

## About Fair Lending

Your race, color, religion, gender, familial status, or national origin should never affect your ability to qualify for a mortgage — this concept is called “fair lending.” Fair lending is a right provided to you by the **Federal Fair Housing Act** , with equal protections offered by **Florida’s Fair Housing Act**.

The entire mortgage loan process, from advertisements all the way through closing, has potential to hide discriminatory or preferential behavior. It is critical to understand where to look, and what to look out for, so that you can be sure you are not inadvertently becoming a victim of lending discrimination.

## What are your rights?

### You have the right to a discrimination free lending process.

As stated on HUD’s Fair Lending page:

“The Fair Housing Act makes it illegal to discriminate against someone because of race, color, religion, sex, familial status, national origin or disability at any stage of the mortgage process, including:

- Approvals and denials
- Terms, *e.g.* interest rates, points, fees and other costs
- Advertising
- Mortgage broker services
- Property appraisals
- Servicing
- Home loan modification assistance
- Homeowners insurance

Loans that fall under the Fair Housing Act’s anti-discrimination protections include loans “that are secured by residential real estate or that are for the purchasing, constructing, improving, repairing or maintaining a dwelling. This includes mortgages, refinancing, home equity loans and home improvement loans.”

## Examples of lending discrimination provided by HUD.

Examples of discriminatory lending practices.

- Denying a mortgage or charging a higher interest rate because the property is located in a majority-minority neighborhood.
- Providing a different customer service experience to mortgage applicants depending on their race, color, religion, sex, familial status, national origin or disability.
- Refusing to consider a mortgage applicant’s disability-related income, such as SSI or SSDI.
- Steering a borrower to a loan with less favorable terms because of his or her race, color, religion, sex, familial status, national origin or disability.
- Targeting a minority community for fraudulent home loan modification assistance.
- Refusing to provide mortgages to a person on parental leave.

There are also some less overt warning signs throughout the mortgage loan process that HUD recommends you watch out for, including:

- Marketing with aggressive solicitations of adverse terms of credit to targeted minority neighborhoods, racial or ethnic groups, and communities;
- Marketing that engages in racial steering to high-cost lenders;
- Requiring that women, but not men, provide a cosigner for a loan;
- Unnecessary closing costs;
- Inflated appraisal costs;
- Inflated broker or lender fees;
- Unnecessary recording fees;
- Excessive prepayment penalties;
- Changing mortgage loan terms at closing without the consent of the borrower;
- Homes undervalued during appraisal due to the race of the borrower or property's neighbors; and
- Collection or foreclosure practices applied more harshly because of the race or nationality of either the borrower or the property's neighbors.

# What do you need to do?

## Keep detailed records of everything.

Create a journal of your lending discrimination experience. Write down any conversations or interactions you have had, whether they happened in the past or are ongoing, to create a timeline of your experience.

Remember, you have **1 year** from the alleged act of discrimination to file an administrative complaint with the Department of Housing and Urban Development.

Additionally, you have **2 years** to file a complaint in federal court from the last alleged act of discrimination.

Record who you spoke to, when you spoke to them, what was said, and any witnesses who were present. Write down a list of all the people who were involved.

Gather any documents you received related to your mortgage, and save any emails, telephone voicemails, written letters, or any other correspondence that relates to your experience.

## File a complaint with HUD.

You have the right to file a complaint directly with the Department of Housing and Urban Development.

Filing a complaint **will not** affect your current mortgage loan.

HUD may refer your case to an appropriate local agency for investigation. As part of the Fair Housing Assistance Program, HUD has certified that these agencies meet the same standards for procedure, investigations, and remedies that HUD does.

HUD can also take action on your behalf if the any of the following occur:

- It has been more than 30 days since you filed your complaint, and your certified local agency has not started proceedings;
- Your certified local agency is not carrying out the proceedings in a prompt manner; and
- HUD decides that your local agency no longer meets the requirements for HUD certification.

HUD complaints can be filed by mail, submitting online forms, through email, or over the phone. Anyone can file a complaint, and additional help is offered for those with a disability and non-English speakers.

To file a complaint or learn more about the process, go to HUD's **File a Complaint** page here

## Comply with the investigation.

*While the process described below applies to HUD investigations, you can reasonably expect a somewhat similar procedure from your HUD-certified local agency.*

HUD will assign investigators to your case who will ask you for information about your claim of discrimination. They will want to know the timeline of events, the relevant locations, anyone involved, the witnesses present or anyone else who might have information about your complaint, and any documentation that you have to support your case.

HUD may gather their own evidence in addition to what you provide them with. They may conduct interviews or property inspections, collect additional documentation, or

use other methods throughout their investigation.

The lender you filed the complaint against will be notified and have an opportunity to respond.

HUD will send you a written report notifying you of its findings once the investigation is over. This is called a “Letter of Findings.” If you, or the party you filed the complaint against, disagree with the information presented in the Letter of Findings you have 30 days to request a review. HUD will review their facts and determination, and will decide whether to change it or leave it as is.

### HUD’s determination.

Once the investigation is complete, the Department of Housing and Urban Development will notify you of one of two possible outcomes:

**Determination of Reasonable Cause and Charge of Discrimination:**
These will be issued if HUD’s investigation led them to conclude that there was a reasonable cause to believe that discrimination took place. You and the lender you filed against have **20 days** from this notification to decide whether your case is heard before a Federal District Court judge or a HUD Administrative Law Judge.

**Determination of No Reasonable Cause and Dismissal:**
This will be issued if HUD’s investigation did not find sufficient evidence to support a reasonable belief that discrimination occurred. While there is no formal process written into the Fair Housing Act to appeal this decision, HUD allows you to request a reconsideration by writing to: Director, FHEO Office of Enforcement, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 5226, Washington, DC 20410-2000.

## Federal civil trials.

If a Determination of Reasonable Cause and a Charge of Discrimination has been issued, either you or the lender you filed against can choose to have your case heard by a Federal District Court judge. This choice must be made **within 20 days** of the date you received notice of the determination.

HUD will refer your case to the U.S. Department of Justice, who will file a civil suit on your behalf in the district where the discrimination took place. You or the lender you filed against can also choose to have a jury trial. You can choose to be represented by the Department of Justice's appointed legal counsel or your own attorney.

If the court finds in your favor, the lender you filed against could be ordered to compensate you for damages (expenses, emotional distress, and punitive damages), pay your attorney fees, or make mortgage loans available to you. In addition to financial consequences, the offending party could become subject to a court order not to discriminate.

## HUD Administrative Law Judge hearings.

If a Determination of Reasonable Cause and a Charge of Discrimination has been issued, and neither you nor the party you filed against chose to have a federal civil trial within 20 days of receiving notice of the determination, your case will be heard by a HUD Administrative Law Judge (ALJ).

You can choose to be represented by the HUD's appointed legal counsel or your own attorney.

If the ALJ rules that a violation of the Fair Housing Act took place, he may order the person you filed against to compensate you for damages (expenses, emotional distress), pay your attorney fees, pay a civil penalty, or make mortgage loans available to you. In addition to financial consequences, the offending party could become subject to a court order not to discriminate.

## Additional Resources

- Read HUD's Fair Lending Guide here.
- HUD Housing Discrimination Under the Fair Housing Act
- Information on the Florida Fair Housing Act