pursue the matter in court.
- If parties go before the ALJ, a lawyer for the agency will present the case
- In a HUD complaint, if parties choose to go to federal civil court, the Department of Justice will bring and prosecute the action on behalf of the complainant at no charge

# Decisions and Appeals

## **HUD Complaints**

- ALJ decisions can be “appealed” to the HUD Secretary within 15 days of issuance
- The Secretary has the power to affirm, modify or set aside the ALJ’s decision, or remand
- If the Secretary takes no action within 30 days, the decision is considered final
- That final decision may be appealed to the appropriate Court of Appeals

# Decisions and Appeals cont'd

## **NYS DHR Complaints:**

- Decisions can be appealed to the State Supreme Court within 60 days

## **NYC HRC Complaints:**

- Decisions can be appealed to the State Supreme Court within 30 days of issuance of the decision
- The Commission also can issue a Dismissal for Administrative Convenience before continuing with investigation. Parties can write a letter requesting reconsideration within 30 days of service of the notice of dismissal.

# Decisions and Appeals cont'd

## ***Where No Reasonable Cause Found***

- A party who disagrees may file a civil court action in the appropriate court; note timeframes!

## ***Retaliation Survives a Finding of No Probable Cause***

- Even if no reasonable cause is found to exist for the initial discrimination charge, any respondent that retaliates against a complainant can still be liable for retaliation and that charge will proceed

# PENALTIES

## An ALJ can issue:

- Civil penalties, payable to the agency or government
- Actual damages, payable to complainant – this includes moving expenses, missed work, medical expenses, cost of alternative housing, lost housing opportunity costs
- Injunctive relief and other equitable relief
- Attorneys' fees and costs
- Punitive damages ***not*** available

# Questions?

- Please contact us if you have questions:

Rachel Geballe

Staff Attorney, Brooklyn Legal Services

[rgeballe@lsnyc.org](mailto:rgeballe@lsnyc.org), 718-237-5573

Amy Hammersmith

Staff Attorney, Queens Legal Services

[ahammersmith@lsnyc.org](mailto:ahammersmith@lsnyc.org), 347-592-2261

## Sources of Housing Discrimination Law for the Purpose of Filing Administrative Complaints

- **Fair Housing Act** (Housing and Urban Development)

*42 U.S.C. § 3601 et seq.*

- **Equal Credit Opportunity Act** (Consumer Financial Protection Bureau)

*15 U.S.C. §1691 et seq.*

- **New York State Human Rights Law** (NYS Division of Human Rights)

*N.Y. Exec. Law 290 et seq.*

- **New York City Human Rights Law** (NYC Human Rights Commission)

*N.Y. Admin Code 8-101, et seq.*

# Statute of Limitations (SOL!)

## **ADMIN COMPLAINTS**

One year within last instance of discrimination for all administrative complaints

## **LAWSUITS**

FHA – 2 years

ECOA – 5 years

NY State Human Rights Violation – 3 years

NYC Human Rights Violation – 3 years