

# TRYING A HOUSING DISCRIMINATION CASE

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# STEP ONE: ID YOUR STATUTES

- The **Fair Housing Act** (42 U.S.C. 3601 *et seq.*) will be the focus of this presentation along with some reference to the **Missouri Human Rights Act** (Mo. Rev. Stat. 213.040 *et seq.*).
- However, consider the following statutes for additional protections/duties:
  - **Title VI of the Civil Rights Act of 1964** - prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.
  - **Section 109 of Title I of the Housing and Community Development Act of 1974** - prohibits discrimination on the basis of race, color, national origin, sex or religion in programs and activities receiving financial assistance from HUD's Community Development and Block Grant Program.
  - **Title II of the Americans with Disabilities Act of 1990** - prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities.
  - **Section 504 of the Rehabilitation Act of 1973** - prohibits discrimination based on disability in any program or activity receiving federal financial assistance.
  - **Architectural Barriers Act of 1968** - requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by handicapped persons.
  - **Age Discrimination Act of 1975** - prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
  - **Title IX of the Education Amendments Act of 1972** - prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance.
  - **The Equal Credit Opportunity Act** - prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.
  - **Local Ordinances** - local ordinances may provide more protection than state or federal statutes. For instance, Saint Louis City Ordinance No. 67119 prohibits discrimination on the basis of sexual orientation/gender identity, source of income and age.



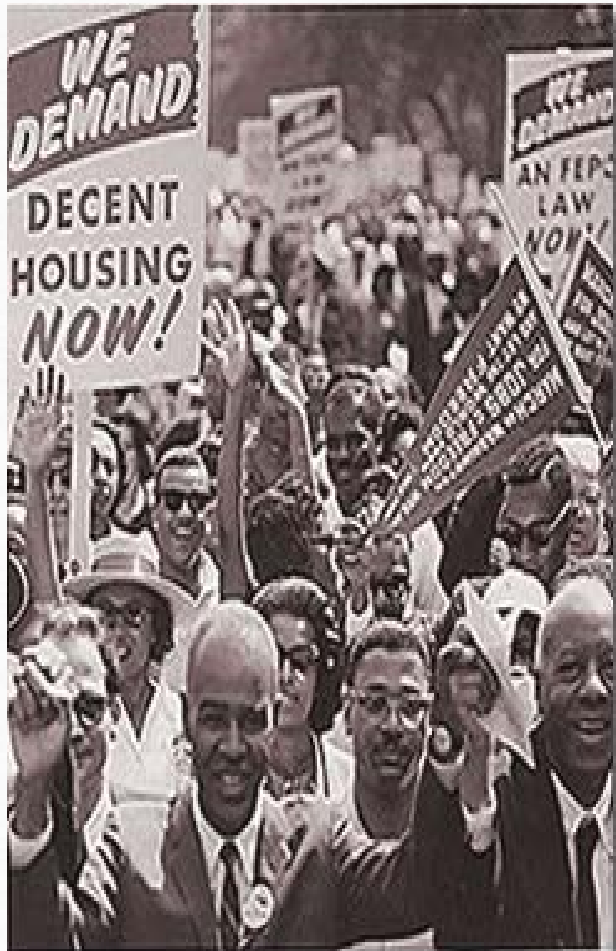
## THE FAIR HOUSING ACT OF 1968

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“We have come some of the way, not near all of it. There is much yet to do.”

– President Lyndon B. Johnson





- Title VIII of the Civil Rights Act of 1968 is commonly known as the Fair Housing Act (FHA).
- The Fair Housing Act was meant as a follow-up to the Civil Rights Act of 1964, which prohibited discrimination in housing but lacked federal enforcement provisions.
- The Act was signed into law on April 11, 1968, a week after the assassination of Dr. Martin Luther King, by President Lyndon B. Johnson, who previously signed the Civil Rights Act of 1964 and the Voting Rights Act of 1965 into law.
- The Act expanded on previous acts and prohibited discrimination in the sale, rental, and financing of housing based on race, religion, and national origin.
- The Act also made it unlawful to intimidate, threaten, or interfere “with any person in the exercise or enjoyment of...any right granted or protected by [FHA].”
- The Act was later amended in 1974 to include gender and in 1988 to include people with disabilities and families with children.



# MISSOURI HUMAN RIGHTS ACT (MHRA)

- The housing provisions of the MHRA were once comparable to the FHA. In 1992, the U.S. Department of Housing and Urban Development (HUD) certified the MHRA provided rights, remedies, procedures, and judicial review substantially equivalent to those provided under the FHA.
- However, HUD has determined that the amendments to the MHRA by Senate Bill 43 in June 2017 now “render it inconsistent with the Act.” <https://themissouritimes.com/wp-content/uploads/2017/10/HUD-Letters-SB-43.pdf>
  - Limitations on methods for proving discrimination - requiring “Motivating Factor” burden “excludes instances wherein discriminatory intent was not the sole motive of the alleged policy or practice, as well instances where discrimination was caused by the disparate impact of an otherwise neutral policy. Thus, long- and firmly established theories of discrimination (e.g., mixed-motive, discriminatory effects) available under the Fair Housing Act and substantially equivalent laws are no longer available under the MHRA.”
  - Limitations on actual and punitive damages - places caps on the total award of both actual and punitive damages, and thus “impermissibly limits the remedies available to victims of housing discrimination.”
  - Protections related to retaliation and association: - narrows the scope of coverage in retaliation cases to employers, employment agencies, labor organizations, or places of public accommodation. HUD believes this revision “omits owners, landlords, or any other class of persons related to housing transactions.”
  - Prerequisite for Filing of a Civil Action – requires the filing of a complaint with MHRC as a jurisdictional prerequisite to the filing of a civil action by an aggrieved person. Under the FHA, “aggrieved persons have the unqualified right to file an administrative complaint, to proceed directly in State or federal court, or to do both simultaneously.”



# MISSOURI HUMAN RIGHTS ACT (MHRA)

- As a result, HUD plans on suspending Missouri's participation in the Fair Housing Assistance Program (FHAP), which reimburses the state for housing discrimination investigations unless the law is restored to a state of "substantial equivalence" by March 1, 2018.
- In the meantime, HUD officials are no longer referring any housing complaints to the MCHR and the state commission must now inform those with complaints that they have the right to file directly with the federal government.
- Due to the changes in the MHRA and their unknown consequences, this presentation will mainly focus on litigating a housing case under the FHA
- **NOTE!!! Because the MHRA is no longer substantially equivalent to the FHA, you can no longer dual file charges of discrimination**
  - Previous to the changes, if you filed a charge with HUD, it was dual filed with the MCHR and if you filed with the MCHR, it was dual filed with HUD
  - **AFTER MARCH 1<sup>ST</sup>, THIS IS NO LONGER THE CASE**
    - If you file with HUD, it does nothing to preserve your state claims
    - If you file with MCHR, it does nothing to preserve your federal claim
    - To preserve all claims, you must file with each agency individually within each agency's SOL
      - HUD – within one year of the act of discrimination
      - MCHR – within 6 months of the act of discrimination

## STEP TWO: ID PROTECTED CLASS

- The FHA and MHRA specifically cover discrimination based on:
  - Race/Color
  - Religion
  - Sex
  - National origin (Ancestry – MHRA)
  - Familial status, or
  - Disability.
- Not covered:
  - Marital status
  - Source of income (Section 8 vouchers)
  - Military discharge
  - Age
  - Sexual orientation/Gender identity



## STEP THREE: ID PROHIBITED ACTIVITY

- Refusing to rent or sell housing
- Refusing to negotiate for the sale or rental of housing
- Setting different terms, conditions, or privileges for sale or rental of a dwelling
- Making housing unavailable to certain individuals
- Falsely denying that housing is available for inspection, sale, or rental
- Providing different housing services or facilities to certain individuals
- Persuading owners to sell or rent their homes by telling them minority groups are moving into the neighborhood (blockbusting)
- Denying certain individuals access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.
- Refusing to make a mortgage loan
- Refusing to provide information regarding loans
- Imposing different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminating in appraising a property
- Refusing to purchase a loan
- Setting different terms or conditions for purchasing a loan.
- Harassing an individual on the basis of race, color, religion, national origin, sex, familial status, or disability
- Retaliating against an individual for filing a complaint of discrimination, participating in an investigation or hearing, or opposing discriminatory practices
- Advertising or making any statement that indicates a limitation or preference based on race, color, religion, national origin, sex, familial status, or disability.

**\*\*\* This is not an exhaustive list**



# Examples of Race Discrimination in Housing

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- One of the central objectives of the Fair Housing Act was to prohibit race discrimination in sales and rentals of housing.
- More than 30 years later, race discrimination in housing continues to be a problem.
- Many cases of race discrimination involve housing providers giving false information to applicants about availability of housing, employing more rigorous screening procedures for minority applicants than white applicants, and steering prospective buyers/renters to certain areas based on race.
- Some race discrimination cases involve municipalities and local government entities denying permits or zoning changes for housing developments or relegating them to predominantly minority neighborhoods.
- Recently, in *Bank of America v. Miami*, 137 S. Ct. 1296 (2017), SCOTUS determined the Fair Housing Act could also be used as a vehicle for cities or other “aggrieved persons” to sue banks for lending practices that disproportionately target people of color so long as the aggrieved party can show “some direct relation between the injury asserted and the injurious conduct alleged.”
  - In the consolidated cases on review, Miami alleged Bank of America and Wells Fargo disproportionately targeted people of color, offering them loans for which they were unqualified and refusing to modify the terms of the loan when it was clear the borrower could not meet them.
  - Miami alleged minority borrowers were disproportionately foreclosed upon and the banks engaged in “reverse redlining” by refusing to offer minorities credit on the same terms as whites and imposing harsher, predatory terms when loans were offered to minority borrowers.
  - Compared to similarly situated white customers, minority borrowers faced higher interest rates, were charged more baseless fees and penalties, and were more often refused loan refinancing and modification when faced with the possibility of default.

# Examples of National Origin Discrimination in Housing

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- National Origin discrimination can be based either upon the country of an individual's birth or where his or her ancestors originated.
- Census data indicates that the Hispanic population is the fastest growing segment of our nation's population. There have been an increasing number of cases against municipalities that have tried to reduce or limit the number of Hispanic families that may live in their communities.
- Lenders have also been found to be in violation of the FHA/MHRA for imposing more stringent underwriting standards on home loans or made loans on less favorable terms for Hispanic borrowers.
- Depending on the community, local governments, housing providers, lenders, may engage in discriminatory practices on the basis of any national origin group that is prevalent in the community such as Native Americans, former members of the Soviet Union, and other portions of Eastern Europe. All such actions are in violation of the FHA/MHRA.
- FHA protects all people against prohibited discrimination, regardless of their legal status in the United States



# Examples of Religious Discrimination in Housing

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- The number of cases filed since the inception of the FHA is small in comparison to some of the other prohibited bases, such as race or national origin.
- Neither the FHA nor the MHRA require housing providers to reasonably accommodate individuals because of their religion, but intentional acts against individuals because of their religion are prohibited:
  - Refusing to rent or sell to a member of a specific religion
  - Establishing rules prohibiting persons from displaying religious symbols on their doors
  - Zoning ordinances designed to limit the use of private homes as a places of worship.
- The FHA does contain a limited exception that allows non-commercial housing operated by a religious organization to reserve such housing to persons of the same religion.

# Examples of Sex Discrimination in Housing

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- Sex discrimination has become an area of increased focus for both the Department of Justice and HUD in recent years.
- Sex harassment is a form of sex discrimination under the FHA/MHRA. It occurs when there is deliberate or repeated comments, gestures or physical contact that creates a hostile environment or when sexual favors from tenants are sought as quid pro quo.
- Acts taken by a housing provider or municipality against a victim of domestic violence who calls the police to report abuses could also constitute sex discrimination as such acts disproportionately effect women and possibly other protected classes.
- While marital status is not a protected class, a rule that prohibits single women, but not single males or families, from renting a building would be illegal sex discrimination.
- Women, particularly minority women, are also at times subjected to pricing discrimination in mortgage lending, which is also illegal under the FHA, MHRA and the Equal Credit Opportunity Act.



# Examples of Sex Discrimination in Housing

- Neither the FHA nor the MHRA specifically includes sexual orientation and gender identity as prohibited bases. However, discrimination against a lesbian, gay, bisexual, or transgender person may be covered if it is based on non-conformity with gender stereotypes. Such as, if a housing provider refuses to rent to an LGBT person because he believes the person acts in a manner that does not conform to his notion of how a person of a particular sex should act.
  - Example – a transgender woman is asked by the owner of her apartment building not to dress in women's clothing in the common areas of the property.
- Housing discrimination against people with HIV/AIDS and people perceived to have HIV/AIDS is also illegal under the FHA/MHRA's prohibition of disability discrimination. This protection can be invoked in situations in which a housing provider assumes any member of the LGBT community has such a diagnosis.
  - Example - a gay man is evicted because his landlord assumes he has HIV/AIDS, he is protected by the Fair Housing Act whether he has HIV/AIDS or not because the man is perceived to have a disability.
- In addition, housing providers that receive HUD funding or have loans insured by the Federal Housing Administration (FHA), as well as lenders insured by FHA, are subject to HUD's Equal Access Rule, which requires equal access to HUD programs without regard to a person's actual or perceived sexual orientation, gender identity, or marital status.
  - Example - an underwriter for an FHA-insured lender is reviewing a loan application by two males in which both incomes are being used as the basis for the applicants' credit worthiness. The underwriter assumes the applicants are a gay couple and, as a result, denies the application despite the fact that the applicants meet all requirements for the loan. This violates HUD's Equal Access Rule, which prohibits FHA-insured lenders from taking actual or perceived sexual orientation into consideration in determining adequacy of an applicant's income.

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](https://www.hud.gov/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination)

# Examples of Familial Status Discrimination in Housing

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- The FHA/MHRA prohibits discrimination in housing against families with children under 18.
- The Act prohibits the denial of housing to “families” with children as well as the imposition of any special requirements or conditions on tenants with children.
- Families include pregnant women and individuals in the process of adopting a child. The 7<sup>th</sup> Circuit also includes individuals in the process of becoming foster parents in its definition of family.
- Landlords may not locate families with children in any single portion of a complex, place an unreasonable restriction on the total number of persons who may reside in a dwelling, or limit their access to recreational services provided to other tenants.
- There is a limited exception for those facilities designated as “Housing for Older Persons” that provide housing to those 55 years of age or older.



# Examples of Disability Discrimination in Housing

- The FHA defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working.
  - The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded or perceived as having such an impairment.
  - Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act.
- Individuals with disabilities are protected from municipalities who use zoning and other regulations to hinder their residential choices, such as unnecessarily restricting “communal, or congregate, residential arrangements,” such as group homes.
- Similarly, housing providers are not permitted to inquire into the ability of a person with a disability to live independently absent evidence that the individual is a direct threat to the health or safety of others or would result in physical damage to the property.
- Housing providers must make reasonable accommodations to their rules, policies, practices, or services when such accommodations may be necessary to afford an equal housing opportunity to an individual with a disability. An accommodation is not reasonable if it imposes “undue financial or administrative burden.”
  - Allowing a service animal in a “no pets” facility
  - Providing a parking space to an individual with mobility impairments
  - Waiving a “guest” fee if a person with a disability needs live in nursing care

# Examples of Disability Discrimination in Housing

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- Some individuals with disabilities may live together in congregate living arrangements, often referred to as "group homes." The FHA/MHRA prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals with disabilities. It is unlawful --
  - To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
  - To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with developmental disabilities.
  - To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.  
<https://www.justice.gov/crt/fair-housing-act-1>
    - Example – a city ordinance that permits two or less “non-related” individuals from living together in a single family residence may have to make a reasonable accommodation to its zoning rules to allow a group home of four unrelated individuals with disabilities to occupy a single family residence



# Examples of Disability Discrimination in Housing

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- The Fair Housing Act defines discrimination in housing against persons with disabilities to include a failure "to design and construct" certain new multi-family dwellings so that they are accessible to and usable by persons with disabilities, and particularly people who use wheelchairs. The Act requires all newly constructed multi-family dwellings of four or more units intended for first occupancy after March 13, 1991, to have certain features: an accessible entrance on an accessible route, accessible common and public use areas, doors sufficiently wide to accommodate wheelchairs, accessible routes into and through each dwelling, light switches, electrical outlets, and thermostats in accessible location, reinforcements in bathroom walls to accommodate grab bar installations, and usable kitchens and bathrooms configured so that a wheelchair can maneuver about the space.

<https://www.justice.gov/crt/fair-housing-act-1>

## STEP FOUR: ID COVERED PROPERTY

- The FHA/MHRA cover most housing regardless as to whether they are publicly or privately owned, including:
  - Residential homes
  - Apartments/condos
  - Vacation homes
  - Residential hotels
  - Migrant housing
  - Dormitories
  - Nursing homes
  - Group homes
  - Homeless shelters
- In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.



## STEP FIVE: ID PARTIES

- PLAINTIFFS:
  - The FHA permits any “aggrieved person” to file a civil action to seek damages for violations of the statute, defining “aggrieved person” to include “any person who ... claims to have been injured by a discriminatory housing practice.”
    - Individuals
    - Housing providers
      - *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1981)
    - Testers
      - *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1981)
    - Neighborhood residents
      - *Gladstone Realtors v. Bellwood*, 441 U.S. 91 (1979)
    - Cities and municipalities
      - *Bank of America v. Miami*, 137 S. Ct. 1296 (2017)
    - White tenants who entertain or house friends or family of a protected class
      - *Walker v. Pointer*, 304 F.Supp. 56 (N.D.Tex. 1969)
    - Landlords who rent to individuals of a protected class
      - *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969)
  - Aggrieved party must be able to show some injury in fact and show some direct relation between the injury asserted and the injurious conduct.
    - Out of pocket financial loss
    - Injury to neighborhood stability
    - Frustration in mission
    - Diversion of resources

## STEP FIVE: ID PARTIES

- DEFENDANTS:

- Anyone who has engaged in any act of discrimination prohibited by the fair housing laws can be sued.
  - Landlords
  - HOA's
  - Mortgage companies
  - Real estate agents
  - Government officials (for acts performed in their official capacities)
  - Cities/Municipalities
  - Brokers
- The courts have applied general principles of agency in accessing responsibility under the fair housing laws. *Meyer v. Holley*, 123 S.Ct. 824 (2003), i.e. a principal is legally responsible for the acts, conduct, and statements of its agents or employees if those acts are done within the scope of the agent/employee apparent authority.
- Discriminatory admissions and other statements made by an agent, in addition to his acts and conduct, are also attributable to his principal. *Johnson v. Jerry Pals Real Estate*, 485 F.2d 528 (7th Cir. 1973).
- Where an agent discriminates pursuant to direct instructions from his or her principal, both the principal and the agent are liable. *Jeanty v. McKey & Poague, Inc.*, 496 F.2d 1119, 1120-1121 (7th Cir. 1974). "Following orders" is not a defense. The correlation of this principle is that an employee who is discharged for refusing to discriminate has a cause of action against his former employer. *See* 42 U.S.C. §3617;  
<https://www.jmls.edu/clinics/fairhousing/pdf/fair-housing-primer.pdf>



## STEP SIX: ID PROCESS

- Under the FHA, “aggrieved persons have the unqualified right to file an administrative complaint, to proceed directly in State or federal court, or to do both simultaneously.”
- To pursue a claim under the housing provisions of the MHRA, complainants must first exhaust administrative remedies by filing a charge of discrimination with the Missouri Commission on Human Rights within 180 days of the act of discrimination.
  - Even if you know you will eventually file a FHA claim in federal court, consider state exhaustion requirements for supplemental state claims

# Exhaustion Under MHRA

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- The Missouri Commission on Human Rights (MCHR) investigates complaints of discrimination in housing, employment, and places of public accommodations because of race, color, religion, national origin, ancestry, sex, disability, age (in employment only), and familial status (in housing only).
- INTAKE - Intake staff is available to assist with filing a complaint of discrimination or referring to another agency if the MCHR lacks jurisdiction over the matter.
- COMPLAINT IS FILED - After a complaint is filed, the MCHR serves the complaint to the named respondents and the parties are invited to mediate or settle the complaint.
- INVESTIGATION - The investigator acts as a neutral fact-finder and does not represent either party. The investigator interviews witnesses, gathers and reviews documents, and writes an investigative summary.
  - After 180 days, the complainant may ask for a Notice of Right to Sue. The complainant would have 90 days to file suit against the respondent.
- DETERMINATION
  - No Violation: When no discrimination is found, the MCHR closes its case and notifies the complainant of their Right to Sue. The complainant then has 90 days to file suit against the respondent.
  - Probable Cause: When discrimination is found, MCHR attempts to settle the case. If the case is not settled, the Chairperson will set the matter for hearing or dismiss the case.
- THE HEARING PROCESS - At the hearing, the MCHR's case is generally presented by an Assistant Attorney General. The Hearing Examiner conducts the hearing and issues a recommended finding and order to the Commission.
- FINAL DECISION AND ORDER - The Commission issues a Final Decision and Order. If no discrimination is found, then the case is dismissed. If discrimination is found, remedies are ordered. Remedies may include re-instatement or promotion, back pay, and damages for pain, suffering, humiliation, and deprivation of civil rights. Either party has the right to appeal the decision to circuit court.



# Alternative Procedures Under the FHA

HUD Complaint

Enforcement by the Department of Justice

Administrative Trial

Private Lawsuit

# HUD COMPLAINT

File Complaint with HUD w/in a year of the act of discrimination



HUD Investigates (Investigation must be complete in 100 days)



Conciliation



Report

## Reasonable Cause

- HUD ALJ
- Private Lawsuit

## No Cause

- Give Up
- Private Lawsuit



Enforcement by  
DOJ

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graph LR; A[Enforcement by DOJ] --- B[At request of HUD Secretary]; A --- C[At request of aggrieved party]; A --- D[Pattern and Practice Cases]
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At request of  
HUD Secretary

At request of  
aggrieved party

Pattern and  
Practice Cases

Private Lawsuit

2 year SOL

No HUD exhaustion requirement for FHA

DOJ can intervene if AG certifies the case is  
of general public importance

A civil action may be filed even though a  
HUD complaint was filed; however a civil  
action may not be filed after HUD has  
issued a charge and an ALJ has commenced  
a hearing on the charge



## STEP SEVEN: ID LITIGATION STRATEGY

- Emergency Relief
  - Temporary Restraining Orders
    - Designed to preserve status quo until hearing on PI
  - Preliminary Injunctions
    - Per *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 113 (8th Cir. 1981) P must show
      - (1) the threat of irreparable harm to the moving party;
      - (2) balancing this harm with any injury an injunction would inflict on other interested parties;
      - (3) the probability that the moving party would succeed on the merits; and
      - (4) the effect on the public interest.
  - Expedited Hearing
    - Requires good cause
      - Preserve P's ability to buy or rent property
      - Prevent P from eviction
- Emergency Appeal
  - If district court denies emergency relief and time is still of the essence to prevent irreparable harm
- Discovery
- Testers

## STEP EIGHT: WIN

- Prima Facie Case
- Injunctive Relief
- Actual and Punitive Damages
- Attorney's Fees
- Civil Penalties