

29 FAR 35 | 8/29/2003 | NOTICE OF PROPOSED RULES

DEPARTMENT DEPARTMENT OF MANAGEMENT SERVICES

AGENCY FLORIDA COMMISSION ON HUMAN RELATIONS

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MEETING DATE Wednesday, September 24, 2003

MEETING TIME 9:00:00

RULE NO 60Y-7.001

TITLE Complaints

**SPECIFIC
AUTHORITY** 120.53, 760.06(12), 760.31(5) FS.

**LAW
IMPLEMENTED** 120.53, 760.20-760.37 FS.

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APPROVER Cecil Howard, Executive Director

PROPOSAL DATE 8/18/2003

PUBLISH DATE 8/1/2003

Purpose

The rule chapter provides for Commission proceedings to receive, investigate and act upon complaints of discriminatory housing practices.

Summary

Amendments have updated rule sections to conform to current procedures and statutory requirements, including the adoption of the Uniform Rules of Procedure, and clarifying when a complaint is filed, and under what conditions, amendments, withdrawals and dismissals of complaints may be made.

Regulatory Costs

None. Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

Notification

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

FULL TEXT OF THE PROPOSED RULE

60Y-7.001 Complaints.

(1) Who may file. A complaint may be filed by any person who claims to have been injured by a discriminatory housing practice or any person who believes that he will be injured by a discriminatory housing practice that is about to occur.

(2) Time for Filing. A complaint may be filed at any time within one year of the occurrence of the alleged discriminatory housing practice. If the alleged discriminatory housing practice is of a continuing nature, the date of the occurrence may be any date subsequent to the commencement of the discriminatory housing practice up to and including the date on which it shall have ceased.

(3) Place and Date of Filing. A complaint shall be filed at the office of the Commission. The date of filing shall be the date of actual receipt of the complaint by the Clerk or other agent of the Commission. Any document received by the Clerk or other agent of the Commission after 5:00 p.m. (Eastern

Time) shall be filed as of 8:00 a.m. on the next regular business day.

(4) Form. The complaint must be in writing and shall be signed by the complainant. The complaint shall be verified.

(5) Contents.

(a) The complaint should contain the following information:

1. The name, address and telephone number of the person filing the complaint;
2. The name, address and telephone number of the respondent;
3. A clear and concise statement of the facts, including pertinent dates, constituting the discriminatory housing practice;
4. If known, a statement disclosing whether proceedings involving the alleged discriminatory housing practice have been commenced before a Federal, State or local agency charged with enforcement of fair housing practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provision of paragraph (a) of this subsection, a complaint is sufficient if it is in writing under oath or affirmation and is sufficiently precise to identify the parties and to describe generally the action or practice complained of.

(6) Amendments.

(a) A complaint may be reasonably and fairly amended within 60 days after filing and, thereafter, for good cause with the consent of the Executive Director at any time.

(b) A complaint may be amended to cure technical defects, or omissions, including verification, or to clarify and amplify allegations made therein. Such amendments and amendments which describe an additional discriminatory housing practice relating to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(c) An amendment adding or changing a respondent will relate back to the date the complaint was first received if, within the period provided by subsection (2) of this section, the new respondent (i) has received such notice of the filing of the complaint as is sufficient to avoid prejudice in a defense on the merits, and (ii) knew or should have known that, but for a mistake concerning identity of the proper respondent, the complaint would have been filed against the new respondent.

(7) Withdrawal. A complaint may be withdrawn by a complainant at any time; however, following the issuance of a Notice of Determination, withdrawal may be made only with the consent of the Executive Director.

(8)

(a)

1. Notice to Respondent. When it is determined that a complaint is complete and has been timely filed, the Executive Director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice should be served within 10 days of the date of filing. An amendment likewise shall be served upon the respondent.

2. The notice shall advise the respondent of relevant procedural rights and obligations by referencing, for example, Sections 760.20-760.37, F.S., and Chapters 60Y-6, 60Y-7, 60Y-8, and 60Y-9, F.A.C..

3. The notice shall advise the respondent of the complainant's right to commence a civil action under Section 760.35, F.S., in court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. If filed in federal court under federal law, ~~the~~ notice will state that the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under Section 760.36, F.S., is pending.

4. The notice shall advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under Florida's Fair Housing Act is a discriminatory housing practice that is prohibited.

(b) Notice to Complainant.

1. The Commission shall serve notice upon the complainant acknowledging the filing of the complaint, advising the complainant of the time limits set forth in Rule 60Y-7.004, F.A.C.

2. The Commission shall serve notice upon the complainant advising the complainant of the statutory remedies and choice of forums by

referencing Sections 760.34, 760.35 and 760.37, F.S., and by informing the complainant that Section 760.34, F.S., is neither an obstacle nor a prerequisite to commencement of a separate civil action on his own under Section 760.35, F.S.

3. The notice shall advise the complainant of his right to commence a civil action under Section 760.35, F.S., in a court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that, if filing in federal court under federal law, the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge, based on the alleged discriminatory housing practice. The notice will also state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under Section 760.36, F.S., is pending.

4. The notice shall advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under Florida's Fair Housing Act is a discriminatory housing practice that is prohibited.

5. Upon an investigatory determination of reasonable cause, the Commission shall serve notice upon the complainant advising the complainant that at the election of the complainant, the Attorney General shall bring an action in the name of the state on behalf of the complainant to enforce the provisions of Sections 760.20-760.37, F.S.

6. The complainant must make his election within 20 days after receipt of the notice. If an election is made for a civil action by the Attorney General, then a civil action shall be commenced and maintained within a reasonable time from the date of the election.

7. In addition, complainant shall be advised that, as an alternative to the Attorney General bringing an action, the Commission will petition for an administrative hearing and seek relief for complainant under Section 120.57, F.S., and prosecute the matter to a final agency order, which may include defending against an appeal by the respondent.

8. At all times, however, Complainant retains the right to seek administrative or judicial relief without governmental assistance.

(9) Maintenance of Records. Once a complaint has been served on the respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.

Specific Authority 760.31(5) FS. Law Implemented 760.34 FS. History-New 1-25-90, Amended 11-20-91, Formerly 22T-21.001, Amended 9-17-98._____.