

# FAIR HOUSING COACH

Train your staff to avoid costly discrimination complaints

FEBRUARY 2026

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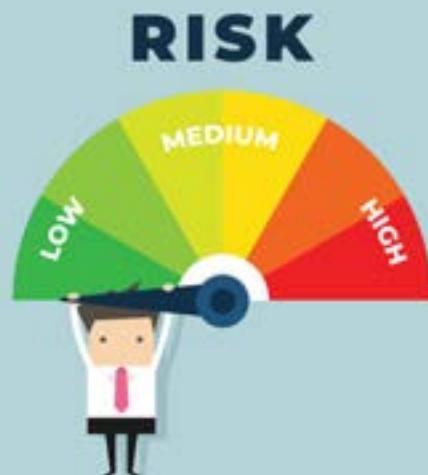
## Take 8 Steps to Minimize Risks of Retaliation Liability

*Damage awards against landlords that retaliate can reach six figures.*

There were 32,321 fair housing complaints filed nationwide in 2024, one of the highest totals in more than two decades, according to the 2025 Fair Housing Trends Report recently released by the National Fair Housing Alliance. As usual, disability-related discrimination accounted for the largest share

of complaints at 54.6 percent, followed by race, national origin, sex, familial status, and religion.

While concerning, those numbers aren't all that surprising. But what is surprising is that retaliation complaints more than doubled from the previous year to the highest recorded level.



With the surge in this type of fair housing complaint, our February lesson will look at how retaliation happens and what you can do to avoid it. We'll explain the laws of retaliation and the difficulties they may pose when dealing with protected individuals after they've engaged in protected activities. Then, we'll outline eight rules to follow to ensure that your staff is sensitive to retaliation liability risks and aware of the actions they can take to defuse them. At lesson's end, you can take the Coach's Quiz to see how much you've learned.

### WHAT DOES THE LAW SAY?

Retaliation means revenge for perceived wrongdoing. In the context of fair housing, retaliation is an unfavorable action taken by a landlord, such as rejecting a rental applicant or evicting a tenant, because they complain about discrimination or exercise any of their other rights under fair housing laws. The risk of a

retaliation claim rises any time you reject, evict, raise the rent, or make housing decisions that negatively affect a person who has previously exercised a fair housing right, even if the negative action was for legitimate reasons having nothing to do with retaliation.

Retaliation violates the federal Fair Housing Act (FHA) provision making it illegal to "coerce, intimidate, threaten, or interfere with" any person "on account of his having exercised" any right the law protects.

To win a retaliation case, the applicant, tenant, or other complainant (which, for simplicity's sake, we'll refer to as "tenant," except where the context requires otherwise) must prove four things:

#### 1. Tenant exercised a fair housing right.

First, tenants must show they exercised a fair housing right, such as:

- Complaining about discrimination or harassment;

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**FAIR HOUSING COACH** [ISSN 1520-3093 (PRINT), 1938-3142 (ONLINE)]  
is published by The Habitat Group, 15 Shaw Street, New London, CT 06320.

#### Volume 28, Issue 8

**SUBSCRIPTIONS/CUSTOMER SERVICE:** To subscribe or for assistance with your subscription, call 800-519-3692 or go to our website, [www.FairHousingCoach.com](http://www.FairHousingCoach.com). Subscription rate: \$420 for 12 issues. **TO CONTACT THE EDITOR:** Email: [hstone@TheHabitatGroup.com](mailto:hstone@TheHabitatGroup.com). Call: Heather Stone at 212-812-8436. Fax: 212-228-1308. **TO PLACE AN ADVERTISEMENT:** Please contact Andrea Stowe at [andrea@plainlanguagemedia.com](mailto:andrea@plainlanguagemedia.com) or call 888-729-2315, ext. 316.

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## The most common evidence of retaliatory motive is timing.

- Requesting accommodations for a disability;
- Reporting a discriminatory housing practice to a landlord, fair housing advocacy group, or government authority; and/or
- Talking to a HUD official, bringing a complaint, testifying, assisting, or participating in any way in an FHA proceeding.

**2. Landlord knew of tenant's exercise of the right.** To make out a case for retaliation, tenants must also show that the landlord knew that they exercised a fair housing right. A landlord is considered to have knowledge if a leasing agent or other employee knew of the activity.

**3. Landlord took adverse action against tenant in response.** Next, tenants must show that they were on the receiving end of some “adverse action” from the landlord after they exercised the fair housing right. Examples include:

- Rejection of a rental application or renewal;
- Eviction;
- Rent increases and other unfavorable rental terms;
- Bringing a lawsuit without any reasonable basis;
- Threats to engage in the above or any other adverse actions; and
- Harassment.

### 4. Landlord took the adverse action because tenant exercised the right.

Most retaliation cases come down to the fourth element: Whether the exercise of the fair housing right was the reason the landlord took adverse action against the tenant. Note that retaliation doesn’t have to be a landlord’s only motive for taking adverse action against a tenant; it need only be one of the factors in the decision. In other words, a retaliatory motive taints the entire decision even if there were

legitimate, nondiscriminatory motives as well.

**Timing tells a tale.** The most common evidence of retaliatory motive is timing. Adverse action that occurs after a tenant exercises a protected right creates the inference that it happened because of the exercise. The smaller the time interval, the stronger the inference. Thus, evicting a tenant 24 hours after she makes a fair housing complaint puts you in a tough position at trial.

Still, the mere fact that adverse action comes after exercise of a right isn’t enough to prove retaliation. Maybe the timing was just coincidental. If timing was decisive in all cases, tenants would be able to do anything they wanted because they previously exercised a fair housing right. Thus, a tenant who hasn’t paid rent in months would be able to avoid eviction simply because he previously requested an accommodation or exercised some other fair housing right.

**Example:** A tenant claimed that her Colorado landlord threatened to evict her after she complained that he was discriminating against families with children. The landlord admitted to making the threat but insisted he made it because of the tenant’s refusal to follow a house rule requiring all tenants to put heat tape on their water supply pipe. The HUD administrative law judge found that the evidence supported this explanation and tossed the retaliation case [HUD v. Quintana, HUDALJ 08-92-0239-1 (1994)].

## 8 RULES FOR AVOIDING RETALIATION LIABILITY

### Rule #1: Don't Retaliate Deliberately

The starting point is to strictly prohibit your staff from targeting tenants for complaining about discrimination or engaging in any other form of protected activity. For example, refusing to renew a lease to punish a tenant who has complained

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## Retaliation is still illegal even if the accusation that brings it on is false.

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about your decision not to grant his request for an accessible parking space is illegal and likely to result in a retaliation complaint. Unfortunately, the six-figure damage awards being handed out against landlords suggests that deliberate retaliation remains an all-too-common occurrence.

**Example:** A Los Angeles area landlord shelled out \$225,000 to settle charges of raising the rent, threatening to evict, and taking away a family's parking space because of their association with another family that was evicted because they had a disabled child [Downey Property Management, et al., Calif. Dept. of Fair Employment and Housing press release, October 2018].

**Example:** An Ohio landlord paid \$177,500 to settle charges of sex harassment against at least 20 tenants, including refusing to make repairs for women in retaliation for spurning sexual advances [U.S. v. Klosterman, (S.D. Ohio), Oct. 1, 2020].

**Example:** HUD charged the property manager and owner of a 10-unit Montana apartment complex for retaliating against a tenant after she informed the property manager that his unwanted conduct toward her daughter was inappropriate. After the tenant confronted the property manager, the property manager took several retaliatory actions, including sending multiple threats of eviction, revoking tenancy privileges, and sending harassing text messages, culminating in seeking to evict the tenant [HUD v. Christian and Yellowstone Apts. LLC, FHEO No. 08-21-2505-8, January 2024].

### COACH'S TIP:

Don't be tempted to take adverse action when a tenant's discrimination complaint is clearly frivolous. It may seem unfair, but retaliation is still illegal even if the accusation that brings it on is false; all that's required is that it be made in good faith.

### Rule #2: Don't Try to Keep Tenants from Exercising Their Fair Housing Rights

Don't do or say anything to pressure or persuade a tenant who expresses fair housing complaints or concerns not to pursue a formal complaint. Once a tenant comes to you with a fair housing complaint, your first reaction might be to try to set things right so you don't end up getting sued. The irony is that in seeking to prevent a fair housing lawsuit, you might actually be inviting one. That's because your efforts might be seen as an illegal act to "coerce, intimidate, threaten, or interfere" with fair housing rights.

So, refrain from making not just threats but also promises or inducements that may be seen as bribes designed to stop the exercise of a fair housing right. Although you can offer constructive solutions, you should make it clear that your suggestions are just that—suggestions—and don't preclude tenants from filing a complaint or pursuing their other fair housing remedies.

### Rule #3: Don't Charge Tenants Fees for Exercising Their Fair Housing Rights

Another form of retaliatory activity banned by the FHA is charging tenants fees, deposits, or extra rent for exercising their fair housing rights. Common

examples include charging fees for providing disabled tenants handicap-accessible parking spaces or other reasonable accommodations that the FHA requires.

**Example:** A Colorado condo association fined a tenant with epilepsy for allowing her to keep a service dog in violation of its “no dogs” policy. The tenant sued for retaliation. The association asked the court to dismiss the case without a trial. HUD considered the case so important that it intervened on the tenant’s behalf. Fining a tenant for requesting an accommodation is evidence enough to support a retaliation claim, regardless of whether the underlying accommodations claim was valid, the government argued. The federal court agreed and allowed the case to go forward. Retaliation claims stand on their own and aren’t dependent on the validity of the underlying discrimination claim that prompted them, the court concluded [Arnal v. Aspen View Condo. Ass’n, et al., 226 F. Supp. 3d 1177 (D. Colo. 2016)].

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## Proper records are essential to prove your action wasn’t a pretext for retaliation.

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### Rule #4: Differentiate Between Retaliation and Legitimate Enforcement

There’s a big difference between retaliation and enforcement of rental application and lease rules. In other words, a person’s protection from retaliation doesn’t require you to accept an unqualified rental applicant or tolerate a tenant’s failure to pay rent or other serious violations. Thus, a tenant isn’t allowed to create a serious disturbance on Tuesday just because he complained about a fair housing issue on Monday.

**The key question:** How do you enforce your rental qualifications and lease rules against applicants and tenants after they’ve exercised a fair housing right? The answer is not by refraining from taking the action but by ensuring that you can justify it by showing that you did it for legitimate, nondiscriminatory reasons

having nothing to do with the previous exercise of a fair housing right.

**Example:** A Pennsylvania public housing tenant filed a state discrimination complaint contending that she was sexually harassed by maintenance workers and her neighbors over the course of her 10-year tenancy. A few months later, she was evicted. Although the timing was suspicious, the federal court ruled in the landlord’s favor and dismissed the case.

The landlord won because the tenant couldn’t get past the fourth prong of the retaliation test by proving there was a causal link between the eviction and the fair housing complaint. And the reason she couldn’t prove this was because the landlord was able to demonstrate that it had received multiple complaints about the tenant in the months after the sexual harassment complaint. Neighbors accused her of verbal assault, beheading a neighbor’s cat, and inviting a neighbor’s child into her apartment and not letting her go until the police arrived. So, the court concluded that the eviction was for a legitimate and nondiscriminatory reasons and not an act of retaliation for filing the sexual harassment complaint [Madison v. Philadelphia Housing Authority, Civil Action 09-3400, E.D. Pa., June 2010].

### Rule #5: Document Legitimate Reasons for Taking Adverse Actions

Like the landlord in the *Madison* case, to not only defeat but also prevent retaliation claims, you must keep careful records documenting your rental and leasing decisions. Specifically, you must be able to demonstrate the legitimate and nondiscriminatory bases for the rules and standards you set and the actions you take to enforce them.

Without these records, it will be easy for the people you reject, evict, fail to renew, etc. after they engage in protected fair housing activity to claim that you retaliated. The documents are essential to counteract these claims and show the pol-

icy, action, or decision was justified and not a pretext for retaliation.

You also need documentation any time you amend your property's policies, rental standards, and rules of conduct. Otherwise, a tenant might claim that you made the change to retaliate against them for exercising a fair housing right.

**Example:** The owner of a Georgia condo claimed the community association deliberately adopted new rent restrictions to keep her from following through with her plans to rent the unit to an African-American woman. Although the deal did go through, the owner sued the association for trying to stop it. The association denied the charges and insisted that the bylaw changes had nothing to do with the proposed rental.

Thus, as is often true in retaliation litigation, the case boiled down to the evidence of the housing provider's intentions. Unlike the landlord in *Madison*, the association in this case couldn't come up with evidence justifying its proposed new rental restrictions. In fact, the absence of discussion of the change in the corporate meeting minutes belied the association's contention that they were already in the works at least a year before the proposed rental arrangement.

By contrast, there was evidence suggesting that the association was concerned that leasing the unit to an African-American tenant would reduce property values and lead to protests by other owners in the community. Result: The Georgia state court ruled that there was enough evidence to allow the case to go to trial. Having lost its bid for dismissal, the condo association then faced an unenviable choice: Pay a hefty settlement or risk a trial [*Bailey v. Stonecrest Condo. Assoc., Inc.*, 2010 WL 2472501 (Ga. App.)].

#### Rule #6: Enforce Your Rules and Rental Criteria Consistently

Showing that an enforced policy is

legitimate and nondiscriminatory isn't enough to justify an adverse action against a tenant who has engaged in protected activity; you must also be able to show that the action is consistent with your previous practices. Otherwise, it might look like you're singling out the tenant for selective enforcement. Thus, for example, failure to follow pool rules would look like a pretext for not renewing a tenant if you let other tenants get away with similar violations.

**Example:** HUD charged a New Hampshire landlord and its property managers with violating the Fair Housing Act by retaliating, threatening, or interfering with a tenant's fair housing rights. The charge alleged that, after the tenant filed a fair housing complaint with HUD, the landlord and property manager conducted a background check on the tenant, contrary to their usual practice of not running background checks on existing tenants, and then sought to evict the tenant based on a long-ago event that the background check turned up [HUD v. Greenview Associates, L.P., FHEO No. 01-23-3686-8, October 2024].

Deciding not to renew the lease of a person who has engaged in protected activity is a frequent source of retaliation claims, attorneys warn. Accordingly, they suggest that you create a policy for nonrenewals and apply it consistently to all tenants. In addition to listing clear and legitimate criteria for nonrenewals, the policy should require staff to create a memo documenting its discussions about and reasons for not renewing a tenant. These records can put you in a strong position to defend against a claim for retaliatory nonrenewal.

#### Rule #7: Don't Retaliate Against Third Parties

FHA protection from retaliation covers not only rental applicants and tenants claiming to be victims of discrimination, but also third parties who help or encour-

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## Adopt a policy assuring tenants they won't suffer retaliation if they report discrimination.

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age them to pursue their fair housing rights. That includes fair housing associations and even your own employees. Result: It's illegal to fire, demote, transfer, cut the pay of, harass, or take other unfavorable employment action against an employee for speaking up against discriminatory practices or advising aggrieved tenants to contact HUD or other fair housing agencies.

**Example:** The owners and managers of a Kansas City high-rise apartment building shelled out \$2.13 million to settle allegations of creating a racially hostile environment and retaliating against a former employee for cooperating with HUD investigators and helping others file complaints with HUD. The abuse, complete with hangman's nooses and racial slurs, was so bad that the federal court also issued an order permanently banning the property manager from working in rental housing and ordering her to pay a \$55,000 civil penalty [U.S. v. Sturdevant, Civil Action No. 07-2233-KHV, Fed. Dist. Ct. Kansas, May 2010].

You can also get into trouble if you take retaliatory action against tenants for opposing discrimination against their neighbors. This is true even if the tenant targeted for retaliation is white or otherwise not a member of a protected class under the FHA.

### Rule #8: Implement a Non-Retaliation Policy

Although it's never fun when a rental applicant or tenant comes to you with a discrimination complaint, discouraging such reports could expose you to liability for interfering with the exercise of fair housing rights under the FHA. Moreover, these reports should be welcomed because they can help you identify and root out hidden discrimination problems at your property.

The problem is that people may be reluctant to speak up because they fear retaliation. For example, suppose an applicant hears a leasing agent use a racial slur. What you want her to do is come forward and tell you. But the applicant won't do that if she thinks it might lead you to reject her. As a result, she may tell a local fair housing organization instead.

One way to overcome these natural misgivings is to adopt a policy assuring applicants and tenants that they won't suffer retaliation if they report discrimination. Your non-retaliation policy, like our *Model Anti-Retaliation Policy*, can be either freestanding or part of the general notice or policy you post in your rental offices and common areas to indicate that you're an equal opportunity provider who's committed to following fair housing laws.



Now that we've explained the eight rules to follow to avoid liability for engaging in retaliation under the FHA, let's see how well you learned the material. Take the Coach's Quiz below to see if you can apply the rules to real-life situations.

**Instructions:** Each question has one and only one correct answer. The correct answers (with explanations) are published in a separate PDF available in the Archive with the lesson PDF and follow the quiz online. Good luck!

Submitting this quiz to your supervisor?

Put your name here:

#### QUESTION #1

Your house rules allow you to evict any tenant who unreasonably hasn't paid rent for more than three consecutive months. You've consistently enforced this policy without exception for the past 10 years. Just as you're making preparations to evict a mobility-impaired tenant who hasn't paid rent for three consecutive months, he comes to you to request a designated handicap parking spot. Can you evict him?

- a.** No, because it would be retaliation for requesting a reasonable accommodation
- b.** Yes, if he doesn't have a reasonable excuse for not paying the rent
- c.** Yes, if you can prove that he doesn't really need the accommodation

#### QUESTION #2

A tenant comes to the property manager in tears and says that a contractor who's been sexually harassing her for months just entered her apartment and exposed himself to her. "I'm going to call a lawyer," she exclaims. The manager feels terrible for the tenant and wants to do everything he can to help her. But he also doesn't want her to make a scene or drag the lawyers in. So, he tells her not to tell anybody about the incident and assures her that he'll call the police and speak directly to the contractor's employer. Did the property manager break the law?

- a.** Yes, because he interfered with the tenant's right to file a fair housing complaint
- b.** No, because he acted in the tenant's best interests
- c.** No, because it's far from clear whether the tenant would have a valid fair housing case against the manager