

39 FAR 144 | 7/25/2013 | NOTICE OF PROPOSED RULES

DEPARTMENT DEPARTMENT OF MANAGEMENT SERVICES

AGENCY FLORIDA COMMISSION ON HUMAN RELATIONS

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MEETING DATE

MEETING TIME

RULE NO 60Y-7.001

TITLE Complaints

**RULEMAKING
AUTHORITY** 760.31(5) FS.

**LAW
IMPLEMENTED** 760.34 FS.

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APPROVER Michelle Wilson, Executive Director

PROPOSAL DATE 7/18/2013

PUBLISH DATE 7/24/2013

Purpose

The proposed rule amendment is sought in response to Chapter 2013-207, Laws of Florida, which became effective July 1, 2013. The new law passed Senate Bill 1464/House Bill 1147, which amended Florida Statute, chapter 760.34, as follows:

(4) If, within 180 days after a complaint is filed with the commission or within 180 days after expiration of any period of reference under subsection (3), the commission has been unable to obtain voluntary compliance with ss. 760.20-760.37, the person aggrieved may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination pursuant to Section 760.35, F.S., to enforce the rights granted or protected by Sections 760.20-760.37, F.S. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved, the Attorney General may shall bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of Sections 760.20-760.37, F.S.

The U.S. Department of Housing and Urban Development (HUD) has certified that the Florida Commission on Human Relations enforces the Florida Fair Housing Act which provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act. As a certified agency, the Florida Commission on Human Relations receives referrals of housing discrimination complaints for investigation from HUD, and in return for investigating those complaints, the Florida Commission on Human Relations receives funding from HUD. HUD has expressed concern that the law change identified above will impact the Commission's substantial equivalency certification because of the possibility that if the Attorney General, in its discretion, decided not to bring a civil action in the name of the state on the aggrieved person's behalf, the aggrieved person would be left without appropriate redress and/or representation.

Summary

The proposed rule would confirm that in those circumstances where the Attorney General decides not to bring a civil action in the name of the state on the aggrieved person's behalf, the Florida Commission on Human Relations will bring a civil action.

Regulatory Costs

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: There are no applicable federal standards that relate to Rule 60Y-7.001, F.A.C.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or 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 SCHEDULED AND ANNOUNCED IN THE FAR.

FULL TEXT OF THE PROPOSED RULE

60Y-7.001 Complaints.

(1) through (7) No change.

(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 may ~~shall~~ bring an action in the name of the state on behalf of the complainant to enforce the provisions of Sections 760.20-.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 may ~~shall~~ be commenced and maintained within a reasonable time from the date of the election. If the Attorney General, in its discretion, determines that it will not initiate a civil action on behalf of the aggrieved person, the Commission shall institute a civil action in an appropriate court.

7. In addition, complainant shall be advised that, as an alternative to the Attorney General bringing an action, the Commission 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) No change.

Rulemaking 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, 12-31-03, _____.