

WHAT REMEDIES ARE AVAILABLE UNDER THE FAIR HOUSING LAWS?

Many states and local governments provide remedies to persons who complain of fair housing violations. Federal remedies range from HUD conciliation efforts to federal court litigation. Often, HUD is the first agency contacted, and HUD will either investigate the complaint itself or refer the complaint to a local agency where the alleged discrimination occurred if the local agency has been certified by HUD. Certification is given to state or local agencies if the rights, procedures, and remedies are substantially equivalent to those created by the federal and if the state make judicial review available. The City of Tampa, for example, has a human rights office that often investigates local housing complaints and reports its findings to HUD.

An individual can file a complaint with HUD within one year after the alleged discriminatory act occurred. HUD then has a duty to provide notice to the person/party who allegedly committed the act of discrimination (the “respondent”). HUD (or its designee) must complete the investigation within 100 days of the making of the complaint or give reasons in writing why it failed to do so.

During the investigation period, HUD generally tries to mediate the case through the “conciliation” process. If no conciliation (settlement) agreement is reached between the parties, HUD must prepare a final report at the end of its investigation. The report and the information derived from the investigation can be requested by either party, but anything said or done in the court of conciliation may not be used in any subsequent proceeding. HUD complaints are often settled through the conciliation process, as it avoids having to proceed through further administrative and/or judicial procedures.

If no conciliation agreement is reached and if HUD has determined that “reasonable cause” exists to support that the alleged discriminatory act did occur, the HUD Secretary must issue a charge of discrimination. However, if HUD finds “no reasonable cause,” the case is essentially dismissed.

Housing discrimination can take many forms. The foregoing information is designed to explain the fair housing laws in everyday language and is not intended to be, and it should not be considered a substitute for professional legal advice or services when the need arises. Each situation has its own peculiarities and laws frequently change. Therefore, you should always seek the advice of legal counsel when a legal matter arises. Drake & Associates – 813-662-1536; www.danielgdrake.com

If HUD finds “reasonable cause” and issues a charge, the complainant has 20 days to elect to have the U.S. Justice Department filed suit against the respondent on the complainant’s behalf but in the name of the United States. This may be beneficial to the complainant, as he/she gets free counsel and the possibility of a punitive damages award. The respondent also has the right to request that the matter be heard in federal court.

If no party requests that the matter be heard in federal court, the matter will proceed to trial before an Administrative Law Judge. HUD attorneys will prosecute the case on behalf of the complainant; however, the complainant has the right to hire his/her own attorney. The ALJ has the authority to award the complainant “actual” damages, injunctive relief, and impose civil penalties upon the respondent (up to \$10,000 for a first violation, up to \$25,000 for a second violation within 5 years of a prior violation, and up to \$50,000 if the respondent has more than two violations within the previous 7-year period). An ALJ may not award punitive damages, but a successful complainant can be awarded his/her attorney’s fees (this is not available to a successful respondent unless the ALJ finds that the complaint was completely without merit – not likely to happen, in the author’s opinion, if HUD has issued a charge).

An aggrieved party has the choice of not waiting until HUD completes its investigation and move forward with the filing of a private suit (through private counsel) in either state or federal court, generally depending on which law(s) the complainant wishes to sue under. The statute of limitations to follow this course of action is two years. The courts have the authority to award a successful complainant actual AND punitive damages, injunctive relief, attorney’s fees and costs, and civil penalties of up to \$50,000 for the first violation and up to \$100,000 for any subsequent violation.

Anyone who suffers an injury by a discriminatory housing practice can bring a complaint under the fair housing laws. An injury can be economic (a tenant was charged higher rent for a discriminatory purpose) but it does not have to be. In certain cases testers that have been given false or misleading information can be complainants. Property owners who are precluded from selling or renting property to minority persons can sue. Neighborhood residents and villages that have been

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injured by the "steering" policies of a realtor can sue. Fair housing organizations that are forced to expend time and efforts to assist equal access to fair housing may also be able to file complaints.

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