

What to do if You Receive a Fair Housing Complaint

Fair housing is serious business, and we all work hard to ensure compliance with the requirements of the Fair Housing Act and Section 504. But despite all your best efforts, you may still find yourself faced with a fair housing complaint and its accompanying investigation. What should you do if a complaint is filed?

First, don't take it personally. Complaints are uncomplicated and inexpensive to file, and the administrative agencies that process them do not require the person filing the complaint to provide much up front in the way of evidence to back up the claim. On the other hand, you should take the complaint seriously, and at least notify your attorney that the complaint has been filed.

Second, you will be asked by the agency to respond in writing to the complaint within a certain number of days. You should **never** miss this opportunity to present your side of the story. The time to respond may seem short. If you need more time, call the agency and request an extension.

Before you respond to the complaint, gather all the documents that relate to the incident or policy in issue. If you have maintained written resident files, and both established and adhered to consistent operating policies, this should not be a difficult task. If you have not maintained written resident files, and have operated your business without clearly established policies, you will now have learned a difficult lesson.

Along with gathering your documents, you will want to identify those people (either employees or other residents) who might have some knowledge of the issues in the complaint. Now is not the time to start interrogating folks; just make a list of potential witnesses and what they might know.

At this point you will have two options. One is to take all the material you've put together and deliver it to your attorney. Your attorney can then prepare a formal answer to the complaint that will be organized and responsive, and may go a long way toward convincing the investigator that there's not much more work to be done to finish the investigation and close the case. Your other option is to use the same material and prepare your own response. Only you can make the decision about whether you are prepared to invest the time and effort needed to make an effective response on your own.

Don't be surprised if, during this initial period, you get a call from the agency investigator asking you to consider "conciliation" (settlement) of the complaint. HUD and all agencies certified by HUD have a statutory duty to attempt conciliation at some point during the investigation, and they usually try soon after you receive your notice of the complaint. Although there are benefits to early settlement (not the least of which is that the matter will be over and done with), you may not want to pay to conciliate any matter that you haven't taken the time to investigate and weigh the merits. Even if you don't have a position yet on whether this is a complaint you need to settle, try to keep an open mind and cooperate with conciliation efforts.

Remember that the investigator is impartial – like a mediator, shuttling offers and counteroffers between the parties. If you suspect the investigation is being less than impartial in some way, don't hesitate to ask to speak to a supervisor instead.

After you've initially responded to the complaint, the investigation may continue with a formal request for more specific information, including interviews with witnesses. Here's where your list may come in handy; you probably know of people who would be supportive of your defense, and the investigator might not be aware of them. Be sure to suggest that the investigator talk to those people.

While the investigation may seem intrusive, and your inclination may be to hold back, the fact is that little can be accomplished by being evasive. Both HUD and the HUD-certified agencies have subpoena power, meaning they can (within reason) compel you and your company to turn over records and be interviewed by the investigator. You may also be asked to gather statistics on resident population, or respond in writing to a data request letter.

Most complaints are resolved with either conciliation or a finding by the agency of no evidence to believe a fair housing violation occurred. In the event the agency does find evidence to believe a violation has occurred, you may want to consider contacting your attorney, if you haven't already. The agency ceases to be impartial once it has made this determination, and will begin steps to remedy the damage done by the discrimination.

Regardless of how the agency rules on the complaint, once the agency's determination is issued, the investigative case file is closed, and you are entitled to obtain a copy of it, generally at your own expense. The agency's determination should indicate how to request a copy. If dealing with HUD, you can make a request under the Federal Freedom of Information Act.

To summarize, when you are notified that a complain of a fair housing violation has been filed against you or your company:

- Don't get emotional;
- Decide whether you want to retain an attorney for the investigation. If so consult an attorney with expertise in fair housing laws
- Respond to the complaint within the time frame given
- Participate in conciliation discussions and cooperate with the investigator's requests to a reasonable extent
- If you choose, obtain the agency's file when the investigation is complete

Following these steps should result in a faster, less complicated, and ultimately less costly resolution of the complaint.

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