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HOW TO INVESTIGATE HOUSING DISCRIMINATION



Fair Housing in Pennsylvania

**It's Their Right.
It's Your
Responsibility.**



WHAT IS DISCRIMINATION?

- Unfair, negative treatment of others
- Discrimination happens when people with some form of power use it to prevent “others” from being treated equally or from getting the same rights and privileges that everyone else has
- Discrimination happens everywhere: in the workplace, in schools, in housing and in public spaces
- Unlawful discrimination happens when it is based on the person being a member of a certain group or having certain characteristics

WHAT IS PHRC'S MISSION?

- **Two-Part Mission:**

- **Enforce PA non-discrimination laws**
 - PA Human Relations Act
 - PA Fair Educational Opportunities Act
- **Promote Equal Opportunity for ALL in PA**

WHAT DOES THE PHRA COVER?

- **Employment**
- **Housing**
- **Commercial Property**
- **Public Accommodations**
- **Education**

EXAMPLES OF HARMS

- Failure to rent/lease
- Failure to sell
- Reasonable accommodation – disability or religion denied
- Eviction
- Retaliation
- Reasonable Modification denied
- Different terms and conditions
- Lending practices
- Advertising
- Harassment

These are just some examples. This is not an all- inclusive list

WHAT ARE THE PROTECTED CLASSES?

- Race or color
- Sex (Includes pregnancy, sexual orientation, gender identity)
- *Age (40 or over)
- Religion
- National Origin
- *Ancestry
- Disability
 - Currently having, having a record of, being regarded as having or association with someone who has a disability
 - *Use, handling or training of support animals for disability
- Familial status
- Retaliation

*Not covered under the Fair Housing Act, only the PHRA

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INTAKE PROCESS OVERVIEW

INTAKE PROCESS

- Intake investigators hold an appointment with the Complainant, party who is filing a complaint.
- The Intake investigator will determine jurisdiction and whether the PHRA covers the ask of harms that is reported and if the Complainant has a protected class under the law.
- If the complaint meets all jurisdictional criteria, the Intake Investigator will draft a complaint and have the Complainant sign. This complaint is Complainant's version of what happen to them.
- Once the Intake Investigator has a signed complaint, they will submit it for Service, to be served to the Respondent, the alleged Responsible party.

INVESTIGATION PROCESS OVERVIEW

ANSWER

- Complaint is served on Respondent
- Respondent must provide an answer
 - 30 days to respond
 - 30-day extension can be granted for good reason and if requested in writing
 - Answer must be specific
 - Answer must be verified
 - Answer is provided to the Complainant as well
 - If no answer is received a rule to show cause liability order may be issued holding Respondent liable

ANSWER, CON'T.

- Secure an Answer from Respondent to the complaint. This answer will be the Respondent's version of the what happened and why they did what Complainant stated harmed Complainant.
- The answer should respond to each line of the complaint.
- Respondent must send a copy of the answer to the Complainant and the PHRC Investigator.
- Respondent can admit to the allegations that Complainant stated and confirm discrimination, it can admit to the allegations, but contend that its actions were due to a nondiscriminatory reason, or they can deny the allegations.

REBUTTAL BY THE COMPLAINANT

- Upon receipt of the answer, Complainant will need to review the answer and provide a rebuttal to the Investigator to include :
- Witnesses to the act of harms or others that experienced the harm.
- Documents, including letters, text, and medical records. For Housing, this should include a copy of the rental application, lease agreement, addendums or mortgage agreement.
- Photographs and diagrams.
- Recordings can only be submitted if they meet the requirements of the Wiretapping and Surveillance Control Act- PA is a two- party consent state.

SETTLEMENT PRIOR TO PROBABLE CAUSE

- At any point, the Complainant can engage in settlement of their case:
 1. When the answer is received, both Complainant and Respondent will be offered the option to mediate a settlement.
 2. Complainant and Respondent can work with the Investigator to settle their case, prior to the investigation being completed.
 3. Complainant and Respondent may choose to settle the case and withdraw the case from PHRC.

ACTIVE INVESTIGATION OF A CASE

- PHRC Investigators review the allegations by:
 - Conducting fact finding conference when appropriate
 - Reviewing documents and records
 - Interviewing parties
 - Interviewing relevant witnesses
 - Conducting on-site visits
- In all cases, documents can be subpoenaed if needed
- These requests are enforceable in court if the need is justified

HOW TO REVIEW EVIDENCE

- Case Investigations follow a framework based on the applicable elements of proof. We refer to them as proof elements.
- For each type of Housing discrimination act of harm, there is a correlating proof formula that an investigator will follow to complete the investigation.
- The PHRC and HUD follow the same proof element to complete investigations.
- Each Proof Formula is based on precedent from cases that have been litigation in the past.

COMMON HOUSING PROOF FORMULAS

Refusal to Rent

COMPLAINANT'S INITIAL BURDEN

- 1) Complainant is a member of a protected class; **and**
- 2) Complainant applied for and was qualified to rent or purchase the dwelling; **and**
- 3) Complainant's application was rejected; **and**

The dwelling remained available thereafter, **or** the respondent rented or sold the dwelling to a person not of the complainant's protected class, **or** additional evidence exists indicating discriminatory intent, such as suspicious timing, procedural irregularities, the house unexpectedly being taken off the market, or questionable statements by non-decision makers

Eviction, Termination or Refusal to Renew

COMPLAINANT'S INITIAL BURDEN

- 1) Complainant is a member of a protected class; **and**
- 2) Complainant was the respondent's tenant; **and**
- 3) Respondent acted to terminate the complainant's tenancy, for example, by initiating an eviction, sending a notice to terminate, or refusing to renew Complainant's lease; **and**
- 4) Respondent did not take similar action against a tenant of a different protected class, **or** the dwelling remained available thereafter.

CON'T.

Terms and Conditions During Tenancy

COMPLAINANT'S INITIAL BURDEN

- 1) Complainant is a member of a protected class; **and**
- 2) Complainant was Respondent's tenant; **and**
- 3) Respondent imposed unfavorable or less favorable terms or conditions on Complainant's tenancy; **and**
- 4) Respondent did not impose such a terms or conditions on similarly situated tenants not of Complainant's protected class.

Retaliation

COMPLAINANT'S INITIAL BURDEN

- 1) Complainant engaged in an activity protected by the Act, or aided/encouraged another to do so; **and**
- 2) Respondent subjected Complainant to an adverse action; **and**
- 3) Circumstantial evidence exists of a causal link between the protected activity and the adverse action. Examples of such circumstantial evidence include (a) a temporal link between the protected activity and adverse action; (b) similarly situated persons who did not engage in a protected activity and who were not subject to the adverse action; or (c) selective enforcement against the complainant of a generally applicable policy.

Reasonable Accommodations

COMPLAINANT'S INITIAL BURDEN

- 1) Complainant is a person with a disability; **and**
- 2) Respondent knew or reasonably should have known that Complainant is a person with a disability; **and**
- 3) Complainant requested an accommodation in the rules, policies, practices, or services of Respondent; **and**
- 4) The requested accommodation may be necessary to afford Complainant an equal opportunity to use and enjoy the dwelling; **and**
- 5) Respondent refused Complainant's request to make such accommodation **or** failed to respond or delayed responding to the request such that it amounted to a denial.

RESULTS OF THE INVESTIGATION

The investigation may find:

- **No Probable Cause** - Insufficient evidence of unlawful discrimination
- **Probable Cause** - Based on all available evidence it is more likely than not that an unlawful act of discrimination occurred

NO PROBABLE CAUSE

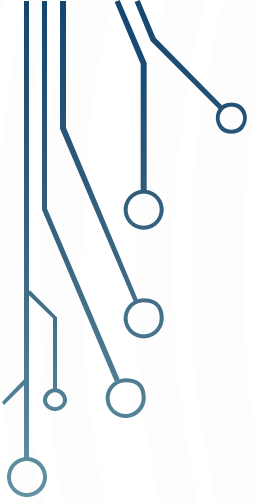

If No Probable Cause is found:

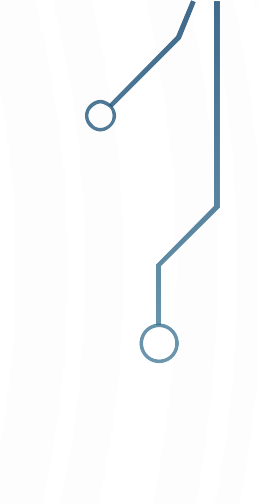
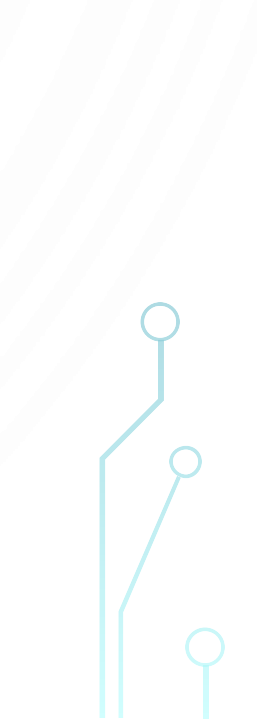
- Investigator completes a detailed case analysis which is sent to both parties explaining why the allegations could not be proven
- At least 2 levels of review before a case is closed
 - Investigative Supervisor
 - Regional Director
- Complainant may file an appeal if they believe key evidence was not considered, new information has been discovered or the evidence supports a different finding
- If the appeal is received timely, an attorney who did not review the case previously will review the finding and the evidence
- A case can be reopened if an error is found

PROBABLE CAUSE

If Probable Cause is found:

- No further investigation is generally conducted. A determination is issued.
- The Commission now shifts from neutral fact finder to prosecutor role
- PHRC requires Respondent immediate cease and desist discriminatory practice
- PHRC attempts to conciliate:
 - Complainant must provide proof of damages and mitigation efforts
 - If not conciliated, case is referred to legal for public hearing
- If case does not conciliate, public hearing convened before Commissioners or Hearing Examiner in the county in which the allegations were alleged to occur

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- Reasonable accommodation.
 - Verifiable Out of pocket expenses
 - Training requirements
 - Make Accessible
 - Policy Change
 - Neutral Reference

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- PHRC is a “make whole” agency
 - PHRC can award any monetary or other damages lost due to the discriminatory act
 - Pain and suffering cannot be awarded by the Commission but has been awarded by state courts
 - In housing and commercial property cases “Embarrassment and Humiliation” may be awarded
 - Attorney fees cannot be awarded by the Commission
 - Parties can settle for any amount or with whatever remedies they agree to however after PC is found, the Commission may stipulate certain provisions we feel are needed to remedy and prevent future discrimination

OTHER REASONS CASES MAY BE CLOSED

**The case may also be closed without a finding for administrative reasons
after the case was docketed and under investigation:**

- Lack of Jurisdiction
- Untimely
- Court Filing (Parties filed same complaint in Common Pleas or Federal Court)
- Respondent bankrupt or no longer in business
- Complainant cannot be located
- Complainant not cooperating
- Appropriate remedy offer was made and refused by Complainant

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