

Prompt Judicial Action under the Fair Housing Act to Combat Discriminatory Evictions

Introduction

Clients facing a discriminatory eviction require urgent attention to prevent additional substantial harm. Once a complaint alleging discrimination has been filed with the U.S. Department of Housing and Urban Development (HUD) or your state or local agency that enforces a substantially equivalent fair housing law, the Secretary or the designated state enforcement agency may seek “prompt judicial action” under the Fair Housing Act (Act) or applicable fair housing law, to avoid further irreparable harm to the complainant and allow the agency to investigate and process the the complaint fully.

This job aid provides information on how to determine if prompt judicial action is appropriate for your client and what injunctive relief options are available under the Fair Housing Act. This job aid also provides best practices on how to proceed with prompt judicial action, including tips for conducting intake and gathering pertinent documentation to support a motion for prompt judicial action. Finally, this job aid includes a sample demand letter to a housing provider requesting a stay or delay of an eviction pending the investigation and processing of a fair housing complaint. This job aid will be useful for intake staff, investigators, directors, and FHIP/FHAP legal counsel.

What is prompt judicial action?

The Fair Housing Act provides that the Secretary may authorize a civil action for prompt judicial relief on behalf of an aggrieved party. 42 U.S.C. § 3610(e) and 24 C.F.R. § 103.500. Prompt judicial action under the Act can include temporary or preliminary injunctive relief pending final disposition of a complaint. Each state or local agency that enforces a substantially equivalent fair housing law must also provide the opportunity to “seek prompt judicial action.” 24 C.F.R. § 115.204(b)(1)(i). In other words, HUD or a substantially equivalent agency may ask the court to stay an eviction until such time as HUD or the agency completes its investigation and fully processes the complaint, including until a final judgment is rendered in the case.

State and local agencies may apply different procedures and have different standards for temporary and preliminary injunctions. Confer with legal counsel and your state and local rules of civil procedure. Note that there may be many other legal remedies available to tenants to oppose an eviction, including through landlord-tenant law. FHIPs, FHAPs and others are encouraged to explore such options. This job aid, however, will focus only on prompt judicial action under the Fair Housing Act.

Injunctive relief under the Act may bar the housing provider from engaging in a specific act (such as proceeding with an eviction) while allowing the complaint to be investigated and processed, or command the housing provider to reverse an act that injured the aggrieved party (such as restoring essential utilities or restoring access to the dwelling). There are typically two types of injunctive relief: temporary restraining orders (TROs) and preliminary injunctions.¹

TROs are orders issued by a court of law to immediately compel a respondent to take action or to restrain certain actions by a respondent. TROs may be issued without the respondents receiving notice of an opportunity to be heard, particularly in instances where there is an imminent harm occurring at the time of filing. Some examples of imminent harm include situations where the landlord is actively removing the tenant's belongings from a dwelling or has already disconnected essential utilities (electricity, gas, water). Under Fed. R. Civ. P. 65(b)(2), TROs expire after 14 days, though they may be extended for good cause or if the respondent consents.

Preliminary injunctions are very similar to TROs in that they compel a respondent to take action or restrain certain actions by a respondent. Unlike TROs, a preliminary injunction is not time limited and often stays in place pending final resolution of the case. Preliminary injunctions require service on the respondent, which affords the respondent an opportunity to be heard in court on whether one should issue.

Practice tip 1: You should file the motion for TRO and the motion for preliminary injunction at the same time. The Court considers the same four factors in deciding both the TRO and preliminary injunction (details on the factors below). The TRO will be your avenue to appear before a judge immediately to seek an order to remedy imminent harm against your client until the hearing date on the motion for preliminary injunction. Since the TRO will last up to 14 days, be sure to request a hearing date on the motion for preliminary injunction before the TRO expires. If you cannot have a hearing on the preliminary injunction before the TRO expires, be prepared to request an extension of the TRO until such date.

Practice tip 2: Once the court grants the TRO and/or the preliminary injunction, serve copies of the order on all relevant parties or entities who could potentially resume the eviction actions. This can include the owner, property manager, maintenance staff, security personnel, and utility company.

Is prompt judicial action appropriate?

Determining whether to seek prompt judicial action requires an understanding of the factors the court will consider in granting a request for prompt judicial action. The Supreme Court has held that a plaintiff seeking a preliminary injunction must establish that: (1) plaintiff is likely to succeed on the merits of its claims; (2) plaintiff (or in this case complainant) is likely

¹ Refer to the Federal Rules of Civil Procedure or your local rules of civil procedure for the form and content of motions for injunctions and proposed orders.

to suffer irreparable harm absent injunctive relief; (3) the balance of equities tips in plaintiff's favor; and (4) an injunction is in the public interest. *Winter v. Nat'l Res. Def. Council*, 555 U.S. 7 (2008). For these reasons, a thorough—and expedited—preliminary investigation is necessary before seeking prompt judicial action.

Use this checklist to determine if prompt judicial action may be appropriate if a discriminatory eviction is alleged:

- Is there strong evidence that the housing provider discriminated? Are you likely to prevail on the merits?
- Is there an immediate threat of lost housing? Are there other immediate threats of serious injury, loss, or damage to the aggrieved person? In addition to the loss of housing, serious injury could occur if the complainant might lose affordable rent/payment, complainant's medical conditions might be exacerbated by the eviction action, the landlord has turned off all utilities, or the tenant is likely to experience homelessness as a result of the harm.
- Is there a high degree of certainty that irreparable injury, loss, or damage will occur unless injunctive relief is granted immediately?
- Has a state court already ordered the eviction? If so, it is likely too late to obtain prompt judicial action.

What information is needed to support a request for prompt judicial action?

Since time is of the essence, intake and investigative staff need to ensure that there is sufficient information and documentation to support a filing seeking prompt judicial action. Information gathered must meet the legal standards of the court in your jurisdiction in order to justify if and whether injunctive relief will be granted. Evidence and documentation in support of prompt judicial action may include:

- Complainant's signed affidavit with a detailed factual statement detailing respondent's discriminatory conduct, as well as how that conduct threatens or is about to threaten the complainant with irreparable injury, loss, or damages (and specific date or times when eviction or court proceeding is expected to occur, if available);
- A verified Housing Discrimination Complaint;
- Proper identification of the respondents having authority to grant the relief sought by the aggrieved party (which can include proof of ownership or proof of operational control);
- Evidence that respondents have been notified of the filing of the complaint;²

² Personal service of the complaint on the respondents may be appropriate, considering the urgency of some cases of injunctive relief.

- Other affidavits or evidence showing that plaintiff will likely prevail on the merits of the complaint, ie, evidence that the alleged discrimination likely occurred; and
- Other affidavits or evidence showing that the respondents' actions are causing or will cause imminent and irreparable harm to the complaint

Sample Letter to Respondent Requesting Stay of Eviction

After gathering sufficient information through intake or a preliminary investigation, a FHIP or FHAP may consider reaching out to a respondent to request a stay and/or delay in any eviction proceedings without pursuing prompt judicial action. This action is highly recommended. Counsel may also be asked to assist if necessary.

Below is a sample letter to a respondent, which can be customized with additional information:

Dear Housing Provider,

<Anytown FHIP or FHAP> advocates for and facilitates the enforcement of federal, local, and municipal fair housing laws and ordinances.

We are writing on behalf of <aggrieved party>, who is a tenant at <name of property or address>. He/she/they reported that they received a notice of intent to terminate the lease on <date>. <Aggrieved party> reported that they believe that the notice of intent to terminate his/her/their lease is discriminatory. <Anytown FHIP or FHAP> has gathered information from the <aggrieved party> in light of their allegations and we believe that discrimination more than likely occurred. [Alternatively, xx agency has received a complaint from the <aggrieved party> and is currently investigating the complaint.]

On behalf of <aggrieved party>, our request is to stay and/or delay the eviction until additional information about <aggrieved party's> allegations can be gathered and/or the investigation is closed.

We are looking forward to resolution of this matter. Please contact <Anytown FHIP or FHAP> at XXX-XXXX to discuss these concerns as soon as possible.

This letter should include the signature of your executive director and/or legal counsel. The letter may be sent via expedited US mail or delivered in person to the respondent, their legal counsel, or statutory agent.