

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION  
OF THE VIRGINIA GENERAL ASSEMBLY**

**Review of the Virginia  
Fair Housing Office**

**House Document No. 76**

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## Preface

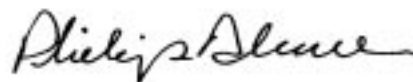
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Item 14N of the 1997 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to study the operations of the Virginia Fair Housing Office (FHO). The FHO is located within the Department of Professional and Occupational Regulation (DPOR). The study mandate required an assessment of the allocation of resources within the FHO, taking into consideration caseload, case processing time, office staffing, staff training and other appropriate issues. This report is focused on the efficiency and effectiveness of the FHO staff in administering and enforcing the provisions of the Virginia Fair Housing Law.

A large backlog of unresolved complaints affected fair housing operations from FY 1993 through FY 1997, increasing the amount of time needed to process complaints. However, recent actions taken by DPOR and FHO management have eliminated the backlog. Nevertheless, this study found that the operations of the FHO could be made more efficient and effective in several respects, thereby enhancing its ability to promote and enforce compliance with the Virginia Fair Housing Law. For example, while staffing and resource levels are generally adequate to support current operations, clerical staffing, staff training, and legal support all require attention. Case processing procedures also need clarification. Furthermore, data management problems identified during the study could negatively affect the amount of funding received from the U.S. Department of Housing and Urban Development for complaint processing.

The study also found that a cohesive strategy is needed to promote and increase public awareness of the Virginia Fair Housing Law, particularly among housing providers who are not required to be licensed by DPOR. Approximately 80 percent of FHO workload is attributable to complaints filed against individuals and firms who are not required to be licensed by DPOR. This study also presents recommendations concerning the investigation and adjudication of fair housing complaints. The report found that the investigation of complaints could be strengthened through improved collection of evidence, including better use of fair housing testing methods. The adjudication of complaints could be improved through better consideration of evidence generally, and through the establishment of a quasi-judicial administrative hearing process.

On behalf of the Commission staff, I would like to thank the management and staff of the Department of Professional and Occupational Regulation for their cooperation and assistance during the preparation of this report.

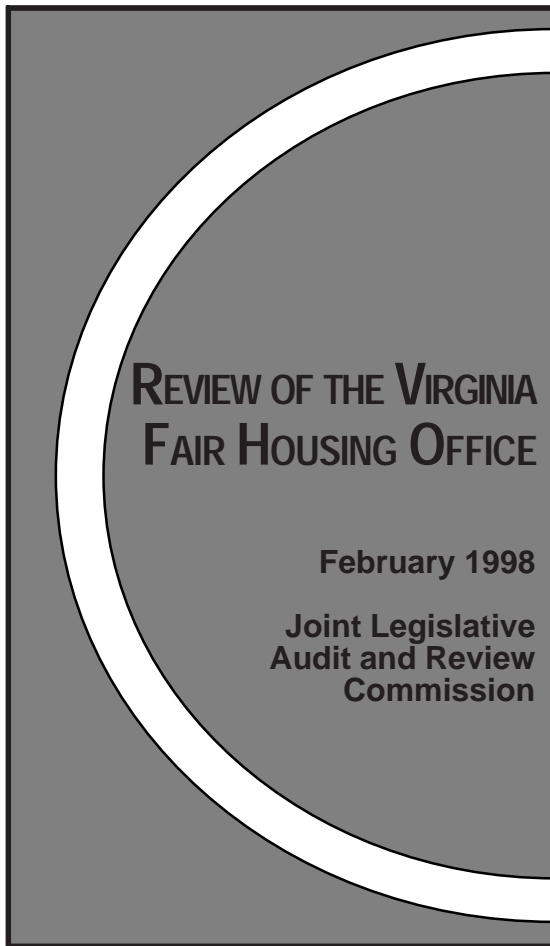


Philip A. Leone  
Director

February 4, 1998



# JLARC Report Summary



Item 14N of the 1997 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to study the operations of the Virginia Fair Housing Office, and to make recommendations "regarding the appropriate allocation of resources, considering caseload, case processing time, office staffing, staff training and such other issues as may seem appropriate." The Fair Housing Office (FHO) is an administrative title for designated staff within the Enforcement Division of the Department of Professional and Occupational Regulation (DPOR). Working pursuant to the direction of the Virginia Real Estate Board, and with consultation and legal support from the Of-

fice of the Attorney General (OAG), the FHO processes, investigates and attempts to resolve complaints alleging discriminatory housing practices pursuant to the Virginia Fair Housing Law, and educates the public concerning rights and obligations conferred by the statute.

The Virginia Fair Housing Law prohibits a broad range of discriminatory practices based on race, color, national origin, sex, elderliness, religion, familial status, or handicap. Virginia receives relatively few fair housing complaints compared to other Southeastern and Mid-Atlantic states. However, the number of complaints has varied significantly over the past ten years. Most complaints have involved allegations of race-based discrimination in rental housing. However, complaints alleging discrimination based on familial status and disability are increasing.

Virginia is one of 30 states for which fair housing statutory provisions, and the administration of those provisions, have been certified as substantially-equivalent to the federal fair housing act by the U.S. Department of Housing and Urban Development (HUD). As a result, fair housing complaints filed in Virginia are investigated by the FHO rather than by HUD. Furthermore, the FHO is paid \$1,700 by HUD for each complaint that it satisfactorily processes. However, Virginia's program is subject to review, oversight and certification by HUD.

The State's administration and enforcement of the Virginia Fair Housing Law, of which the operations of the FHO comprise an integral component, is affected by the efficiency and effectiveness of the FHO. After years of untimely complaint processing, the FHO has taken steps to improve its efficiency. However, its effectiveness in administering the Virginia Fair Housing Law

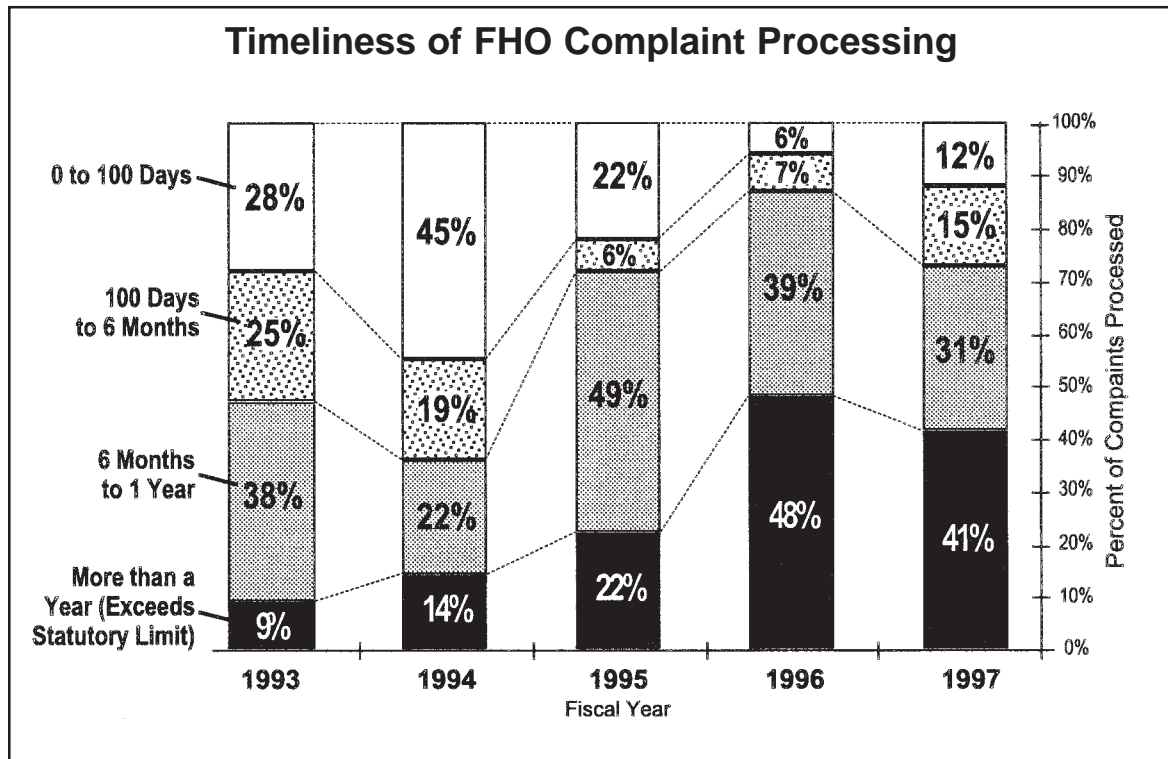
is relatively minimal for a number of reasons. The effectiveness of the FHO could potentially be improved through changes to a number of its internal policies and procedures, as well as through changes to a number of external, structural factors that affect its operations.

**Case Processing Procedures Need Clarification to Improve Timeliness**

Substantial variation in caseload over the past several years has affected the complaint processing capabilities of the FHO. The number of fair housing complaints received by the FHO increased from 77 in FY 1991 to 210 in FY 1994, resulting in a substantial backlog of unresolved complaints that was not fully addressed until FY 1997. In part as a result of the increased workload, compliance by the FHO with statutory case processing time limits (which state that investigations should be completed within 100 days of receipt of a complaint, and must not extend beyond 365 days) has been weak

(see figure below). For example, as a result of the large backlog, approximately 40 percent of the complaints closed in FY 1997 took more than 365 days to investigate. Within the past year, upon advice and direction from the OAG and Board, timely complaint processing has become a top priority for the FHO.

In its 1995 performance assessment of the FHO, HUD noted that there was room for improvement in the area of complaint investigations and recommended that the Real Estate Board “develop more efficient methods and procedures for conducting investigations and making determinations to comply with the time limits indicated in its law.” JLARC staff determined that the lack of internal procedures governing complaint processing may have contributed to the development of an increased backlog, because case management procedures with regard to statutory time limits were not established. While case processing procedures alone may not have completely prevented the



large backlog that developed in FY 1994, their absence affected how the backlog was managed by the FHO.

**Recommendation (1).** *The Virginia Fair Housing Office, in conjunction with the Office of the Attorney General and the Real Estate Board should finalize written case processing procedures as previously recommended by the U. S. Department of Housing and Urban Development to ensure uniformity, including efficient methods and procedures for conducting investigations and making determinations in order to comply with time limits stated in the Code of Virginia.*

### **Complaint Processing Resources Are Generally Adequate, But Training and Legal Support Need Improvement**

The FHO has seven full-time and one part-time staff positions. Since the FHO is not a separate State agency, it does not have its own appropriation and consequently it is dependent upon DPOR for the allocation of its budget and staffing. Given the relatively low current caseload of FHO, this staffing level appears to be adequate in most respects at the present time. One exception is the level of clerical and secretarial support. Prior to 1994, the FHO had a full-time secretarial position. Since then, the position has been part-time, has been marked by frequent turnover, and has provided inadequate clerical support to the FHO. Adequate clerical support is important because the fair housing administrator believes that the FHO may ultimately process 200 complaints annually.

There has been some concern that training has been minimal, and staff in critical positions such as FHO investigators have largely learned by trial and error. While Virginia's case processing agreement with HUD includes training requirements, there are no training manuals in place. The need for better training is particularly important given the expectation that planned staff re-

ductions at HUD will result in a larger and more complex caseload for the FHO in the future. Training needs are particularly evident in certain areas of fair housing law such as design and construction requirements and mortgage lending.

One of the case processing functions performed by FHO staff, along with other DPOR staff, is creating, updating and maintaining the fair housing complaint database. During its review of all complaints closed from FY 1993 through FY 1997, JLARC staff identified several instances of missing or incomplete data which, if not addressed, could lessen the utility of the data.

The Fair Housing Office staff have expressed numerous concerns about the adequacy of legal support, provided by the Office of the Attorney General, for the State's fair housing function. The Real Estate Board, on the other hand, is the official client of the OAG for fair housing matters and has expressed general satisfaction with the level of legal support. Nevertheless, given the concerns expressed by the FHO staff concerning the adequacy of its access to legal support, the level and type of legal support for the State's fair housing function should be addressed.

**Recommendation (2).** *The Department of Professional and Occupational Regulation should reestablish a full-time Secretary Senior position for the Virginia Fair Housing Office. The Department should also allocate additional staff (financed with non-general funds) to the Fair Housing Office as necessary to meet statutorily-established deadlines for the investigation and processing of complaints, if projected increases in complaint volume occur.*

**Recommendation (3).** *The Virginia Fair Housing Office, in conjunction with the Real Estate Board and the Enforcement Division of Department of Professional and Occupational Regulation, should develop a formal training manual. In addition, the Fair Housing Office should consider supplement-*

ing training required by the U.S. Department of Housing and Urban Development with training on issues including investigative techniques by experts in fair housing law and investigation.

**Recommendation (4).** *The Virginia Fair Housing Office, in conjunction with the Information Systems Division of the Department of Professional and Occupational Regulation, should evaluate its database management procedures to ensure that its databases are accurate and complete.*

**Recommendation (5).** *The Virginia Fair Housing Office, in conjunction with the Real Estate Board and the Office of the Attorney General, should develop a mechanism to provide more direct access to legal advice during the processing of fair housing complaints. The Real Estate Board may wish to consider dedicating non-general funds to pay for the additional support this mechanism would require.*

### **Education Efforts Would Benefit from More Evaluation and Planning**

In order to increase public awareness of and compliance with the Virginia Fair Housing Law, the FHO conducts a number of outreach activities, including educational training sessions in locations around the State. The FHO appears to want to make a concerted effort to make its educational outreach effort more proactive. For example, field investigators are now required to spend ten percent of their time on such activities. However, the FHO needs to develop a more thorough understanding of the types of activities that are likely to be most effective. Improved collection and analysis of data from training session participants, as well as identification of best practices used by other states, can help the FHO to develop a more cohesive education and outreach strategy aimed at the vast majority of complaint respondents who are not subject to regulation by the Board.

**Recommendation (6).** *The Virginia Fair Housing Office should develop a written management plan which articulates a cohesive strategy for increasing awareness of and compliance with the Virginia Fair Housing Law. The management plan should, at a minimum, address the following topics: (a) collection and utilization of data concerning training session participants, (b) evaluation of the impacts of training sessions, (c) identification of best practices used by fair housing agencies in other states, and (d) targeting of housing providers and property managers not required to be licensed by the Real Estate Board.*

### **Conciliation Has Provided Some Relief, But Emphasis Needed on Provisions Which Promote the Public Interest in Fair Housing**

Conciliation refers to settlement of a complaint without making any determination concerning the merits of the allegation. Conciliation agreements typically provide the complainant with some type of individual relief, but are also supposed to “vindicate the public interest” by promoting fair housing practices throughout the State. During FY 1997, slightly more than one-half of conciliation agreements approved by the Real Estate Board provided monetary relief. On average, these agreements provided \$1,021 in compensation which is somewhat low in comparison to average monetary conciliation awards obtained in other states. Only about half of the respondents who signed conciliation agreements in FY 1997 were required to obtain fair housing training even though in some instances respondents acknowledged a lack of familiarity with the Virginia Fair Housing Law. Even fewer of the conciliation agreements included provisions to eliminate discriminatory housing practices through the revision of lease agreements or rules or regulations.

**Recommendation (7).** *The Real Estate Board, the Department of Professional and Occupational Regulation, and the Virginia Fair Housing Office should take necessary steps to ensure that provisions to “vindicate the public interest” in fair housing, including fair housing training and educational requirements, are included in conciliation agreements in all appropriate instances.*

### **Administrative Hearing Process Would Aid in the Adjudication of Complaints**

Virginia’s structure for administering its fair housing statute is significantly different from that of most other substantially-equivalent states in several respects, which could have potential implications for the operations of the FHO within the overall context of administering and enforcing the Virginia Fair Housing Law. In particular, Virginia does not have a quasi-judicial administrative hearing mechanism for adjudicating fair housing complaints. Most other states, as well as HUD at the federal level, utilize some type of administrative process for adjudicating complaints following a reasonable cause determination by: (1) receiving evidence and testimony, (2) issuing findings of fact and law which affirm or reject a reasonable cause determination, and (3) recommending appropriate relief provisions subject to approval by the state’s fair housing agency. Typically, these administrative processes are optional in that parties to a complaint may elect to have the disputed issues resolved in court. In Virginia, by comparison, the only available option for resolving a complaint following a reasonable cause determination is the filing of a civil lawsuit by the OAG.

**Recommendation (8).** *The General Assembly may wish to consider amending the Code of Virginia to establish a quasi-judicial administrative hearing mechanism for the adjudication of fair housing complaints.*

### **Reasonable Cause Determinations and Filings of Civil Lawsuits Are Rare**

Among the 638 complaints closed from FY 1993 through FY 1997, JLARC staff identified eight which resulted in a determination that reasonable cause existed to believe that the Virginia Fair Housing Law had been violated. Reasonable cause determinations are relatively rare in all of the substantially-equivalent states, but the lack of any reasonable cause determinations in Virginia during FY 1997 is still quite low by comparison (see table on next page.) In addition, during the past five years, the Board has sometimes reversed reasonable cause determinations, based on advice from the OAG, that it had previously made.

It is important for the Board to be able to make a reasoned determination concerning the merits of a fair housing complaint. As previously described, Virginia’s processing of fair housing complaints is governed by a statutory 365-day time limit. Clarification of Virginia’s statutory 365-day rule would help to ensure that the Board is able to make a reasoned determination of the complainant’s allegation.

**Recommendation (9).** *The General Assembly may wish to amend Sections 36-96.10 and 36-96.11 of the Code of Virginia to (a) clarify whether or not a 365-day time limit applies to the issuance of a complaint determination by the Real Estate Board; and (b) provide statutory authority for an investigation of a fair housing complaint to extend beyond 365 days if completion of the investigation within 365 days is impracticable.*

### **Investigation and Conciliation of Complaints Could Be Improved**

The FHO performs investigation and conciliation activities simultaneously but independently of each other on parallel tracks using different staff. This approach to con-



**Prevalence of Reasonable Cause Determinations  
During FY 1997 by Other State Fair Housing Agencies**

<b>State</b>	<b>Number of Reasonable Cause Determinations</b>	<b>Total Determinations, Closures, and Conciliations</b>	<b>Reasonable Cause Determination Percentage</b>
Pennsylvania	31	505	6%
Florida	27	206	13
Kentucky	13	42	31
Maryland	13	94	14
North Carolina	5	68	7
Georgia	4	146	3
South Carolina	3	53	6
Tennessee	1	8	13
West Virginia	1	17	6
Delaware	0	26	0
<b>Virginia</b>	<b>0</b>	<b>145</b>	<b>0</b>

ciliation is appropriate early in the process, prior to a substantive investigation. However, if initial conciliation efforts fail and investigation begins, continued strict reliance on a parallel approach could limit the likelihood that the complaint will be resolved in a just and appropriate manner. This is primarily the result of investigative evidence not being utilized in a meaningful way during later-stage conciliation efforts. Guidance published by HUD in 1995 provides for a more cohesive approach to investigation and conciliation.

Testing is a technique for investigating fair housing complaints, and auditing voluntary compliance, in which pairs of trained individuals posing as *bona fide* housing seekers are sent out into the housing market at closely spaced intervals to seek information on housing availability. Testing has been used successfully by public and private fair housing agencies to obtain comparative data on discriminatory treatment. At present, testing is utilized to only a very limited extent by the FHO. By comparison, the use of testing appears to be more ex-

tensive and performed utilizing a more structured approach in other states. A properly designed and structured approach to testing could make the investigation of complaints by FHO more efficient and effective.

**Recommendation (10).** *The Virginia Fair Housing Office should develop a written management plan to better incorporate the use of testing into its overall procedures for investigating complaints by (a) establishing an effective structure for the performance of testing and the evaluation of information obtained during the test in response to appropriate complaints; and (b) better utilizing testing data submitted with new complaints by taking necessary steps to determine how the information was obtained and interpreted so that it may serve as effective evidence in determining whether or not discriminatory housing practices occurred.*

**Recommendation (11).** *The Virginia Fair Housing Office should use audit-testing and self-testing activities as part of a broader program of ensuring voluntary compliance with the Virginia Fair Housing Law.*

*The results obtained from audit-testing should be used by the Real Estate Board and the Fair Housing Office in appropriate instances as a basis for developing and filing complaints to enforce the provisions of the Virginia Fair Housing Law.*

**Recommendation (12).** *The Virginia Fair Housing Office, the Department of Professional and Occupational Regulation, and the Real Estate Board should review their practices for conciliation and investigation of complaints, including the feasibility of using fact-finding conferences during inves-*

*tigation of complaints and the use of investigative evidence during conciliations. This evaluation should be based on the guidance provided by the U.S. Department of Housing and Urban Development in the Title VIII Complaint Intake, Investigation and Conciliation Handbook. This evaluation should be undertaken to ensure that procedures for the investigation and conciliation of complaints function in a cohesive manner to support the ultimate objective of identifying, and providing appropriate relief for, discriminatory housing practices.*

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## I. Introduction

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The Virginia Fair Housing Law (section 36-96.1 et seq. of the *Code of Virginia*) prohibits housing practices, such as refusal to rent an apartment or sell a house, which discriminate on the basis of race, color, religion, sex, national origin, elderliness, familial status or handicap. According to the statute, “It shall be the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth...in order that the peace, health, safety, prosperity, and general welfare of all inhabitants of the Commonwealth may be protected and insured.” Virginia is one of 30 states whose fair housing law has been certified by the U. S. Department of Housing and Urban Development (HUD) as substantially-equivalent to the federal fair housing act. The Virginia Fair Housing Law is administered and enforced through a structure and process that involves the Commonwealth’s Real Estate Board, the Office of the Attorney General, and the Department of Professional and Occupational Regulation.

The Virginia Fair Housing Office (FHO) is an administrative and organizational title for seven full-time and one part-time staff within the Enforcement Division of the Department of Professional and Occupational Regulation (DPOR). The Virginia Fair Housing Office processes, investigates, and conciliates complaints regarding alleged violations of the Virginia Fair Housing Law on behalf of the Real Estate Board. However, unlike the Real Estate Board and the Office of the Attorney General (OAG), the Fair Housing Office has no statutory responsibilities nor a required existence according to the *Code of Virginia*.

After years of untimely complaint processing, the Fair Housing Office has taken steps to improve its efficiency. However, the effectiveness of the Fair Housing Office in administering and enforcing the Virginia Fair Housing Law is minimal for several reasons. The effectiveness of the Fair Housing Office could potentially be improved through changes to a number of its internal policies and procedures, as well as to several structural factors that affect its operations within the overall context of administering and enforcing the fair housing statute.

Item 14N of the 1997 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to study the operations of the Fair Housing Office. This chapter provides an overview of State fair housing law, describes the administration of fair housing law in Virginia, and discusses the study approach.

### OVERVIEW OF FAIR HOUSING LAW

Congress established the first comprehensive fair housing law through the enactment of Title VIII of the U.S. Civil Rights Act of 1968, formally known as the Fair Housing Act. The Virginia Fair Housing Law, enacted in 1972, was a direct result of this federal statute. HUD regulations went into effect in September 1972 to provide for the recognition of local and state laws which are “substantially equivalent” to the

federal Fair Housing Act. Virginia was subsequently granted substantial equivalency, which gave the State the authority to investigate housing complaints on behalf of HUD in accordance with State law. If Virginia's law were not substantially equivalent, HUD would have to investigate all fair housing complaints filed in Virginia and take appropriate enforcement action. This section provides an overview of the provisions of the Virginia Fair Housing Law.

### **Virginia Fair Housing Law Provisions Are Extensive**

The State statute prohibits a broad range of discriminatory practices based on race, color, religion, national origin, sex, elderliness, familial status or handicap (Exhibit 1). Generally, all dwellings are subject to the Virginia Fair Housing Law. However, there are two broad categories of exemptions:

- (1) any single-family house sold or rented by an owner provided that the owner (a) does not own more than three single-family homes, (b) does not use the services of a real estate broker, agent, or other person engaged in the business of selling or renting dwellings, (c) does not use discriminatory advertising, and (d) has not, in the case of a home in which the owner does not reside, sold any other such home during the preceding 24 months.
- (2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

The Virginia Fair Housing Law does not prohibit a religious organization from giving preference to members of that religion in the sale, rental or occupancy of dwellings which the organization owns or operates. Further, the law allows private clubs to limit the rental or occupancy of dwellings to its members, or give preference to its members, when the club provides lodgings for other than a commercial purpose and when the provision of lodging is incidental to the primary purposes of the club.

***Amendments Concerning Functional Responsibility.*** There have been several major amendments to the Virginia Fair Housing Law since 1972. For example, the Attorney General was initially given the authority to receive and investigate complaints and enforce by civil injunction any violation of the law on behalf of the Commonwealth. When the law was amended in 1973, the Attorney General was granted the additional power to refer cases in which a "person operating under a real estate license issued by the State...is found by a court to have violated any provision of this chapter" to the licensing agency for appropriate action. A 1975 amendment transferred the authority and responsibility for receiving and investigating fair housing complaints from the Attorney General to the Virginia Real Estate Commission (now the Virginia Real Estate Board). An apparent justification for this transfer of responsibility was the belief that fair housing issues appropriately fell within the context of regulating the real estate profession. Currently, however, only about 20 percent of fair

## Exhibit 1

**Unlawful Discriminatory Housing Practices  
Prohibited by Virginia Fair Housing Law****It shall be unlawful:**

- To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, familial status, or handicap.
- To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin, sex, elderliness, familial status, or handicap.
- To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination, or an intention to make any such preference, limitation, or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, or handicap.
- To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- To include in any transfer, sale, rental or lease of housing any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, or handicap, or for any person to attempt to honor such a restrictive covenant.
- To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, or handicap
- For any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the manner of providing such a transaction, or in the terms and conditions of such a transaction, because of race, color, religion, or national origin, sex, elderliness, familial status, or handicap.
- To refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, if such modifications may be necessary to afford the handicapped person full enjoyment of the premises.
- To refuse to make reasonable accommodations in rules, practices, policies, or services for a handicapped person when such may be necessary to afford equal opportunity to use and enjoy a dwelling.
- To refuse to design and construct multi-family dwellings for first occupancy after March 13, 1991 in such a manner that common-use areas and dwelling units are readily accessible to and usable by a handicapped person.
- To deny any person access to, membership in, or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, national origin, sex, elderliness, familial status, or handicap.

Source: JLARC staff analysis of Sections 36-96.3 and 36-96.4 of the *Code of Virginia*.

housing complaints involve licensees of the Real Estate Board. Elderliness, familial status, and handicap were added as protected classes in 1989. Through the elderliness classification, Virginia provides additional protection for its citizens who have attained their fifty-fifth birthday.

***Amendments Concerning Enforcement Mechanism.*** Other major amendments to the Virginia Fair Housing Law have broadened and strengthened the statutory enforcement mechanism. While the original law allowed the Attorney General to enforce the law through civil injunction, a private citizen adversely affected by a discriminatory practice could file an action against the responsible party and could receive up to \$250 actual damages with court costs and attorney fees. For real estate licensees, Virginia had made a deliberate effort to ensure that violators of the fair housing law were penalized accordingly. If the Board conducted an investigation and determined that there existed reasonable cause to believe that a licensed broker, salesperson, rental location agent or agency had engaged in a discriminatory housing practice, then the Board would immediately attempt to resolve the matter by conference and conciliation. If these efforts failed, then the Board was authorized to initiate an administrative hearing to determine whether or not to revoke, suspend or fail to renew the license or licenses in question. A 1984 amendment specifically authorized the Board to take action regarding licensure without awaiting a court decision.

At the federal level, amendments to the fair housing act in 1988 established an enforcement mechanism utilizing HUD and the Department of Justice. This was a major change in federal fair housing law, and all the substantially-equivalent states had to make appropriate amendments to their fair housing statutes in order to retain their substantially-equivalent certification. Consequently, in 1991 the Virginia Fair Housing Law was repealed and revised to reflect changes made in the 1988 amendments to the federal fair housing act. For Virginia, the change established an enforcement mechanism utilizing the Real Estate Board and the Office of the Attorney General, created a statutory time limit for the filing and completion of investigations, outlined procedures for investigation, expanded the definition of unlawful discriminatory practices, and formalized the conciliation process. Perhaps most significantly, the new law increased monetary penalties. Under current law, a court or jury may award compensatory and punitive damages without limitation otherwise imposed by State law, and reasonable attorney fees and costs to victims of discrimination.

### **Fair Housing Assistance Program Links HUD and Fair Housing Office**

HUD's Fair Housing Assistance Program (FHAP) as outlined in federal regulations was established in 1992. It allows the Secretary of HUD to use the services of responsible State and local agencies in the enforcement of fair housing laws. Funding is provided to all substantially-equivalent State and local agencies under FHAP to assist them in carrying out activities related to the administration and enforcement of their fair housing laws. Currently, there are 30 substantially-equivalent state fair housing agencies. In Virginia, DPOR and the Real Estate Board jointly serve as the FHAP agency certified by HUD. DPOR provides staff support to the Real Estate Board.



The process to certify a FHAP agency requires examination and affirmation by the Assistant Secretary of HUD based on (1) whether the law administered by the agency, on its face, satisfies criteria set forth in the fair housing act; and (2) whether the current practices and past performance of the agency demonstrate that, in operation, the law in fact provides rights and remedies which are substantially-equivalent to those provided in the fair housing act. The specific procedures used by HUD to monitor the agency's continuing substantial-equivalency certification are detailed in federal regulations. Virginia received interim certification in 1993 and full certification in 1995.

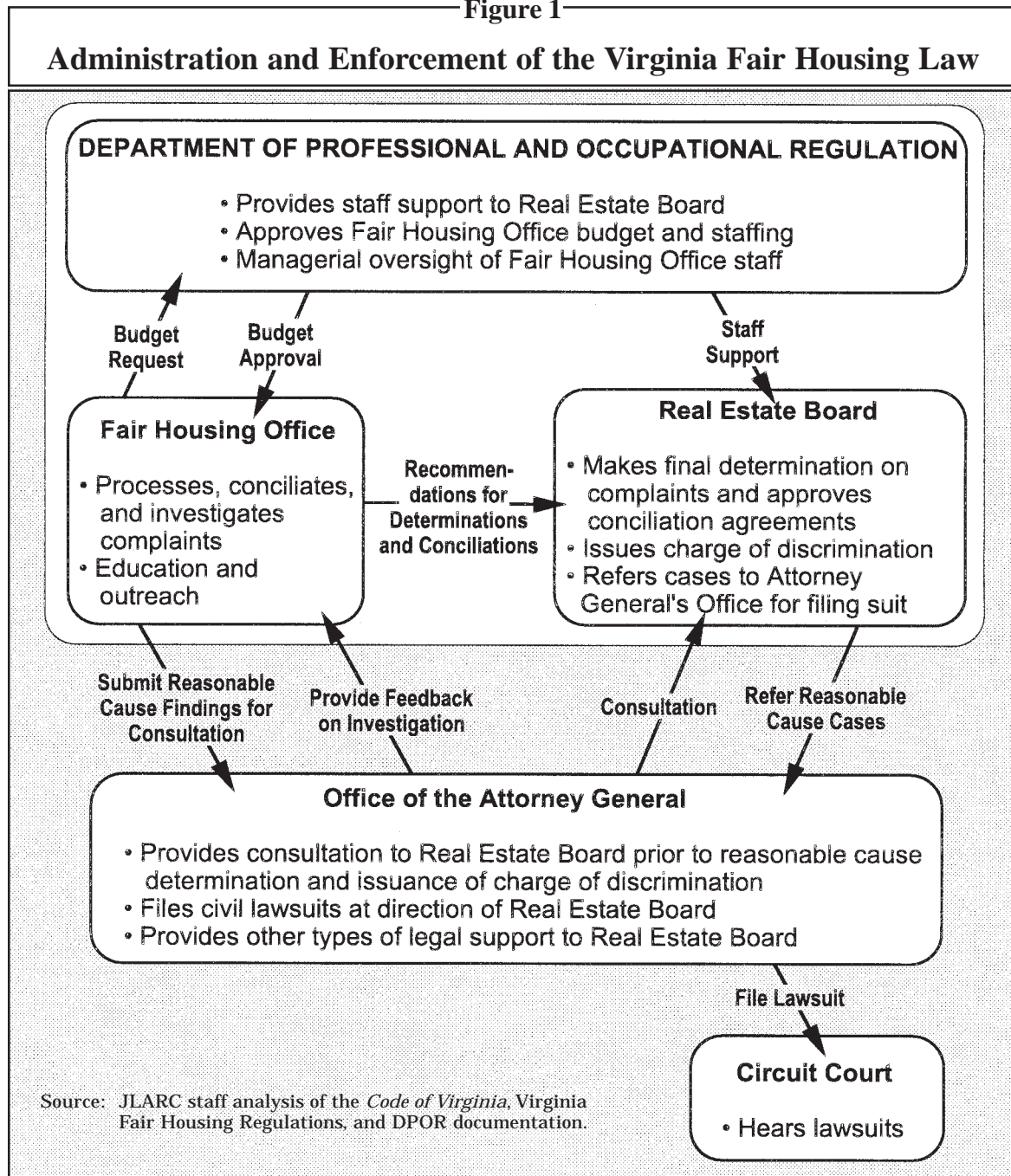
Two specific "consequences" of certification described in federal regulations involve the processing of complaints. First, all complaints received by HUD alleging violations of state or local fair housing law or ordinance are referred to the certified FHAP agency for investigation. This process is typically detailed in a written Memorandum of Understanding (MOU) and a Cooperative Agreement between the FHAP agency and HUD. A signed MOU may authorize an agency to be certified for up to five years. Secondly, if HUD determines that a complaint has not been processed in a timely manner, it may reactivate the complaint and conduct its own investigation and conciliation efforts. Virginia's process for administering the fair housing law is discussed in more detail in the next section.

#### ADMINISTRATION OF THE VIRGINIA FAIR HOUSING LAW

There are three principal entities involved in the process of administering and enforcing the Virginia Fair Housing Law. The Virginia Real Estate Board has the statutory responsibility for administering and enforcing the statute. In this role, it makes reasonable cause determinations, issues charges of discrimination, and approves conciliation agreements. The Office of the Attorney General has the statutory responsibility for providing consultation to the Real Estate Board, and filing civil lawsuits on behalf of the Commonwealth in response to charges of discrimination issued by the Real Estate Board. Staff of the Fair Housing Office are responsible for receiving, processing, conciliating, and investigating complaints of housing discrimination. In addition, two private, nonprofit fair housing organizations engage in fair housing enforcement activities in the interests of Virginia's citizens.

The organizational structure for administration of fair housing laws in Virginia is different than that in most other substantially-equivalent states. Virginia is one of only two such states in which fair housing complaints are not administered by a civil or human rights commission. Instead, the FHO operates within the broader context of administration and enforcement that includes the Real Estate Board and the Office of the Attorney General. Its operations are significantly influenced and affected by the responsibilities, roles, actions and decisions of the other two entities. Figure 1 illustrates the roles played by each of these entities within the administrative and enforcement process.

Figure 1



**Fair Housing Function in Most Other States Is Part of Consolidated Civil Rights Agency**

Of the 30 substantially-equivalent state fair housing agencies certified by HUD, Virginia is one of only two that is not administered by a civil rights or human rights commission. The model for civil rights administration in most other substantially-equivalent states is consolidated staffing for the administration, investigation, and

enforcement of the civil rights laws concerning housing, public accommodations, handicapped access, employment, and education. Their staff are typically cross-trained to administer all of the relevant civil rights statutes. In addition, as will be discussed in Chapter II, such agencies typically have their own legal staffs, often with authority to file lawsuits to enforce the law. Examples of consolidated civil rights agencies in other states include the:

- North Carolina Human Relations Commission,
- Maryland Commission on Human Relations,
- Kentucky Commission on Human Rights,
- West Virginia Human Rights Commission, and
- Tennessee Human Rights Commission.

Virginia's Council on Human Rights (CHR), which is responsible for administering the provisions of the Virginia Human Rights Act, is authorized by statute to investigate and conciliate discrimination complaints in the area of employment, public accommodations, and education. The Virginia Human Rights Act also prohibits discrimination in real estate transactions. As a matter of practice, any fair housing complaints received by the CHR are referred to the FHO.

Unlike the Real Estate Board, the CHR has no enforcement authority. For example, the CHR can not seek injunctive relief. In addition, the Office of the Attorney General may not file a civil lawsuit on behalf of the CHR. The CHR may refer complaints for which it has made a reasonable cause determination to the U.S. Equal Opportunity Commission for prosecution or it may, as will be discussed in Chapter III, set the matter for a public hearing.

## **The Role of the Fair Housing Office**

Organizationally, the Fair Housing Office is located within the Enforcement Division of DPOR. The Department of Professional and Occupational Regulation certifies, licenses, or registers over 20 professions including barbers, cosmetologists, contractors, architects, professional engineers, landscape architects, asbestos workers, hearing aid specialists, polygraph examiners, and realtors. The Enforcement Division is responsible for receiving and investigating all complaints that allege a violation of the laws or regulations involving the regulatory programs within DPOR.

While the FHO itself is not defined in statute or regulation, its organizational placement and function within DPOR signifies its role in the enforcement of fair housing law. Currently, the FHO staff consists of seven full-time and one part-time staff positions. This includes the fair housing administrator (designated by the Director of DPOR), an assistant fair housing administrator, a program conciliator, three field investigators, an intake specialist/in-house investigator, and a secretary currently classified as a P-14, or a part-time wage position. The staff utilize the process for complaint investigation outlined in the *Code of Virginia* and fair housing regulations on behalf of the Real Estate Board.

**Fair Housing Regulations.** Fair housing regulations were promulgated by the Real Estate Board in 1991 and in most instances replicate State law. There are three main parts to the regulations:

- general provisions, including definitions, purpose, and general construction;
- regulated conduct, concerning prohibited practices and advertising; and
- procedures for complaints, responses, investigations, conciliations, reasonable cause determination, and issuance of a charge.

These regulations identify and describe the role of the fair housing administrator while the *Code of Virginia* does not. The extent of the administrator's authority, as will be discussed in more detail in Chapter III, has been the subject of debate.

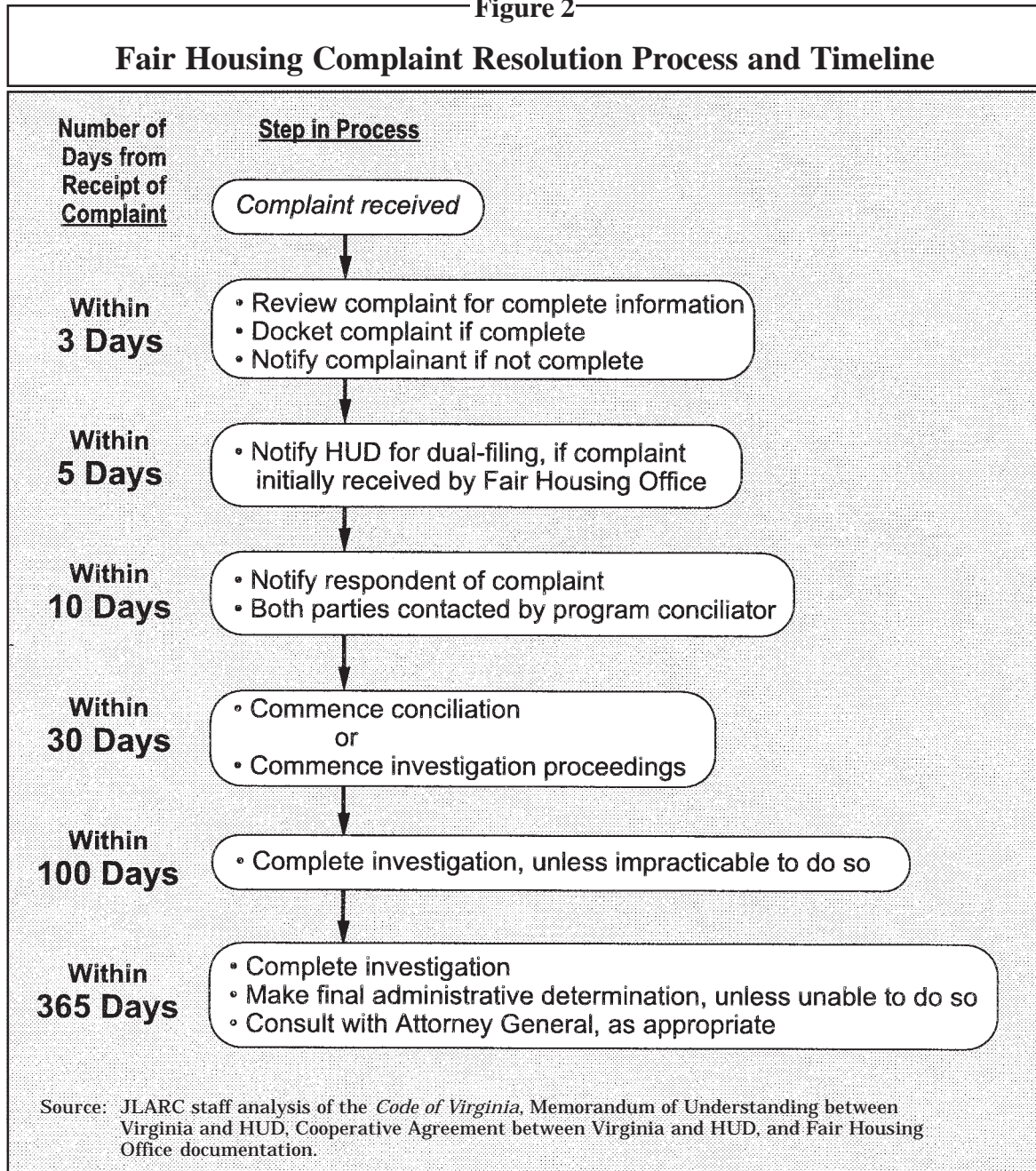
**Mission Statement.** The fair housing administrator recently developed a written mission statement for the Fair Housing Office. The mission is to "increase awareness of and compliance with the law" by:

- conducting effective and efficient investigations,
- resolving complaints through conciliation agreements that provide relief for the aggrieved party and promote fair housing,
- providing training and participating in community events,
- conducting media, public relations, and educational campaigns, and
- advocating when necessary that the Attorney General file suit on behalf of the aggrieved party to protect the public interest.

**Fair Housing Complaint Processing.** Complaints may be filed against (1) any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice; or (2) any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice. Complaints may be filed directly with HUD or with the FHO within one year of the alleged discriminatory practice occurrence. Since Virginia is a substantially-equivalent state, most complaints filed directly with HUD are subsequently sent to the FHO for investigation. Similarly, after determining whether a complaint actually raises fair housing issues, FHO staff contact HUD's Mid-Atlantic Region to register, or "dual file" the complaint.

Figure 2 illustrates the processing of complaints by the Fair Housing Office. Once a complaint is docketed, it is assigned for conciliation and investigation. The FHO has 100 days to complete the investigation and one year to complete the processing of the complaint unless it is impracticable to do so. Within 10 days of when the complaint was docketed, the program conciliator contacts the parties to determine if they are interested in resolving the complaint through informal negotiations. If either party is not interested in conciliation, or if conciliation is not successful, then the investigation continues.

Figure 2



Once a complaint has been investigated, the complaint can be closed in any of the following ways:

- administratively (includes withdrawals, uncooperative complainants, inability to locate complainants, or no jurisdiction),
- conciliation/settlement,
- no violation, or
- violation (finding that there is reasonable cause to believe that discrimination may have taken place).

All closed complaints are brought before the Real Estate Board for approval. Complaints which require Board action typically include those in which FHO staff recommend that a formal charge of discrimination be issued.

### **The Role of the Real Estate Board**

The Real Estate Board's primary function in State government is to oversee the regulation of the real estate profession through licensing, continuing education, enforcement, and disciplinary activities directed at real estate brokers and salespersons. In addition, however, the *Code of Virginia* designates the Real Estate Board as the entity responsible for administering and enforcing the Fair Housing Law. While in practice the Fair Housing Office staff perform most of the day-to-day activities involved in the administration of the Fair Housing Law, the *Code of Virginia* actually grants the Real Estate Board the power "to initiate and receive complaints, conduct investigations of any violation of this chapter, attempt resolution of complaints by conference and conciliation, and upon failure of such efforts, issue a charge and refer it to the Attorney General for action."

The Real Estate Board emphasizes the conciliation of complaints in order to reach a just, mutually agreeable resolution of the disputed issues without having to make a determination on the merits. Conciliation may occur at any time beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the Board. The Board must approve all conciliation agreements between the complainant and the respondent. If after a conciliation agreement has been signed the Board has reasonable cause to believe that a respondent has breached the terms of the agreement, the Board may refer the matter to the Attorney General with a recommendation that a civil action be filed for the enforcement of such agreement.

In practice, the Board receives and considers recommendations from the fair housing administrator concerning complaints that should be closed with a determination of no reasonable cause, and concerning the provisions of conciliation agreements. The Board also receives and considers recommendations from both the fair housing administrator and the Office of the Attorney General for reasonable cause determina-

tions. Based on information collected and analyzed by the Fair Housing Office during its investigation, and upon consultation with the Office of the Attorney General, a formal charge of discrimination may be issued and the matter referred to the OAG for civil litigation. In order to aid in its deliberative process, the Board created a three-person fair housing subcommittee in September 1996 to review staff findings and recommend action to the full Board.

The Real Estate Board, along with DPOR, is the signatory to the Memorandum of Understanding with HUD. As previously indicated, the MOU is a binding agreement which establishes procedures for communication with the federal government to monitor and evaluate the enforcement of the fair housing law, as a condition for continued receipt of federal funds, and for continuation of substantially-equivalent certification.

### **The Role of the Office of the Attorney General**

The *Code of Virginia* prescribes two specific roles for the Office of the Attorney General in the enforcement of the Virginia Fair Housing Law. The first statutory responsibility is to provide consultation during the investigation process. The *Code of Virginia* requires that the OAG be consulted before a reasonable cause determination is made and before a formal charge is issued. However, OAG staff assigned to the Board and the FHO stated that they are willing to provide consultation at any time during complaint processing, as long as it is well within the 365-day statutory time limits for making a determination concerning the complaint. As will be discussed later in the report, the interpretation and proper administration of this statutory time limit has been the subject of some uncertainty and debate.

The OAG's second statutory responsibility is to file and maintain a civil lawsuit seeking relief for the complainant, on behalf of the Commonwealth, in circuit court within 30 days after a charge of discrimination is issued by the Real Estate Board and referred to the OAG. A complainant maintains the right to settle the case until the court date. Once a case goes to court, the OAG acts on behalf of the Commonwealth.

### **The Role of Private Fair Housing Organizations**

Two agencies, Housing Opportunities Made Equal of Richmond and the Fair Housing Council of Greater Washington, work on behalf of Virginia citizens to assist in promoting and enforcing compliance with the Virginia Fair Housing Law. Both of these organizations have received grant funding from HUD through its Fair Housing Initiatives Program (FHIP) over the past several years. While these agencies do not investigate fair housing complaints on behalf of HUD or the State, they are designed to enhance enforcement activities by HUD and substantially-equivalent state or local agencies.

***Housing Opportunities Made Equal (HOME) of Richmond.*** HOME is a private nonprofit fair housing organization, which provides free information, assis-

tance and comprehensive housing counseling services. HOME, which is located in Richmond, has used testers to support claims of discrimination, and has filed cases in court on behalf of aggrieved parties. In addition, HOME recently developed the Analysis of Impediments to Fair Housing in the Richmond Metropolitan Area on behalf of the City of Richmond and Chesterfield County. This analysis is required of all entities receiving community development block grant money from HUD.

***The Fair Housing Council of Greater Washington.*** The FHCGW is a private nonprofit fair housing agency dedicated to the creation of racially and economically integrated communities, neighborhood diversity, and the elimination of discriminatory housing practices. The FHCGW plays a key role in the coordination of regional fair housing planning. A key component of its operations is the Fair Housing Center of Northern Virginia, located in Fairfax County. This serves as the program office for the FHCGW in the Virginia suburbs of Washington D.C.

***Fair Housing Testing.*** Both HOME and FHCGW investigate complaints of housing discrimination through the use of testing. Testing is a simulated housing search technique which is used to obtain comparative data on differential treatment. Testing is conducted by sending a trained team of individuals, consisting of a protected tester and a comparison tester, out at closely spaced intervals to seek information about housing availability in a particular geographic area. Other than the race, color, religion, sex, national origin, elderliness, handicap, or familial status of the protected tester, testers are generally assigned identical socio-economic characteristics. Occasionally, however, the protected tester is given more favorable characteristics, such as a higher income, than the comparison tester thus presenting the protected tester as the more-qualified applicant under generally-accepted standards for the housing industry. Fair housing testing is a process that has been accepted by the courts, the U.S. Department of Justice, and the U.S. Department of Housing and Urban Development. Consequently, testing has been used over the years by fair housing advocates to uncover unlawful acts of housing discrimination.

### **Fair Housing Law Is Largely Dependent Upon Voluntary Compliance**

The effectiveness of the Virginia Fair Housing Law, as is the case with any statute, is largely dependent upon voluntary compliance. Voluntary compliance in turn is dependent on all housing providers and others involved in the real estate industry having adequate knowledge and understanding of the statutory provisions. Several individuals interviewed during this study stated the opinion that numerous provisions of the Virginia Fair Housing Law, particularly those prohibiting discrimination based on familial status or handicap, may be poorly understood or unknown to many housing providers who are not required to be licensed by the Real Estate Board.

Discriminatory housing practices can occur in either an overt or subtle manner. These practices can be the result of either intentional behavior, or the result of ignorance concerning specific provisions of the Virginia Fair Housing Law. Several individuals interviewed during the study expressed the opinion that most housing dis-



crimination has become less overt, more subtle, and increasingly difficult to detect. According to HUD, on a national basis, most instances of housing discrimination are not reported as complaints. In fact, without personal knowledge of how a similarly-situated person was treated by a realtor, housing provider, mortgage lender, or insurer, an individual may not even realize that he or she has been the victim of discrimination.

***Differing Perspectives on Extent of Voluntary Compliance.*** During interviews with JLARC staff, members of the Real Estate Board were asked for their perspective on the extent of voluntary compliance with the Virginia Fair Housing Law. In general, the belief is that voluntary compliance is high on the part of licensed realtors, but more of a problem among housing providers who are not required to be licensed by the Real Estate Board. For example, one member of the Real Estate Board attributed a high level of voluntary compliance on the part of licensed realtors to continuing education requirements for licensing and to professional education efforts undertaken by the Virginia Association of Realtors. On the other hand, a perceived low level of voluntary compliance by non-licensed housing providers was felt to be due, in part, to many of these individuals being “older, ignorant of the law, and set in their ways.”

Another member of the Real Estate Board interviewed by JLARC staff expressed serious reservations concerning the level of voluntary compliance with the Virginia Fair Housing Law:

I don't think it is being complied with by the real estate industry, insurers, or lenders. I just see it [discrimination] out there in the marketplace. I know that there are a lot of deals turned down due to unfair practices. A lot of people have not even heard of the Virginia Fair Housing Law. A discussion of voluntary compliance has not occurred within the Real Estate Board, but it should.

This indicates there is not unanimity of opinion among Real Estate Board members concerning the level of voluntary compliance.

***Other Indicators of the Extent of Voluntary Compliance.*** Fair housing testing can be used to obtain information which can help to determine the extent of voluntary compliance. For example, in order to assess the level of voluntary compliance with statutory provisions prohibiting discrimination in home sales on the basis of race or national origin, the Fair Housing Council of Greater Washington conducted a total of 46 paired tests in the City of Alexandria, Arlington County, and Fairfax County between September and November 1996 using full-time testers posing as *bona fide* home seekers. The testers were employed, trained, and debriefed by the FHCGW.

Information developed as a result of this effort indicates that instances of housing discrimination persist in Virginia. Based on its analysis of the overall results of the sales audit testing, the FHCGW identified 15 tests, or 33 percent of all the tests performed, which contained evidence of discrimination based on race or national origin. For example:

*In McLean, a Latino tester was required to give his social security number so the agency could investigate his credit before showing him any homes. When he refused, the broker came in and explained that it was the agent's first day on the job so she may have been rude in her approach - but the tester still needed to be pre-qualified. The previous day the white tester had met with the same agent and he was shown three homes without any mention of pre-qualification.*

\* \* \*

*In Arlington, a real estate agent showed six homes to a white tester with no mention of the tester's income. After visiting one home, the agent told the tester he should drive around the neighborhood to check the condition and make-up of it. The next day, a Latino tester met with the same agent, who asked the Latino tester about his income and insisted on calling a lender before showing him any homes.*

\* \* \*

*In Springfield, a real estate agent volunteered to a white tester that the tester should call Fairfax County if the tester wanted to know how many blacks or Latinos live in any specific neighborhood.*

\* \* \*

*In Franconia, a real estate agent questioned a Latino tester about his income and debts, and refused to show the tester any homes until the tester talked to a lender. The next day, a white tester was shown five homes without questions about the tester's income.*

Fair housing testing conducted by HOME in the Richmond metropolitan area has resulted in similar findings.

In a 1997 audit, the FHCGW conducted 25 tests in the Washington D.C. metropolitan area to determine (1) the level of voluntary compliance with statutory provisions prohibiting discrimination in apartment rentals on the basis of handicap, and (2) the level of voluntary compliance with minimum architectural design and construction requirements to ensure accessibility by the disabled. Fifty percent of the 14 tests designed to discern disparate treatment based upon the tester's disability showed evidence of discrimination. All of the 11 tests designed to identify violations of minimum architectural guidelines revealed evidence of non-compliance. For example:

*A tester with a disability visited an apartment complex in Alexandria and was quoted a special of \$50 off the regular monthly rent. A comparison tester visited fewer than 30 minutes later and was told about the same special by the same agent. However, the comparison tester*

*was given a call at home later that same day and was told that the special had improved; it was now \$75 off the regular rent. The tester with a disability never received a follow-up phone call regarding the added special.*

The use of fair housing testing will be discussed in greater detail in Chapter III.

## JLARC REVIEW

Item 14N of the 1997 Appropriation Act (Appendix A) directs the Joint Legislative Audit and Review Commission (JLARC) to study the operations of the Virginia Fair Housing Office, and to make recommendations to the 1998 General Assembly regarding the appropriate allocation of resources, considering caseload, case processing time, office staffing, staff training, and such other issues as may seem appropriate. This section lists the study issues, discusses the various research activities that were conducted as part of the review, and provides a brief outline for the remainder of the report.

### Study Issues

JLARC staff developed three major study issues in order to evaluate the overall efficiency and effectiveness of the Virginia Fair Housing Office:

1. Is the investigation of complaints by the Fair Housing Office efficient and effective?
2. Is the complaint resolution process administered by the Fair Housing Office and the Real Estate Board reasonable and adequate?
3. Is the structure, management and oversight of the Fair Housing Office adequate and appropriate in order to encourage compliance with State fair housing law?

### Research Activities

Several research activities were undertaken to address the issues in this study. These included structured interviews, data analysis, file and document reviews, and a survey of other state fair housing agencies.

***Structured Interviews.*** During the study, JLARC staff conducted structured interviews, either in person or by telephone, with the following:

- current and former fair housing administrators;
- all other staff in the Fair Housing Office, including the assistant fair housing administrator, field investigators, the complaint intake specialist, and the program conciliator;
- other management and staff within DPOR, including the Director, Deputy Director for Enforcement, Real Estate Board Administrator, Fiscal Director, Human Resources Officer, and Records Management Officer;
- members of the Real Estate Board;
- management and staff from the U.S. Department of Housing and Urban Development;
- staff from private fair housing organizations operating in Virginia, including Housing Opportunities Made Equal (HOME) of Richmond, the Fair Housing Council of Greater Washington, and the National Fair Housing Alliance;
- current and former staff from the Office of the Attorney General;
- attorneys in private practice who specialize in fair housing litigation;
- officials from the Virginia Association of Realtors and the Virginia Apartment and Management Association, and
- the directors of the State Council on Human Rights, and the Department for the Rights of Virginian's with Disabilities.

**Data Analysis.** JLARC staff analyzed data provided by the Fair Housing Office for 638 fair housing complaints that were closed by the Fair Housing Office from FY 1993 through FY 1997, in order to:

- determine the primary contributors to workload, such as the type of protected class;
- assess the timeliness with which investigations have been completed;
- determine the frequency with which complaints have been repeatedly filed against particular individuals or entities;
- evaluate the extent to which complaints involve licensees of the Real Estate Board, as opposed to individuals or entities that are not required to be licensed by the Real Estate Board; and
- identify the most typical outcomes of Virginia's administrative process for investigating and adjudicating fair housing complaints.

JLARC staff also collected and analyzed data for each complaint that was successfully conciliated during FY 1996 and FY 1997. Data were collected concerning the monetary and non-monetary relief that was obtained for the complainant during the conciliation. These data were analyzed to develop a profile of typical outcomes, including the average monetary award and training requirements resulting from the conciliation process as administered by the Fair Housing Office. The extent to which compliance with the terms of conciliation agreements is subsequently monitored by Fair Housing Office staff was also reviewed.

**Document Reviews.** A number of different documents were reviewed during the study. These included:

- State and federal fair housing statutes;
- State and federal fair housing regulations;
- HUD documents such as the Title VIII Complaint Intake, Investigation and Conciliation Handbook, the Memorandum of Understanding with Virginia, and the Cooperative Agreement with Virginia;
- Fair Housing Office documents, including its mission statement, staff position descriptions, budget information, and instructional materials used as part of its educational and outreach activities;
- DPOR documents, including enforcement division reports and continuing education materials for real estate licensure; and
- reports prepared by HOME and the Fair Housing Council of Greater Washington.

**Fair Housing File Reviews.** JLARC staff reviewed over 60 complaint files which had been closed by the Fair Housing Office over the past several years. The following types of complaints were among those reviewed:

- complaints closed following a reasonable cause finding during the period FY 1993 through FY 1997;
- complaints that were closed following successful conciliation in FY 1996 and FY 1997;
- complaints brought to the attention of JLARC staff by HOME, the Fair Housing Council of Greater Washington, and attorneys in private practice; and
- other complaints identified by JLARC staff during review of Real Estate Board meeting agendas and minutes.

***Survey of Other States.*** JLARC staff mailed a survey to state fair housing agencies in the 29 other states whose fair housing laws have been certified by HUD as substantially equivalent to the federal fair housing statute. The survey was designed to collect data concerning each agency's organization and structure, statutory provisions, staffing, workload, and procedural outcomes. Responses were received from 19 of the 29 states, representing a 66 percent response rate. The survey data were analyzed and used as a basis of comparing the operations of the Virginia Fair Housing Office with its counterpart agencies in other states.

## **Report Organization**

This chapter has provided an overview of federal and State fair housing law, and a description of the administration of the Virginia Fair Housing Law. Chapter II examines the operational efficiency of the Fair Housing Office in the processing of complaints. Chapter III assesses the operational effectiveness of the Fair Housing Office in performing its education, conciliation, and investigation functions.

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## II. Fair Housing Complaint Processing

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Since 1972, the Commonwealth has sought to promote fair housing practices for all its citizens through statutory provisions for filing and investigating complaints of alleged discriminatory activities. This process has evolved significantly over the last two decades to reflect changing times and increased public awareness. The efficient processing of complaints is crucial to successful administration and enforcement of the Virginia Fair Housing Law.

With relatively few exceptions, fair housing complaints filed in Virginia are originally submitted to HUD and then referred to the Fair Housing Office for processing. While race remains the principle basis for fair housing complaints, an increasing proportion of cases allege discrimination based on familial status or involve multiple causes. The number of new complaints received by the FHO has varied so widely over the past several years that caseload management has been somewhat difficult to assess. It does appear, however, that the variability of complaint volumes coupled with the failure to process cases in a timely manner resulted in a substantial backlog of unresolved complaints which took three years - from 1994 to 1997 - to eliminate.

Overall, funding for the FHO appears adequate to support the current level of operations, although funding streams are dependent on the number of annual case closures. Staffing levels have remained even over the last five years, and with the exception of the need for a clerical position, appear sufficient for the current workload. Staff training, however, could be improved to make case processing both more efficient and more effective. Fair housing complaint processing could also be enhanced through the development of a mechanism designed to provide more direct access to legal advice and support. In addition, the effectiveness of existing staff could be enhanced through several procedural and other modifications discussed in Chapter III. This chapter describes the nature and magnitude of fair housing complaints, assesses the extent to which fair housing staff meet investigative timelines, considers the appropriateness of resources to support the operations of the Fair Housing Office, and examines the adequacy of legal support provided by the Office of the Attorney General.

### THE NATURE AND MAGNITUDE OF FAIR HOUSING COMPLAINTS

Initially, fair housing laws were premised on race-based discriminatory practices involving the lease or purchase of real property. Over time, however, the federal and State fair housing laws have been expanded to ensure the rights of all persons without regard to race, color, national origin, religion, sex, familial status, disability or elderliness.

JLARC staff found that although the majority of cases filed in Virginia involve an allegation of discrimination based on race, there has been a steady increase in cases involving other protected classes, and in cases with more complex issues surrounding a

variety of housing practices. Compared to other states, Virginia's Fair Housing Office receives relatively few complaints per capita. This section reviews the characteristics and magnitude of complaints processed by the FHO.

### **The Nature of Fair Housing Complaints**

Race is the largest single basis of alleged discrimination, representing approximately 37 percent of complaints received in FY 1993 through FY 1995. Disability and familial status each comprised about 13 percent of complaints received during this period. During the three-year time period, there was an increase in the number of cases alleging multiple-based housing discrimination. In FY 1993, 19 percent of the complaints received alleged discrimination based on two or more protected classes. This increased to 21 percent of the complaint volume in FY 1994 and represented 35 percent of complaints received in FY 1995. Discrimination based on race was alleged in over 84 percent of these multiple-based cases.

According to the fair housing administrator, most complaints processed by the FHO involve rental housing, including refusals to rent, eviction and refusals to provide services on the basis of one or more protected classes. Other typical complaints include those which allege the refusal of respondents to make reasonable accommodations for disabled individuals.

### **Volume and Frequency of Fair Housing Complaints**

In terms of the number of complaints filed relative to population, Virginia ranks relatively low when compared to other fair housing agencies in the Mid-Atlantic and Southeast regions. Table 1 lists the number of complaints received by these agencies in FY 1997 and also indicates how the number of complaints compares to state population. There has been wide variation in the number of complaints received by the FHO over the last ten years. As indicated in Figure 3, complaint volume increased from FY 1991 to FY 1994, the period immediately following the 1991 amendments to the Fair Housing Law. With the exception of FY 1994, HUD data reflects a similar increase in complaint volume during this period across the country. However, in Virginia, there has been a steady decline since that time. In fact, the number of complaints received by the FHO in FY 1997 was the lowest in eight years.

Two external factors have the potential to affect the amount and type of complaints that the FHO will receive for processing in the coming months and years. First, fair housing advocacy organizations indicate that they now avoid filing complaints with the FHO. This is due to their opinion that Virginia's administrative adjudication and enforcement process is ineffective. Instead, these organizations state that they are either: (1) filing the complaint with HUD and requesting that it not be referred to Virginia, or (2) filing a lawsuit, thereby placing immediate reliance on the judicial system rather than the State's administrative process. However, this may not be true on all accounts. During FY 1996, HOME referred 11 cases or 14 percent of the total



Table 1

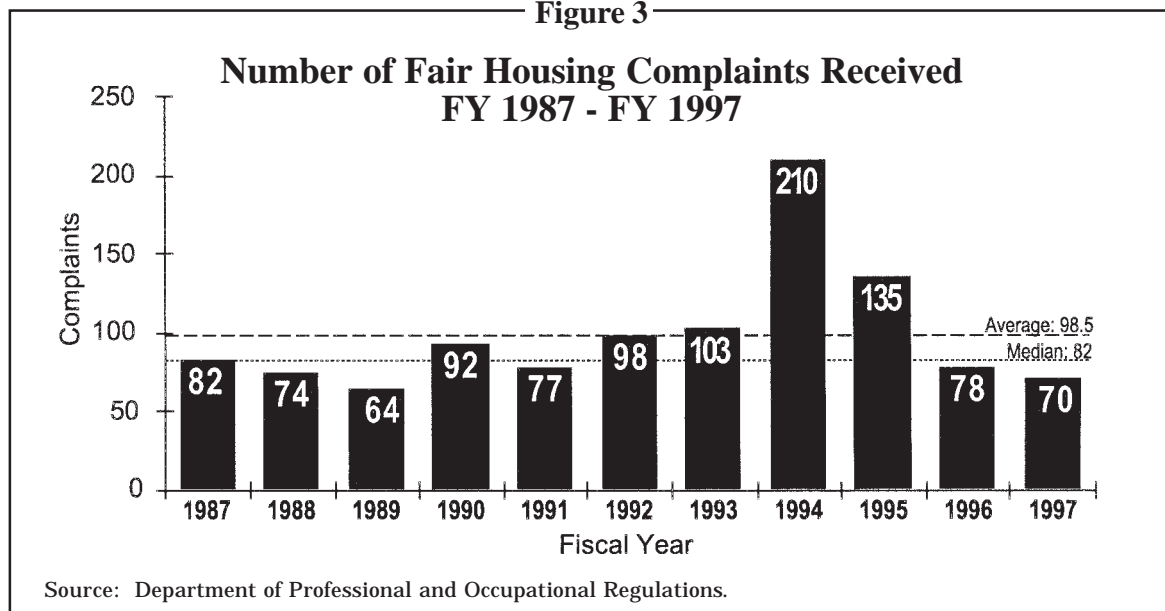
**Complaints Received in the Mid-Atlantic and Southeast Regions  
Fiscal Year 1997**

State	Number of Complaints Received	Population* (in thousands)	Complaints (per 100,000)
Delaware	38	717	5.30
Pennsylvania	336	12,072	2.78
Maryland	139	5,042	2.76
Florida	231	14,166	1.63
Kentucky	61	3,860	1.58
West Virginia	25	1,828	1.37
South Carolina	48	3,673	1.31
Virginia	70	6,618	1.06
Georgia	71	7,201	0.99
Tennessee	26	5,256	0.49
North Carolina	32	7,195	0.44

\* As of July 1, 1995

Sources: Analysis of JLARC Staff Survey of Other States, U.S. Bureau of Census.

Figure 3



complaints received by the FHO during that year. In FY 1997, 18 cases or 26 percent of the total complaints received by the FHO were referrals from HOME. On the other hand, the FHCGW has not filed any complaints directly with the FHO.

Second, it appears that a more significant trend for purposes of FHO workload and complaint processing is the planned downsizing of HUD. In the past, HUD has generally retained complaints which involve systemic or "pattern and practice" allegations of discrimination. However, fair housing organizations, and the fair housing administrator, expect the FHO to receive a greater number of complaints, including more complex, difficult to investigate cases, in the coming years as HUD downsizes and is forced to refer a larger number of complaints to the states. In fact, according to HUD's 1994 Annual Report to Congress on Fair Housing Programs, the ultimate goal of the FHAP is for the "State and local agencies to assume a greater share of the responsibility for enforcing fair housing laws and ordinance." That fair housing organizations may request that HUD not refer complaints to Virginia probably does not make much difference. According to the HUD official directly responsible for monitoring the FHO, such requests not to refer cases to the FHO, or any FHAP agency, are simply not honored.

***Few Complaints Involve Licensees.*** Chapter I described the role of the Real Estate Board in the processing of fair housing complaints and the deliberate intent of the General Assembly to penalize regulants who have violated the Fair Housing Law. However, only 18 percent of all complaints received by the FHO over the last ten years involved licensees. The DPOR Deputy Director for Enforcement has suggested that this trend in part may be due to members of the real estate community becoming increasingly more aware of fair housing issues. In fact, the *Code of Virginia* was amended in 1992 to require brokers and salespersons to complete not less than two hours training in fair housing laws as a condition for licensure.

## CASE PROCESSING PROCEDURES

Federal and State statutes provide that once complaints are received, investigations should be completed within 100 days. By law in Virginia, investigations should under no circumstances extend beyond one year. However, only 18 percent of complaints closed over the last five years have been investigated within 100 days. In fact, 32 percent of all cases closed during this time period took more than a year to investigate. Problems in the timely completion of investigations resulted in inefficiencies in the closure of cases. For example, case closure in FY 1997 occurred on average five months after the investigation was completed. This is significant because the FHO receives funding from HUD based on the number of successfully closed complaints each year.

In order to comply with statute, the Fair Housing Office must address two challenges. First, investigations must be timely yet thorough to ensure that the affected parties receive the full consideration of the law. Second, financial resources must be appropriately allocated to ensure that a consistent level of well-trained staff is available to carry out the operations of the office.

## **Clearer Written Procedures Are Needed to Meet Time Requirements**

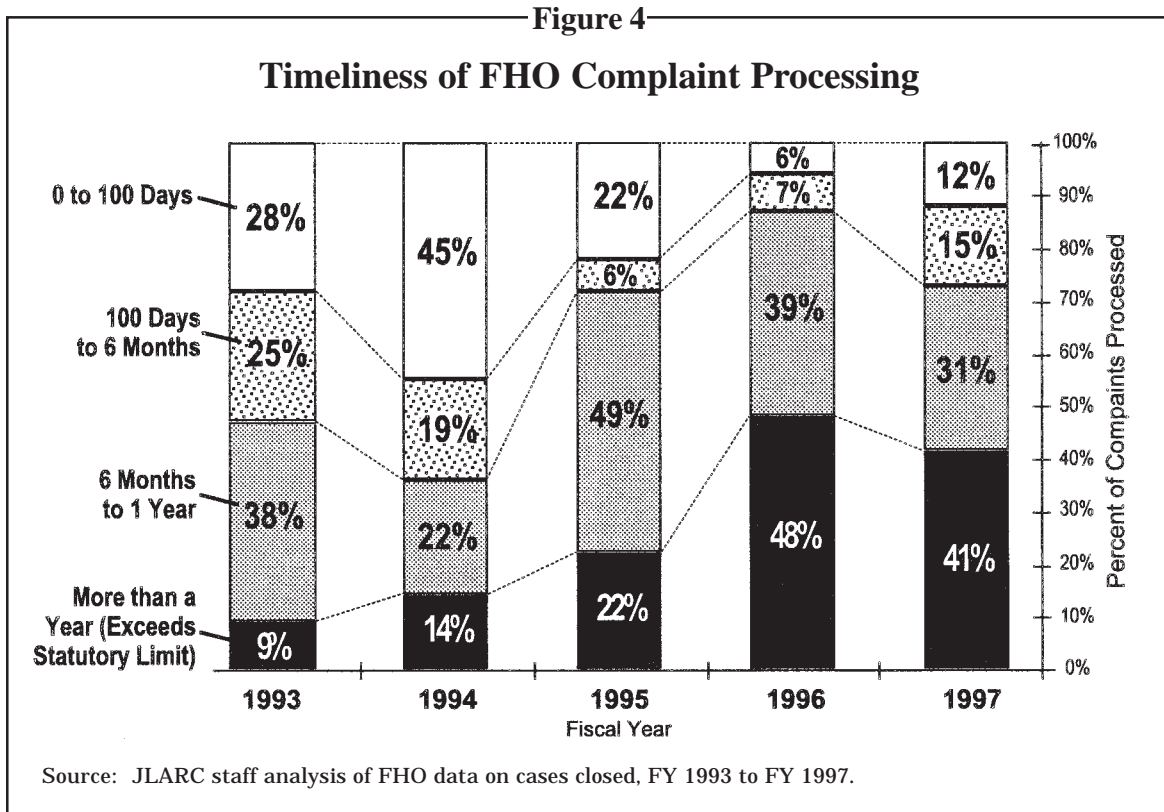
One issue associated with the timeliness of complaint processing is the interpretation of statutory time limits. Federal and State statutes require that a complaint be filed within one year of the last alleged occurrence of the practice. The investigation of the complaint is to be completed within 100 days of the filing of the complaint unless it is impracticable to do so. State law takes this one step further in § 36.96.10 of the *Code of Virginia* by adding language which states that “in no event shall the investigation be extended beyond one year from the receipt of the complaint by the Board.” HUD officials have indicated that Virginia is the only FHAP agency with this one-year requirement specified in law.

***Interpretation of Statutory Time Limits Varies.*** Section 36-96.11 of the *Code of Virginia* states that “The Board shall, within 100 days after the filing of a complaint, determine, based on the facts and after consultation with the Office of the Attorney General, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so...” The Fair Housing Regulations state that “If the administrator is unable to complete the investigation within the 100-day period or dispose of all administrative proceedings related to the investigation within one year after the date the complaint is filed, the administrator will notify the aggrieved person and the respondent, by certified mail or personal service of the reasons for the delay.” This draws into question whether the “365-day” rule (1) allows the investigation of the complaint to continue up to one year to be followed by administrative proceedings, or (2) applies to the entire case process including the completion of the investigation, consultation with the OAG, and approval by the Board. This will be discussed in further detail in Chapter III.

Over the last five years, fair housing administrators have interpreted the 365-day rule as the maximum allowable time to complete investigations, but not inclusive of the final determination. In order to have sufficient time to provide pertinent consultation, the OAG has recently interpreted the 365 day rule to include the entire case process. At any rate, the FHO has had difficulty completing investigations and closing cases within any of the designated time limits.

***Compliance with Processing Time Limits Has Been Poor.*** JLARC staff reviewed a database provided by the Fair Housing Office containing complaint files closed during FY 1993 through FY 1997 to determine the extent to which investigators were meeting the 100 day deadline. As indicated in Figure 4, approximately 28 percent of all cases closed in FY 1993 and 45 percent of all cases closed in FY 1994 were investigated within 100 days. However, by FY 1997, investigations in 41 percent of the closed cases took over a year to complete. This major shift can be explained in several different ways.

First, each year the FHO carries over a number of complaints that it is unable to complete during the year. For example, in FY 1993, the FHO received 103 new complaints. However, investigations were still not complete for approximately 40 percent of these cases a year later. This problem was exacerbated when the number of



complaints received by the FHO doubled in FY 1994. Second, the increase in the number of complaints was not met with a corresponding increase in staff. During FY 1994 and extending into FY 1995 the fair housing administrator position was vacant for nine months.

***Efforts to Eliminate Backlog of Complaints.*** The backlog of cases has been addressed in several different ways. One of the first corrective actions was the hiring of additional individuals to perform the duties of a “conciliator” on a contract basis. Many of the conciliators were trained attorneys and mediators. In addition, the FHO obtained temporary investigators from other divisions within the DPOR to assist the agency in reducing the backlog of cases.

Fifty-eight pending cases that had not been completed were sent back to HUD for reactivation. Federal fair housing regulations authorize HUD to reactivate a complaint referred for processing by HUD if “the substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness.” HUD does not define “reasonable promptness,” but considers such complaints on a case by case basis. In addition, the MOU allows the FHO to request, as necessary, reactivation of complaints for investigation by HUD. According to a HUD

official, because of the 365-day rule, Virginia has returned by far the greatest number of complaints among all states in the Mid-Atlantic region.

Within the last year, the Board and the OAG have made clear to the FHO their intent that the 100-day and 365-day time requirements be strictly adhered to. In August 1996, the OAG advised the Board that extensions beyond the 100-day deadline should be used only as clear exceptions to the normal process. On December 1, 1996 the Board directed the FHO, effective February 1997, to investigate cases in less than 100 days, and to complete cases in less than 180 days, excluding cases referred to the AG's office. The speed with which complaints are investigated now appears to be a top organizational priority for the FHO. In a May 1997 memo, the fair housing administrator told FHO investigators that he intends to enforce the 100-day standard as part of the performance evaluation process. While such intentions are commendable, this process should be articulated in a formal policy or procedural manual to ensure consistent application of the law and thorough consideration of complex cases.

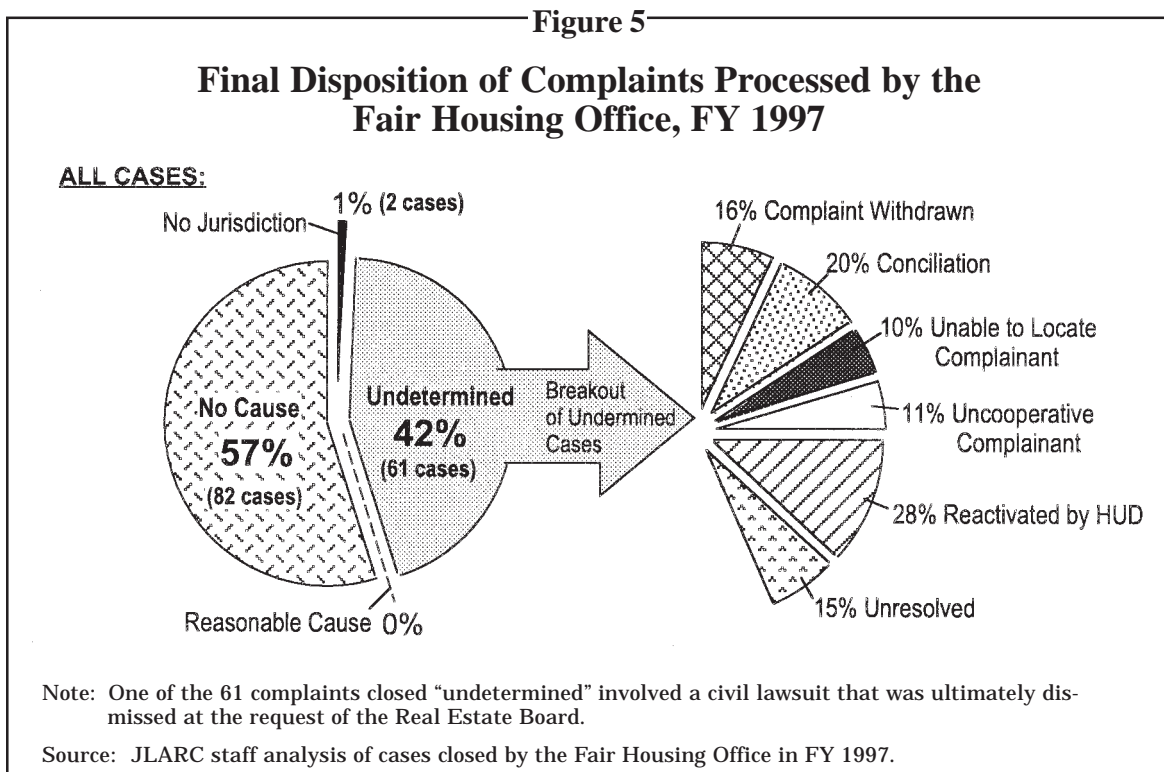
### **Procedures Involving Case Closure Could Be Improved**

HUD can conclude an investigation and close a case in one of the following ways: (1) administrative closure (2) conciliation/settlement, (3) no cause determination, or (4) cause determination. Cases closed administratively include those in which the complainant either withdraws the complaint, fails to cooperate in the investigation, does not file the case in a timely manner, or does not allege discrimination on a prohibited basis. Conciliation results in an agreement with the alleged violator of the fair housing law (the respondent) that resolves the complaint, while protecting both the rights of the complainant and the public interest. A no cause determination results when the evidence is insufficient to believe a violation has occurred or is about to occur. A cause determination is made if the investigation uncovers sufficient evidence of a discriminatory housing practice.

The FHO has in practice closed cases in a manner similar to HUD, however, HUD staff have expressed concern over the use of the term "undetermined" to describe cases closed administratively or ultimately settled via a conciliation agreement. Over the past five years the term "undetermined" has also been used to describe cases closed as a result of a consent decree and private settlement. In fact, over half of all complaints closed during the five-year period were classified as "undetermined." Although "undetermined" is not a classification formally used or accepted by HUD, until recently it nevertheless accepted such findings and in turn paid the FHO for closing cases with this determination.

According to the HUD official who directly monitors Virginia, such determinations are now being returned to the FHO for reconsideration before final payment is made. The fair housing administrator states that this term was most widely used during the time in which the agency was attempting to resolve the case backlog and was unable to complete the investigations in a timely manner. In most circumstances, these cases were sent back to HUD for reactivation. Forty-three percent of all com-

plaints closed in FY 1997 were classified as “undetermined” (Figure 5). Although 45 percent of these were incomplete complaints sent back to HUD for reactivation, only 28 percent were seemingly retained by HUD for reactivation and closure. Nine of the undetermined cases closed by the FHO were never resolved. In other words, FHO staff were unable to convincingly corroborate the complainant’s allegations nor was it able to convincingly affirm the respondents’ defense. Both the fair housing administrator and HUD acknowledge that the term “undetermined” will no longer be used in closing complaints.



**Administrative Closures.** Typically, administrative closures occur within 100 days after a complaint is filed with the FHO. The greater the number of administrative closures, the fewer fair housing complaints are actually resolved on their merits. Previous reviews by HUD found some weaknesses in the area of administrative closures. One of the issues raised by HUD during its 1995 performance assessment of the FHO was the number of the cases that were closed due to the failure of the complainant to cooperate with the investigation. HUD staff found that in most of these cases, the FHO closed the case simply because the complainant failed to respond to the agency’s numerous requests for the complainant to complete and return a Virginia complaint form to the FHO. HUD also found some inconsistencies in how the FHO closes those cases for which they were unable to locate the party or where the party was uncooperative.

**Conciliation.** The Fair Housing Office and the Real Estate Board emphasize the conciliation of complaints. Conciliation agreements can potentially provide for cash settlements, educational and training requirements, other types of affirmative relief, and preparation of compliance reports. According to federal and State law, conciliation efforts are to proceed simultaneously with the investigation. State law provides that “during the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Board, the Board shall, to the extent feasible, engage in conciliation with respect to such complaint.”

Ninety-nine conciliation agreements were approved over the five-year period from FY 1993 to FY 1997. During this time period, it took an average of 243 days to close a conciliation file. It should be noted that conciliated cases are generally not closed until the terms of the agreement are met. Therefore, this average is derived from a closure period ranging from three weeks to two and a half years.

**Reasonable Cause/No Reasonable Cause Determinations.** JLARC staff identified ten complaints processed during the five-year period FY 1993 through FY 1997 that resulted in a reasonable cause determination by the Real Estate Board. Although this determination was subsequently upheld in only eight of these cases, the investigation was completed on each of them before a determination was made. It took an average of 13 months to complete investigations resulting in a reasonable cause determination, compared to the average of 15 months it took to complete the investigations which resulted in a no cause determination during this period. Although HUD data suggest that reasonable cause findings are often associated with longer investigations, the relatively small number of reasonable cause findings in Virginia make the impact of this point very weak.

**Closure Rates for Multiple-Based Complaints.** JLARC staff analysis revealed a slight difference in the time it takes to process multiple-based complaints as compared to complaints alleging discrimination based on only one protected class. Over the five-year period, investigations for single-based complaints took an average of 11 months to complete. In comparison, complaints involving two or more protected classes required more than 12 months to complete. This is reasonable considering investigators must evaluate a distinctively different set of facts for each protected class listed. However, if the trend in multiple based complaints continues to grow, this could significantly impact FHO resources.

**Written Procedures for Processing and Investigating Complaints Need to be Finalized.** HUD’s *Title VIII Complaint Intake, Investigation and Conciliation Handbook* describes in detail suggested methods for complaint processing. For example, the guidelines address complaint intake, special intake processing, investigative procedures, and conciliation techniques. However, HUD guidelines do not reflect the 365-day requirement outlined in State statute. Furthermore, the extent to which FHO staff rely on various types of written guidance from HUD is unclear. In a monitoring review visit in February 1994, HUD advised FHO staff to finalize a draft version of its written case processing procedures to ensure uniformity in case processing. Writ-

ten case processing procedures examined by JLARC staff during this review are currently being updated but have not yet been finalized.

The fair housing administrator recently developed a timeline with case tracking and complaint processing goals and expectations. This document was originally created to help define the administrator's goals and expectations for investigative staff after the fair housing assistant administrator position became vacant in June of this year. This document was distributed and reviewed by all FHO staff including the new fair housing assistant administrator, but is not formally used at this time.

In its 1995 performance assessment of the FHO, HUD noted that there was room for improvement in the area of complaint investigations and recommended that the Real Estate Board "develop more efficient methods and procedures for conducting investigations and making determinations to comply with the time limits indicated in its law." JLARC staff determined that the lack of internal procedures governing complaint processing may have contributed to the development of an increased backlog, because case management procedures with regard to statutory time limits were not established. In fact, the former fair housing administrator told JLARC staff that in the past statutory time constraints were often not considered when closing cases.

While case processing procedures alone may not have completely prevented the large backlog that developed in FY 1994, their absence affected how the backlog was managed by the FHO. For example, the former fair housing administrator told JLARC staff that complaints that were considered likely to result in a no cause determination were addressed prior to complaints that were believed likely to result in a cause determination. According to the former fair housing administrator this decision was a mistake in that victims of alleged housing discrimination may have been harmed by the fact that those cases were not promptly addressed.

***Recommendation (1).* The Virginia Fair Housing Office, in conjunction with the Office of the Attorney General and the Real Estate Board should finalize written case processing procedures as previously recommended by the U. S. Department of Housing and Urban Development to ensure uniformity, including efficient methods and procedures for conducting investigations and making determinations in order to comply with time limits stated in the Code of Virginia.**

#### RESOURCES FOR THE OPERATIONS OF THE FAIR HOUSING OFFICE

The Fair Housing Office does not have a separate appropriation or position level. Consequently, all funding and staff positions are allocated to the FHO by DPOR as part of its internal budget development process. This section examines budgetary resources and staffing levels of the Fair Housing Office.



## Funding for Fair Housing Operations

The amount of federal funding received from HUD is directly proportional to the number of satisfactorily-completed investigations during the prior fiscal year. Consequently, the larger the caseload in any given State fiscal year, the larger the amount of federal funding that can be expected for the next federal fiscal year. Given the variation in FHO's caseload, it is difficult to determine what the normal or expected caseload is or should be for purposes of planning, budgeting, and allocation of resources.

DPOR management have explained that the FHO budget is developed independent of the amount of anticipated federal revenue obtained from HUD for completing investigations. Rather, DPOR develops the FHO budget based on the recommendation of the fair housing administrator, and adjusts the amount of State non-general funds obtained from real estate license fees up or down to reflect the amount of federal funding to be received. Table 2 lists federal and State funding for fair housing operations from FY 1995 to FY 1998. Two trends are evident. First, the total budget has increased over the past few years. Second, federal funds constitute a larger percentage of the FHO budget now than they did three years ago.

Table 2

### Federal and State Funding for the Fair Housing Office FY 1995-1998

Fiscal Year	State	Federal	Total	Percent Federal
1995	\$258,999	\$79,434	\$338,433	23%
1996	276,355	72,882	349,237	21
1997	231,565	166,797	398,362	42
1998*	166,264	267,233	433,497	62

Notes: FY 1998 data are budgeted amounts. FY 1995 - FY 1997 data are actual expenditures. State funds are non-general funds obtained from real estate license fees.

Source: JLARC staff analysis of Fair Housing Office budget and expenditure data.

## Staffing Levels Are Generally Adequate at the Present Time

The FHO currently is allocated seven full-time positions and one part-time position. Staffing has remained relatively even over the last five years. HUD does not have any requirements regarding staffing levels for fair housing complaint processing. However, the staffing level for the FHO compares favorably to other state fair housing agencies in the Mid-Atlantic and Southeastern regions which had, on average, seven total staff and four investigators during FY 1997. Moreover, unlike several other state fair housing agencies, where staff typically administer all of the state's civil rights laws, FHO staff are dedicated exclusively to fair housing matters.

**Clerical Support Staffing.** According to the fair housing administrator, clerical support staffing for the FHO has been an area of frustration. A Secretary Senior position was established in 1991 as a full-time position to provide clerical support, manage telephone inquiries, and assist in the preparation of complaints. When the staff person in this position was promoted in 1994, the position became a part-time wage position. According to the fair housing administrator, six different individuals have rotated through that position in the past year. This position is currently vacant and consequently there has been inadequate clerical support. The administrator has previously requested that the position be converted to a full-time position, but his request has been denied by DPOR based on the agency's position level as provided by the Appropriation Act. However, the Director of DPOR recently authorized the fair housing administrator to complete the necessary paperwork so that this matter may once again be considered. Any such reclassification would have to be approved by the Department of Personnel and Training and the Department of Planning and Budget.

**Future Workload Expectations.** Although staff seemed unprepared for the influx of cases received in FY 1994, the backlog has been resolved and caseloads are now considered manageable. However, the fair housing administrator expects this volume of complaints to increase as a result of expanded educational and outreach activities. Ultimately, the fair housing administrator expects to process 200 complaints per year. This is approximately the number of cases that were closed in FY 1996, but about 55 more than were closed in FY 1997. This would equate to the completion of approximately 72 cases per investigator each year. Nevertheless, the fair housing administrator believes that processing 200 complaints per year is manageable with the existing seven positions, given the changes that have been made to the position description for the assistant fair housing administrator. While this outlook is commendable, past performance draws into question whether more cases can be processed within designated time limits without a proportionate increase in staff. If projected increases in the number of cases received by the FHO occur, DPOR needs to be prepared to allocate additional staff to the FHO to avoid delays in case processing.

**Recommendation (2).** **The Department of Professional and Occupational Regulation should reestablish a full-time Secretary Senior position for the Fair Housing Office. The Department should also allocate additional staff (financed with non-general funds) to the Fair Housing Office as necessary to meet statutorily-established deadlines for the investigation and processing of complaints, if projected increases in complaint volume occur.**

### **Training for FHO Staff Could Be Improved**

HUD's training requirements for the FHO staff are specified in the Memorandum of Understanding and in the Cooperative Agreement. The Cooperative Agreement outlines requirements for receipt of FHAP funds. Generally, the FHO is required to enroll at least some of its employees in HUD-sponsored training conferences at the national and regional levels. However, the Cooperative Agreement between HUD and FHO is vague concerning the specific number of staff that are required to annually

attend HUD-sponsored conferences. Within the past year FHO staff have attended the National Fair Housing Conference, investigator training, conferences on design and construction issues, and training on HUD's new computer system that will be used to electronically transmit case files to the states. Based on information received from FHO, it appears that one of the three field investigators may not have attended any HUD-sponsored training within the past year.

There has been some concern that staff training has been inadequate, and that work responsibilities are learned primarily through trial and error, particularly with regard to new FHO staff. Partly because the FHO has no formal training manual, training for new FHO staff has generally been ad hoc, typically consisting of a day in the field with a senior investigator. Training for other investigators within DPOR has been extended to FHO staff in the past. However, this training does not address fair housing issues.

The executive director of the Fair Housing Council of Greater Washington described HUD conference training as cursory, and said that FHO staff would benefit from advanced training in various areas by fair housing advocacy organizations. One area in which the FHO staff need to improve is in the area of design and construction requirements for accessibility by handicapped individuals. Within the last couple of years the FHO has received housing complaints concerning alleged violations of these requirements contained in State and federal law and regulations. Because staff did not have expertise in this area, they spent significant time and effort identifying individuals within HUD and in private practice to provide assistance in this area. Partly due to concerns about FHO staff experience in some areas, fair housing advocacy groups are reluctant to send certain cases to FHO for investigation. Instead, they conduct their own investigations and testing and file complaints with the federal HUD. However, because of HUD cutbacks, it is widely perceived that a greater number of complaints will be forwarded to the FHO for investigation. Finally, as will be discussed in greater detail in Chapter III, the adequacy of investigations by the FHO has been questioned by both the Office of the Attorney General and private fair housing organizations. Additional training in investigative techniques by experts in fair housing law would be beneficial.

***Recommendation (3).*** The Virginia Fair Housing Office, in conjunction with the Real Estate Board and the Enforcement Division of Department of Professional and Occupational Regulation, should develop a formal training manual. In addition, the Fair Housing Office should consider supplementing training required by the U.S. Department of Housing and Urban Development with training on issues including investigative techniques by experts in fair housing law and investigation.

### **Data Management Problems Have Been Identified**

Data regarding the receipt, investigation, and closure of fair housing complaints is entered into a database by the FHO intake specialist, and maintained by

DPOR's Information Systems Division. During its review, JLARC staff identified several cases which were closed during the period FY 1993 to FY 1997 but were not included in the database received. This discrepancy is significant for two primary reasons. First, according to the fair housing administrator, these data are relied upon to determine the extent to which new complaints involve respondents who have been named in prior complaints. If the database used is incomplete, then such an assessment would be unreliable. Second, as discussed earlier, the amount of federal funding the FHO receives is directly related to the number of complaints closed each year. If these numbers are understated, the FHO will not be reimbursed for eligible complaints which required staff time and resources to complete.

To date, FHO staff have been unable to adequately explain this discrepancy. Staff in the Information Systems Division have suggested that some cases may have been missed due to the queries used to generate JLARC's data request. However, a complete search of the database by the FHO intake specialist revealed only half of the missing cases identified by JLARC. Further, JLARC staff found a significant difference in the numbers of cases which the FHO stated were closed in FY 1996, and the actual number of cases for which payment was received.

HUD staff acknowledge that they do not pay for all cases processed by the FHO including cases that were not dual-filed, and for cases involving elderliness, which is not a protected class under the federal fair housing act. However, even when JLARC staff controlled for this, the discrepancy remained. Although unable to explain the differences, HUD indicated that for at least seven years Virginia's case tracking process has been incompatible with the system used by other FHAP agencies. Through the use of the Housing Complaint Tracking Module (HCTM), an automated case tracking system, HUD is able to access complaint status information from other FHAP agencies in the Mid-Atlantic Region on a regular basis. Initially, there were technical difficulties that prevented Virginia's FHO from using the system designed primarily for EEOC agencies. However, this problem was resolved about two years ago, and the FHO was provided additional funds to attend a HUD-sponsored HCTM training. To date, Virginia has not utilized this tracking system. As a result, HUD has had to rely on a manual case processing system to identify case closures in Virginia.

The Cooperative Agreement between HUD and the Real Estate Board states that "the progress of all dual-filed complaints from receipt through the administrative process may be reported using HCTM, an agency-developed data system or agency-developed manual system that is reviewed and approved by the HUD tracking representative." The agreement lists data and information fields that must be a part of the monitoring system established between HUD and the FHAP agency. HUD currently tracks Virginia's case closures when physical case files are submitted for approval for payment. However, the HUD monitor has stated that she has had to manually enter the required data into HUD's tracking system before payment can be approved. In addition, she has observed some variation in the actual case files submitted for payment and the cases listed in quarterly case progress reports submitted to HUD by the FHO.

The fair housing administrator has stated that the FHO does not plan to utilize the HCTM, instead choosing to submit case data using the new case processing system developed by HUD, which is designed to prompt investigators for information through each phase of the process. While HUD officials have confirmed that the new system will ultimately replace HCTM, the monitoring or tracking component of this system will not be operational until some point in the future. The HUD monitor is not certain as to when this will actually occur. Therefore, the FHO should take steps to ensure that their current case tracking process is consistent with the system used by HUD in order to secure appropriate payment for cases processed.

***Recommendation (4).* The Virginia Fair Housing Office, in conjunction with the Information Systems Division of the Department of Professional and Occupational Regulation, should evaluate its database management procedures to ensure that its databases are accurate, complete, and consistent with HUD guidelines.**

#### PROVISION OF LEGAL ADVICE AND REPRESENTATION

The efficient and effective operation of the Fair Housing Office is highly dependent upon the availability of legal support. Legal support, such as the provision of legal advice, consultation with investigators, and the enforcement of subpoenas, is provided by the Office of the Attorney General. During this study, staff in the Fair Housing Office expressed numerous concerns to JLARC staff about the adequacy of legal support for the State's fair housing function, and suggested that changes be made concerning the provision of legal advice and representation. On the other hand, members of the Real Estate Board, which is the official client of Office of the Attorney General in regard to fair housing matters, generally express considerable satisfaction with the legal support that has been provided. This section reviews the concerns that have been expressed by the Fair Housing Office staff, and examines issues regarding the feasibility of modifying the current arrangement for legal support.

#### **Fair Housing Office Staff Consider Legal Support to Be Inadequate**

During interviews with Fair Housing Office staff, the legal support provided by the Office of the Attorney General was described as inadequate and insufficient for two reasons. First, it is felt that the OAG lacks adequate staff time and resources to provide the level of support that is needed. Second, it is felt that the OAG lacks requisite expertise in fair housing law and civil rights litigation. According to Fair Housing Office staff, the Office of the Attorney General is not structured to provide the type of legal advice and support that is necessary to proactively enforce the Virginia Fair Housing Law from the plaintiff-oriented point of view of a fair housing law advocate. While acknowledging that its time and resources are limited, OAG staff unequivocally dispute the notion that their legal expertise is in any way inadequate for proper administration and enforcement of the Virginia Fair Housing Law.

It is likely that many of the concerns expressed by the Fair Housing Office are a function of the numerous instances in which the fair housing administrator and OAG have disagreed over recommendations for reasonable cause determinations. Five such instances occurred in August 1996, when the OAG was required to review what it described as “the greatest number of cases seen at one time in this Office since the adoption of the Virginia Fair Housing Law.” In each of these cases, the fair housing administrator recommended a reasonable cause recommendation while the OAG in turn advised the Real Estate Board to make a no reasonable cause determination. This will be discussed in greater detail in Chapter III.

During interviews with JLARC staff, Fair Housing Office staff expressed the opinion that the Attorney General’s Office applies an unrealistically high standard in advising the Real Estate Board whether it believes that reasonable cause exists. Fair Housing Office staff express the opinion that a complaint constituting a “perfect” fair housing case will never be found, and would prefer to file lawsuits designed to test the provisions of the Virginia Fair Housing Law in appropriate cases.

For its part, OAG states that it has filed test cases in the past at the direction of the Real Estate Board. However, it will continue to insist that investigative evidence be sound and thorough before it advises the Real Estate Board to issue a charge of discrimination. As will be discussed in Chapter III, the OAG believes that many of the cases referred to it by the Fair Housing Office were either not sufficiently investigated or were not investigated within the time limits prescribed by the *Code of Virginia*.

***Consultation with Investigators.*** Another specific concern of the Fair Housing Office is the lack of authorization for field investigators to directly contact OAG staff during an investigation for advice concerning investigative techniques, development of evidence, or elements of proof. OAG staff report that, while they do not have time to handle calls directly from field investigators, they are entirely willing to speak with them provided that the investigators first address their questions to the fair housing administrator. The OAG believes that the vast majority of investigators’ questions could be answered in that manner. However, the fair housing administrator does not believe that is an efficient procedure within the context of a fair housing investigation. In addition, while the fair housing administrator believes he is qualified to provide investigators with legal advice concerning investigative techniques and development of evidence consistent with applicable legal standards of proof and recent developments in fair housing law, “It doesn’t matter what I think because I am not the attorney [for the Real Estate Board].”

***Enforcement of Subpoenas.*** The Fair Housing Office has not frequently utilized the subpoena power authorized by Section 36-96.10 of the *Code of Virginia*. However, in one of the few cases in which it has utilized this authority, action to enforce compliance with the subpoena was not taken.

*A complainant alleged that she was discriminated against on the basis of race and familial status in that the respondent refused to rent her an apartment. As part of the investigation, the Fair Housing Of-*

*lice sought to obtain rental records and was able to obtain some older records independently from the circuit court clerk. However, current records were not available. Consequently, a subpoena was issued in November 1995. The respondent never complied with the subpoena, despite the fact that the subpoena was reissued twice. In March and June 1996, the Fair Housing Office suggested in writing to the Office of the Attorney General that there was a need to take action to enforce the subpoena.*

*The Office of the Attorney General told JLARC staff that it never received a subpoena from the Fair Housing Office to be enforced, and that it never received any evidence that other efforts to get the materials failed and why such efforts failed. The Office of the Attorney General contends that enforcement of the subpoena would have been impractical since the target of the subpoena was out of the country.*

*The subpoena was never enforced, and the records were never obtained. Among other purposes, these records could have help to identify the racial and familial status composition of the tenants over time. The fair housing administrator eventually recommended a reasonable cause determination based on the investigation. The Office of the Attorney General recommended a no reasonable cause determination citing, among other factors, that there was no developed data concerning the racial or familial occupancy of other units in the apartment.*

### **Provision of Legal Support by Office of the Attorney General Has Undergone Change**

Staff in the commerce and trade section of the Office of the Attorney General currently provide legal counsel and representation for the Real Estate Board and, by extension, for the Fair Housing Office. The section chief and two other staff provide needed support. Each fair housing complaint that is referred to the OAG is reviewed by two attorneys as part of the consultation process with the Real Estate Board.

Responsibility for providing fair housing consultation and representation has been located in a few different sections of the Office of the Attorney General over the past several years. Prior to 1991, fair housing was the responsibility, as it is now, of the commerce and trade section of the government operations division. However, with the 1991 amendments to the Virginia Fair Housing Law, the responsibility was transferred to the trial section of the civil litigation division. This transfer was made with the expectation that fair housing litigation would increase following the 1991 amendments. During that period of time, one fair housing case was handled by the investigation and enforcement section of the criminal division. The amount of fair housing litigation did not actually increase enough to justify retaining the function in the trial section. Consequently, responsibility for fair housing was eventually returned to the commerce and trade section a few years later.

Since regaining responsibility for fair housing, the number of hours that the staff in the commerce and trade section have had to spend providing consultation and representation on fair housing matters has increased substantially:

- FY 1995 - 56 hours by one staff member,
- FY 1996 - 144 hours by three staff members, and
- FY 1997 - 463 hours by three staff members.

This substantial increase in workload was apparently unexpected by the commerce and trade section. According to a former OAG staff member who was responsible for the fair housing function:

When I received the fair housing assignment, I was told that the Fair Housing Office staff hardly ever call, they don't have many cases, and that there had been very little activity over the past few years. However, immediately after I got the assignment, the level of activity just exploded. It was then that we discovered the large backlog of unresolved complaints.

### **Fair Housing Agencies in Other States Have Different Structures for Legal Support**

Fair housing agencies in most of the other substantially-equivalent states which responded to the JLARC survey have a different arrangement for obtaining legal advice and representation than is utilized in Virginia. Many of these fair housing agencies - including those in Maryland, North Carolina, South Carolina, Kentucky, Pennsylvania, and Florida - have their own in-house attorneys who have the authority to initiate litigation to enforce the fair housing statute at the direction of the governing board or commission. Four of the 19 survey respondents are reliant on their Attorney General's office for litigation. However in two of those states, West Virginia and Ohio, the Attorney General's office contains a civil rights division or section. In Arizona, the Attorney General's civil rights division is the state's fair housing agency. Staff in the commerce and trade section of the Attorney General's Office disagree that specialized expertise in civil rights litigation is a necessary prerequisite in order to provide adequate advice to the Real Estate Board on fair housing matters.

There is some precedent in Virginia for an agency with responsibility for administering civil rights statutes to have its own independent source of legal representation with the authority to commence litigation. The Department for the Rights of Virginians with Disabilities (DRVD) is responsible for assisting individuals with the non-discrimination protections accorded by Virginians with Disabilities Act (Section 51.5-40 et seq. of the *Code of Virginia*). Section 51.5-36 of the *Code of Virginia* authorizes the director of DRVD to employ qualified staff, including legal counsel, as shall be necessary for carrying out the agency's responsibilities. However, Section 51.5-37 of the *Code of Virginia* states that no counsel shall be hired by DRVD without the express approval of the Attorney General.



### **Feasibility of Changes to Current Arrangement for Legal Support**

Virginia's fair housing function would probably benefit if the State's fair housing agency had more direct access to legal counsel, either internally or externally, to:

- provide legal advice to investigators concerning investigative techniques and development of evidence consistent with applicable legal standards of proof and recent developments in fair housing law;
- enforce subpoenas; and
- file suit to enforce the provisions of the fair housing law.

Legal support could potentially be provided in the same manner as DRVD, which has its own legal counsel. However, there is likely insufficient workload to justify the use of in-house legal representation by the Fair Housing Office. The fair housing administrator said that having a dedicated attorney from the OAG assigned to the FHO would be sufficient. However, the OAG says it lacks adequate resources for that level of support.

***Recommendation (5).* The Virginia Fair Housing Office, in conjunction with the Real Estate Board and the Office of the Attorney General, should develop a mechanism to provide more direct access to legal advice during the processing of fair housing complaints. The Real Estate Board may wish to consider dedicating non-general funds to pay for the additional support this mechanism would require.**



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## **III. Education, Conciliation, and Investigation**

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In order to promote compliance with the provisions of the Virginia Fair Housing Law, the Fair Housing Office focuses on education, conciliation, and investigation. These staff activities support and complement the enforcement responsibilities of the Real Estate Board and the Office of the Attorney General. The effectiveness of the Fair Housing Office in performing these functions is a key component of the State's overall attempt to achieve compliance with the statute. This chapter assesses the performance of the Fair Housing Office in the areas of education, conciliation, and investigation, within the context of promoting compliance with the Virginia Fair Housing Law.

### **GREATER EDUCATION AND OUTREACH EFFORTS ARE NEEDED**

Knowledge and awareness of the provisions of the Virginia Fair Housing Law on the part of housing providers, realtors, and consumers is essential in order for there to be a high level of voluntary compliance with the statute. Both the Memorandum of Understanding and the Cooperative Agreement with HUD contain requirements for the performance of educational outreach activities by the Fair Housing Office. The Fair Housing Office staff perform several different types of activities designed to more fully educate the public concerning rights and obligations imposed by the Virginia Fair Housing Law. While some initial plans are being developed for greater efforts in this area, a cohesive strategy needs to be developed to better ensure compliance with the law. This section reviews recent education outreach efforts that have been made, and examines how this function can be further improved.

### **Educational Training Sessions Are Provided**

One of the most important educational activities performed by the Fair Housing Office are training sessions held with members of the real estate and housing industries, as well as consumers. These sessions are designed to provide an overview of the Virginia Fair Housing Law, as well as the State's process for administering the law. Typically, these presentations have been done at the request of local organizations. However, they have also occasionally been conducted to help satisfy the training requirements imposed by conciliation agreements. In addition, the fair housing administrator recently coordinated a conference on handicapped accessibility guidelines for the design and construction of new multi-family dwellings.

During FY 1997, Fair Housing Office staff conducted 21 educational and training sessions across the State. Presentations were made to the following types of individuals and firms:

- apartment and property managers,
- leasing consultants,

- real estate brokers and salespersons,
- builders,
- housing providers,
- lenders,
- architects,
- consumers,
- community development block grant recipients, and
- local government officials.

The number of educational and outreach sessions conducted by the FHO in FY 1997 was somewhat low in comparison to other states in the Mid-Atlantic and Southeast regions that responded to the JLARC survey (Table 3).

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Table 3

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**Number of Educational Training Sessions Conducted  
by State Fair Housing Agencies - FY 1997**

State	Number of Sessions
Florida	60
Pennsylvania	48
South Carolina	45
North Carolina	44
Kentucky	38
<b>Virginia</b>	<b>21</b>
Georgia	14
Maryland	6
West Virginia	3
Delaware	1
Tennessee	0
<i>Other State Survey Average</i>	26
<i>Other State Survey Median</i>	26

Source: JLARC staff survey of other state fair housing agencies.

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Absent from the listing of participants are members of the property insurance industry, despite the fact that the sale and underwriting of property insurance is considered a housing practice for the purpose of the Virginia Fair Housing Law. In addition, very few of the training sessions occurred in Southwest or Southside Virginia, or in the Shenandoah Valley. Given the location of the Fair Housing Office in Richmond, and also given the fact that these regions are not in the normal service areas of Virginia's two private fair housing organizations, the educational and outreach efforts in those regions of the State need to be expanded.

### **Public Service Announcements Have Been Developed for Radio**

The Fair Housing Office has worked to produce a series of public service announcements (PSAs) designed to increase public awareness and understanding of fair housing rights and obligations. Each PSA in the series focused on a different statutory protected class, including race, familial status, and disability. The PSAs ran a total of 26 times on radio stations belonging to the Virginia News Network in areas throughout the State during a four-week period from April 7 to May 4, 1997. However, coverage was relatively light in Northern Virginia in that the PSAs did not run on any radio stations located in Arlington County, Fairfax County, Prince William County, the City of Alexandria, or Washington D.C. The PSAs did run on one station in Loudon County.

The fair housing administrator decided to run the PSAs again in June, 1997, at the suggestion of his staff, on two Richmond radio stations that do not belong to the Virginia News Network. According to fair housing office staff, these two stations, which have an "urban contemporary" format, may be more likely to reach members of some protected classes than many of the stations in the Virginia News Network. None of the stations in the Virginia News Network have an urban contemporary format. The additional PSAs ran on these two stations three times a day from June 19 through June 25. The fair housing office has recently expanded its PSA strategy. During FY 1998, PSAs are being run four times each month on the stations belonging to the Virginia News Network.

### **Use of Field Investigators to Perform Education and Outreach**

A fairly significant change that has been implemented by the fair housing administrator is the revision of responsibilities for the three field investigators in order to place greater emphasis on education and outreach activities. Field investigators are now required to spend 10 percent of their time on education and outreach. For example, the fair housing administrator expects the field investigators to make arrangements for presentations to organizations such as chambers of commerce or associations of realtors in localities in which they are conducting investigations.

The expectation of the fair housing administrator is that each investigator will be able to conduct two training sessions per month. The fair housing administrator, assistant fair housing administrator, and program conciliator are also expected to conduct two training sessions per month. If the fair housing office is successful in this endeavor, it would perform approximately 120 training sessions per year. This would far exceed its current level of activity, as well as that of any of the other state fair housing agencies responding to the JLARC survey, and appears to be very ambitious and unrealistic given past efforts. It remains to be seen whether the FHO can accomplish this.

## **Education and Outreach Activities Would Benefit from Evaluation**

The fair housing administrator has several other plans for improving education and outreach activities. For example, bids have been received from vendors to produce a new, updated training video concerning fair housing rights and obligations. This new video would replace a video produced in 1991 which was still being used in FY 1997, although it had become increasingly outdated. The fair housing administrator also wants to conduct a fair housing teleconference with the assistance of the Department of Information Technology. The fair housing office budget contains \$5,000 to support a teleconference, but the details of this activity still need to be developed. Other staff have suggested the use of bus placard advertisements in urban areas.

The Fair Housing Office appears to want to make a concerted effort to improve, expand, and make more proactive its education and outreach function. However, this aspect of Fair Housing Office operations could be strengthened by evaluating the impact that current activities are having on increasing awareness of and compliance with the law. Information obtained from this type of evaluation could be used in the modification of current activities, and the development of new initiatives.

***Incomplete Data Concerning Training Session Participants.*** During the educational training sessions conducted during FY 1997, Fair Housing Office staff did not systematically collect the names, addresses or phone numbers of the participants. Only recently, while the JLARC study was under way, has the staff begun to routinely collect this type of information. The program conciliator plans to utilize this information as an additional means of monitoring compliance with conciliation agreements wherein particular individuals or firms have agreed to receive fair housing training. For example, the program conciliator will be able to determine the extent to which such individuals or firms are in attendance. Another more general purpose for which the training session participant data could be used would be to begin developing a statewide network of individuals and entities which could be subsequently utilized to assist in the promotion of the Virginia Fair Housing Law, and to increase public awareness of the Fair Housing Office.

***No Evaluation of Training Session Impact.*** Currently, the FHO staff does not utilize any type of evaluation form to be completed following a training session. Consequently, the Fair Housing Office does not collect any data that would enable it to systematically evaluate the satisfaction of participants concerning the information presented during the session. In addition to assessing satisfaction with the quality of the presentation, such an evaluation form could also be used to identify specific topics for which certain individuals or groups would like to receive more detailed information. Likewise, the Fair Housing Office has not systematically evaluated the impact of its education and outreach activities on complaint workload, the type of complaints in terms of protected class and discriminatory housing practice, or any other parameter.

The Fair Housing Office needs to develop a more thorough understanding of the types of activities that are likely to be most effective in achieving the items in its mission statement. The position description for the program conciliator states that the

individual will develop, implement, and evaluate policies and procedures relating to training and outreach activities. One method which could be used to evaluate these policies and procedures is the identification of best practices for education and outreach used by fair housing agencies in other states. However, as of October 1997, such an effort had not been undertaken by the Fair Housing Office staff.

***Development of a Cohesive Education and Outreach Strategy.*** As previously indicated in Chapter I, approximately 80 percent of the complaints received and processed by the Fair Housing Office are made against housing providers or property managers who are not required to be licensed by the Real Estate Board. Consequently, most of the respondents to complaints that are part of the Fair Housing Office's workload are not required to receive any fair housing education or training on a continuing basis. It is this unlicensed population, along with housing consumers, that should serve as the focal points for the Fair Housing Office's education and outreach effort. Many of the non-licensed housing providers likely own relatively few properties, perhaps no more than 20 units. Admittedly, this is a difficult group to reach since, in addition to not being regulated by the Real Estate Board, they may not belong to any industry organization. However, if the Fair Housing Office hopes to effectively increase understanding and awareness of the law, it is this group that needs to be identified and targeted.

***Recommendation (6).*** **The Virginia Fair Housing Office should develop a written management plan which articulates a cohesive strategy for increasing awareness of and compliance with the Virginia Fair Housing Law. The management plan should, at a minimum, address the following topics: (a) collection and utilization of data concerning training session participants, (b) evaluation of the impacts of training sessions, (c) identification of best practices used by fair housing agencies in other states, and (d) targeting of housing providers and property managers not required to be licensed by the Real Estate Board.**

## OUTCOMES OF FAIR HOUSING CONCILIATION AND INVESTIGATION

As part of its Memorandum of Understanding with HUD, Virginia is expected to consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law, and to seek and obtain the type of relief designed to prevent the recurrence of such practices. Under the Virginia Fair Housing Law, relief can be obtained in three ways: (1) through a conciliation agreement, (2) as a result of a civil lawsuit filed by the Attorney General, or (3) as a result of prompt judicial action taken to obtain a temporary restraining order or injunction.

To the extent that complainants have obtained appropriate and just relief under the Virginia Fair Housing Law, it has been the result of conciliation rather than enforcement. The conciliation process has obtained relief, albeit to varying degrees, for numerous complainants. On the other hand, there have been very few reasonable cause

determinations made by the Real Estate Board, and even fewer civil lawsuits filed or attempts to obtain prompt judicial action by the Office of the Attorney General at the direction of the Board. This section describes and assesses the end-products of Virginia's process for administering and enforcing the Fair Housing Law.

### **Conciliation Process Has Provided Some Relief**

Virginia's fair housing regulations state that the following types of relief may be sought for aggrieved persons in a conciliation:

- monetary relief in the form of compensatory and punitive damages or attorney's fees;
- access to the dwelling at issue or a comparable dwelling;
- provision of services or facilities in connection with a dwelling; or
- injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.

Fair housing conciliations differ from a private settlement of a dispute in that the public interest is to be "vindicated" so as to promote fair housing practices throughout the State. The fair housing regulations list the following types of conciliation agreement provisions that may be sought for the "vindication" of the public interest:

- elimination of discriminatory housing practices,
- prevention of future discriminatory housing practices,
- remedial affirmative activities to overcome discriminatory housing practices,
- reporting requirements, and
- monitoring and enforcement activities.

**Monetary Relief Obtained by the Fair Housing Office.** During FY 1996 and FY 1997, a total of 45 conciliation agreements were approved by the Real Estate Board - 33 agreements in FY 1996 and 12 in FY 1997 - more than half of which resulted in a monetary award. These agreements produced a wide variety of different types of relief (Table 4). For example, in FY 1996 monetary awards ranged from \$200 to \$13,000. The average monetary award obtained via conciliation was \$2,341, while the median award was for \$1,500. The total amount of monetary relief obtained in FY 1996 was \$39,800. Complainants did not fare quite as well in FY 1997, when the average monetary award was \$1,021. During FY 1997, monetary awards ranged from \$150 to \$5,000, with a median monetary award of \$400. The total amount of monetary relief obtained through conciliation during FY 1997 was \$7,150.

The average monetary award obtained by complainants through conciliation in Virginia is somewhat low in comparison to several other state fair housing agencies. Table 5 presents conciliation monetary award data for FY 1997 of other state fair hous-



Table 4

**Types of Relief Obtained for Complainants by Fair Housing Office  
via Conciliation Agreements (Percent of Conciliation Agreements  
Providing Various Types of Relief)**

<b>Fiscal Year</b>	<b>Monetary Award</b>	<b>Desired Housing Unit</b>	<b>Fair Housing Training</b>	<b>Other Relief</b>	<b>Number of Agreements</b>
1996	52%	12%	18%	39%	33
1997	58	8	50	50	12

Note: Other relief includes provisions to "vindicate the public interest" in fair housing such as revising occupancy standards and revising policies and procedures, as well as terms such as agreeing not to seek eviction. Percentages total more than 100 due to multiple types of relief.

Source: JLARC staff analysis of data contained in Fair Housing Office conciliation agreements.

Table 5

**Average Monetary Award Obtained by Complainants  
Through Conciliation During FY 1997**

<b>State</b>	<b>Average Amount*</b>	<b>Number of Conciliation Agreements</b>
Pennsylvania	\$12,860	182
Georgia	\$8,750	19
Florida	\$3,205	40
Connecticut	\$2,100	32
Missouri	\$1,945	4
Delaware	\$1,750	12
North Carolina	\$1,611	18
Maryland	\$1,500	13
Texas	\$1,335	118
Indiana	\$1,157	28
<b>Virginia</b>	<b>\$1,021</b>	<b>12</b>
South Carolina	\$880	25
West Virginia	0	3
<i>Other State Survey Average</i>	<i>\$2,931</i>	<i>39</i>
<i>Other State Survey Median</i>	<i>\$1,611</i>	<i>19</i>

\*Note: Average computed based on conciliation agreements which provided a monetary award, not based on all approved conciliation agreements.

Source: JLARC staff survey of other state fair housing agencies, October 1997.

ing agencies. Among survey respondents, the average award was \$2,931 and the median award was \$1,611.

***Conciliation Provisions to “Vindicate Public Interest.”*** One way to prevent future discriminatory housing practices through conciliation agreements is by requiring that a respondent receive some type of fair housing training. However, over the past two years, Virginia’s record in this regard has been decidedly mixed. As shown in Table 4, only half of the conciliation agreements in FY 1997, and less than 20 percent in FY 1996, required respondents to receive any type of education or training. This has been despite the fact that, in some instances, the respondent acknowledged a lack of familiarity with the provisions of the Virginia Fair Housing Law.

*A complainant with a hearing impairment alleged that she was discriminated against on the basis of her handicap in that the respondents refused to make a reasonable accommodation of allowing her to keep a trained service dog. In correspondence with the complainant, the respondent incorrectly indicated that it was not covered by the Virginia Fair Housing Law. Conciliation was successful in that the respondent agreed to revise the policy concerning service animals. However, despite the respondent’s demonstrated lack of familiarity with the law, no fair housing education or training was required by the conciliation agreement.*

Other types of relief designed to “vindicate the public interest” in fair housing were equally weak. Only eight of the 45 conciliation agreements closed in FY 1996 and FY 1997 included provisions to eliminate ongoing discriminatory practices through the revision of lease agreements or agency rules and regulations. For example, in one case the respondent agreed to amend language in its by-laws, policies, rules, and/or procedures to make reasonable accommodations for disabled tenants and applicants. Only one agreement required quarterly reports to the Real Estate Board. The FHO should take steps to ensure that relief sought in conciliation agreements includes provisions to adequately vindicate the public interest.

***Recommendation (7). The Real Estate Board, the Department of Professional and Occupational Regulation, and the Virginia Fair Housing Office should take necessary steps to ensure that provisions to “vindicate the public interest”, including fair housing training and educational requirements, are included in conciliation agreements in all appropriate instances.***

### **Reasonable Cause Determinations and Filing of Civil Lawsuits Are Rare**

During the five-year period from FY 1993 through FY 1997, JLARC staff identified eight reasonable cause determinations that were made and subsequently upheld by the Real Estate Board under the provisions of the Virginia Fair Housing Law. During two of those years, FY 1995 and FY 1997, no reasonable cause determinations were

made. There were two other reasonable cause determinations during that five-year period that were subsequently reversed by the Board.

Based on the results of JLARC's survey of other state fair housing agencies, it appears that reasonable cause determination resulting from the investigation of fair housing complaints are in fact made infrequently. However, even compared to the national baseline, the frequency of reasonable cause determinations in Virginia over the past five years is low by comparison. JLARC staff analyzed the prevalence of reasonable cause determinations made by state fair housing agencies in FY 1997. On average, reasonable cause determinations comprised approximately nine percent of all the complaint closures, determinations, and conciliations made by survey respondents in FY 1997 (Table 6.) This is similar to an estimate provided by HUD that the national reasonable cause determination rate is between eight and 12 percent of all complaints filed. According to a HUD official responsible for overseeing Virginia's performance:

The number of reasonable cause determinations in Virginia is not necessarily in and of itself a problem, particularly if many complaints are being successfully conciliated with an average monetary award of perhaps \$5,000. However, if the average monetary award were very low, perhaps \$200, then that coupled with the low number of cause determinations would be a problem.

In addition, the executive directors of both private fair housing organizations in Virginia told JLARC staff that they have become reluctant to file complaints with the Fair Housing Office. One stated that "it seems as if the goal of the Fair Housing Office is to avoid enforcement." The fair housing administrator characterized the relationship between the Fair Housing Office and the private fair housing organizations as "fair" and said it is not better due to the organizations' belief that the State process for administering and enforcing the Virginia Fair Housing Law is "ineffective."

A logical extension of the fact that reasonable cause determinations are rare in many states is that relatively few civil lawsuits have been filed by states to enforce the provisions of their fair housing laws. Again, however, Virginia is relatively low compared to the amount of fair housing litigation conducted by other states. Most of the respondents to the JLARC survey reported filing at least one civil lawsuit during FY 1997, and typically had two to three lawsuits pending. For example, North Carolina and Maryland each reported filing three civil lawsuits during FY 1997.

During interviews with JLARC staff, HUD officials responsible for monitoring Virginia expressed the opinion that Virginia has not yet adequately tested the enforcement provisions contained in its fair housing law. For example, the outcomes of the eight reasonable cause determinations in Virginia from FY 1993 to FY 1997 were as follows:

1. case closed following corrective action taken by the respondent;
2. Board utilized administrative hearing and ordered respondent to pay \$300 fine and \$2,600 in hearing costs, although the complainant received nothing;

Table 6

**Prevalence of Reasonable Cause Determinations  
During FY 1997 by Other State Fair Housing Agencies**

State	Number of Reasonable Cause Determinations	Total Determinations, Closures, and Conciliations	Reasonable Cause Determination Percentage
Ohio	79	483	16%
Pennsylvania	31	505	6
Florida	27	206	13
Kentucky	13	42	31
Maryland	13	94	14
Connecticut	11	106	10
Utah	8	95	8
Hawaii	7	52	13
Nebraska	7	51	14
Texas	6	264	2
Indiana	5	133	4
North Carolina	5	68	7
Georgia	4	146	3
Missouri	4	131	3
South Carolina	3	53	6
Arizona	2	71	3
Tennessee	1	8	13
West Virginia	1	17	6
Delaware	0	26	0
<b>Virginia</b>	<b>0</b>	<b>145</b>	<b>0</b>
<i>Other State Survey Average</i>	<i>12</i>	<i>134</i>	<i>9</i>
<i>Other State Survey Median</i>	<i>6</i>	<i>94</i>	<i>7</i>

Note: All data are for 12 month period ending June 30, 1997 except for Utah which are for 12-month period ending September 30, 1997.

Source: JLARC staff analysis of data collected from survey of other state fair housing agencies.

3. case closed with a violation but no sanction because FHO was unable to locate the complainant to attempt conciliation;
4. consent degree, following the filing of a civil lawsuit, wherein the respondent agreed to personally apologize to complainant in Virginia and to pay complainant's travel expenses from Georgia;
5. conciliation, following the issuance of a charge of discrimination, whereby complainant received \$13,000;
6. the issuance of a charge of discrimination and referral to the OAG conditional upon the respondent satisfying five requirements, including pay-

ment of \$1,500 to complainant, all five of which had previously been rejected by the complainant during attempted conciliation;

7. filing of a civil lawsuit which was subsequently dismissed upon request of the OAG at the direction of the Real Estate Board; and
8. filing of a civil lawsuit which is currently pending in Franklin County Circuit Court.

Assessing the extent to which states have filed civil lawsuits does not address fair housing complaints which are adjudicated using a quasi-judicial administrative hearing. For example, Pennsylvania reported having 24 cases on its public hearing docket as of July 1, 1997. This type of adjudication mechanism is not provided for by the Virginia Fair Housing Law, but is utilized by all but one of the states responding to the JLARC survey. The need for administrative hearings to adjudicate fair housing complaints is discussed in the next section.

#### **ESTABLISHMENT OF AN ADMINISTRATIVE HEARING PROCESS WOULD AID IN THE ADJUDICATION OF COMPLAINTS**

The use of a quasi-judicial administrative hearing process for adjudicating fair housing complaints is a key component of HUD's efforts to administer the federal fair housing act, and it is the prevalent practice at the state level as well. All but one of the other substantially-equivalent states which responded to the JLARC survey utilize some type of quasi-judicial administrative hearing process for adjudicating fair housing complaints. Virginia is a notable exception in that it lacks an administrative hearing mechanism for: (1) receiving evidence and testimony, (2) adjudicating complaints by issuing findings of fact and law which affirm or reject a reasonable cause determination, and (3) imposing penalties and affirmative relief subject to final approval by the state fair housing agency. Statutory provisions do exist for an administrative hearing to determine whether to take disciplinary action against a licensee of the Board if he or she has engaged in discriminatory housing practices.

An administrative hearing mechanism for adjudicating fair housing complaints is not necessarily a panacea. However, it could potentially help to achieve a more efficient resolution of complaints, make better use of investigative evidence within the complaint adjudication process, and place the State's fair housing agency more in control of the administration and enforcement of the Virginia Fair Housing Law. A greater degree of control would be consistent with the Real Estate Board's degree of control over other regulatory functions. In addition, establishment of this type of mechanism would result in the Virginia Fair Housing Law being more consistent with the federal fair housing act than is now the case. This section reviews the mechanisms that are

used by other substantially-equivalent states, and discusses the feasibility of this approach for use in Virginia.

### **Approaches Used by Other State Fair Housing Agencies**

A variety of approaches are currently used by fair housing agencies in other substantially-equivalent states to adjudicate fair housing complaints following the issuance of a reasonable cause determination and a charge of discrimination. The specific role played by the fair housing agency within the process can differ from state to state. For example, while some states such as North Carolina and Maryland utilize an administrative law judge (ALJ) system, board members of the fair housing agency serve as hearing officers in other states, such as Georgia, Kentucky, and South Carolina. Typically, states follow the federal model of providing the complainant or respondent a right to elect to adjudicate the complaint in court rather than in an administrative proceeding.

*The North Carolina Human Relations Commission utilizes an ALJ system. After the commission director makes a reasonable cause determination and conciliation attempts have failed, the complainant, respondent or the commission may elect to have the claims and issues asserted in the reasonable cause determination decided in a civil lawsuit filed by the commission. If a civil lawsuit is not elected, the case is presented to an ALJ for hearing and adjudication. The ALJ will make a proposal for a decision, including proposed findings of fact, proposed conclusions of law, and proposed relief, to the commission. The commission makes a final decision and orders appropriate relief as necessary. The commission can impose compensatory damages, injunctive relief, and a civil penalty not exceeding \$50,000 if the respondent has been adjudged to have committed two or more unlawful discriminatory housing practices during the prior seven-year period.*

\* \* \*

*The Georgia Commission on Equal Opportunity utilizes commission members to adjudicate complaints and render binding decisions. After the commission administrator makes a reasonable cause determination, he immediately issues a charge on behalf of the complainant. The complainant or respondent can elect to have the claims asserted in the charge decided in a civil action filed by the Attorney General, who is required to file suit provided that the administrator's recommendation is well grounded in fact and warranted by law. Alternatively, however, the complainant or administrator may elect to institute an administrative hearing before a three-member panel of the commission, one member of which must be an attorney. Evidence and testimony is received at the hearing. The commission issues findings*

*of fact, conclusions of law, and issues a final order. The commission can award actual compensatory damages, injunctive relief, and reasonable attorney's fees.*

\* \* \*

*The Pennsylvania Human Relations Commission, in the event that a reasonable cause determination has been made and conciliation has failed, may convene a public hearing. The hearing is conducted by a hearing examiner employed by the commission or by a panel of at least three commissioners. Testimony is given under oath and evidence is submitted. The complainant is represented by a commission attorney. At the conclusion of the hearing, transcripts are obtained and briefs are submitted. A final order is made by the commission, which may be appealed in state court.*

### **Feasibility of Administrative Hearing Process for Use in Virginia's Fair Housing Function**

The Virginia Administrative Process Act (VAPA), contained in Section 9-6.14:1 et seq. of the *Code of Virginia*, provides for the type of administrative hearing mechanism currently used by most other state fair housing agencies. The Virginia Fair Housing Law in fact authorizes the use of "an administrative hearing to determine whether to revoke, suspend or fail to renew the license" of a Real Estate Board regulant for whom reasonable cause exists to believe the regulant has engaged in discriminatory housing practices. However, the Virginia Fair Housing Law does not authorize the use of any type of administrative hearing for non-regulants who are party to a complaint. As previously mentioned, 80 percent of fair housing complaints in Virginia involve individuals who are not required to be licensed by the Real Estate Board.

***Administrative Process Act Provisions.*** VAPA provides for informal fact-finding and formal hearings as means by which State agencies, boards, or commissions may render case decisions. Informal fact-finding consists of conference or consultation proceedings and include rights of the parties to the case:

- to have reasonable notice thereof;
- to appear in person or to be represented;
- to have notice of any contrary fact basis or information in the possession of the agency which can be relied upon in making an adverse decision;
- to receive a prompt decision; and
- to be informed of the factual or procedural basis for an adverse decision.

If a hearing officer is not used by the agency during an informal fact-finding proceeding, the agency shall render a case decision within 90 days of the proceeding. If a hearing officer is used, the agency shall render a case decision within 30 days of receiving the hearing officer's recommendation.

VAPA authorizes agencies to conduct a formal hearing for the taking of evidence upon relevant fact issues, if informal fact-finding has failed to dispose of a case by consent or if an agency's enabling legislation expressly provides for case decisions to be made based upon a hearing. The presiding officers at such hearings are empowered to :

- administer oaths,
- receive probative evidence,
- exclude irrelevant, immaterial, insubstantial, privileged or repetitive proofs;
- allow rebuttal or cross-examination,
- hold conferences for the settlement or simplification of issues by consent, and
- regulate and expedite the course of the hearing.

In all such formal hearings, the parties shall be entitled to:

- be accompanied and represented by counsel,
- submit oral and documentary evidence and rebuttal proofs,
- conduct cross-examination,
- submit proposed findings and conclusions, and
- have the proceedings completed and a final agency decision rendered promptly.

According to VAPA, all formal hearings shall be presided over by a hearing officer selected on a rotating basis from a list prepared by the Executive Secretary of the Virginia Supreme Court (OES). Agency heads are required to request assignment of a hearing officer from OES to preside over a hearing. All hearing officers are required to meet the following minimum standards:

- active membership in good standing in the Virginia State Bar;
- active practice of law for at least five years; and
- completion of a course of training approved by OES.



In order to comply with the demonstrated requirements of the agency requesting a hearing officer, OES may require additional training before a hearing officer will be assigned to a proceeding before the agency.

Virginia does not have an administrative law judge system. As noted in the 1993 JLARC study, *Review of Virginia's Administrative Process Act*, past concerns about the use of ALJ's in Virginia have involved the expense of creating ALJ positions. The 1993 JLARC study also described several problems with the hearing officer system, and suggested some options for addressing the problems.

***Current Use of Administrative Hearings by Real Estate Board/DPOR.***

As part of the enforcement and disciplinary aspects of their real estate regulatory activities, DPOR and the Real Estate Board currently utilize informal fact-finding conferences and formal hearings pursuant to VAPA. Typically, a member of the Real Estate Board presides at the informal fact-finding conference. When necessary, however, the Real Estate Board may elect to have a hearing officer, obtained from the list maintained by OES, preside at the conference. The presiding officer provides proposed findings of fact and recommended conclusions regarding the regulatory issues. Based on the proposal, the Real Estate Board may elect to do any of the following:

- issue a final order,
- close the case with a finding of no violation,
- accept an offered consent order,
- offer a revised consent order, or
- have the case scheduled for a formal hearing pursuant to VAPA.

The purpose of these hearings is to discipline licensees of the Board, not to provide affirmative relief to complainants who are victims of discriminatory housing practices.

***Current Use of Administrative Hearings by Council on Human Rights.***

If based on an investigation and on consultation with the Attorney General's Office, the CHR director determines that there is reasonable cause to believe that a discriminatory act has occurred and conciliation efforts have failed, the case may be scheduled for a public hearing pursuant to VAPA. According to State administrative regulations promulgated by CHR pursuant to VAPA:

- All cases are heard by a hearing officer appointed by the CHR from the list maintained by OES.
- The hearing officer will not be bound by statutory rules of evidence or technical rules of procedure.
- The complainant and respondent shall appear in person, but may be assisted by an authorized representative.
- All testimony shall be given under oath.

- Irrelevant, immaterial and unduly repetitious evidence shall be excluded at the discretion of the hearing officer.
- The hearing officer may accept relevant documents and other evidence into the record provided they have been produced to the CHR and the other party at least five working days prior to the hearing.
- Each party shall be provided the opportunity for oral argument.
- The CHR votes to accept or not accept the hearing officer's findings. If they are not accepted, the findings are returned to the hearing officer for further consideration, or else a new hearing officer is appointed.

***Administrative Hearing Process for Fair Housing Has Potential Advantages and Is Feasible.*** From the perspective of the State's fair housing function, there are potential advantages to the establishment of an administrative hearing process. For example, the process could be structured in such a way that a reasonable cause determination by the Real Estate Board is either affirmed or rejected by the entity conducting the hearing. This could serve to place the Real Estate Board, and the Fair Housing Office, more in control of the administration and enforcement of the Virginia Fair Housing Law. For example, following a reasonable cause determination, the role of the Attorney General's Office within the process could be simply to defend the Board's determination rather than having to consider the relative merits of a civil lawsuit. The defense of administrative determinations made by a State governing board is consistent with the role of the Office of the Attorney General. Other potential advantages to an administrative hearing process include a more efficient resolution of complaints, allowing for better use of investigative evidence within the complaint adjudication process, and making the Virginia Fair Housing Law more consistent with the federal fair housing act than is now the case.

The establishment of an administrative hearing process for the adjudication of all fair housing complaints, not just those involving Real Estate Board regulants, in Virginia is feasible. However, certain issues — such as the right of election to file a civil lawsuit, and designation of the parties who would preside over the hearing — would need to be considered as part of the effort to develop a new process.

***Recommendation (8).*** The General Assembly may wish to consider amending the *Code of Virginia* to establish a quasi-judicial administrative hearing mechanism for the adjudication of fair housing complaints.

#### SEVERAL ASPECTS OF FAIR HOUSING OPERATIONS SHOULD BE ADDRESSED

Several aspects of Fair Housing Office operations may help to explain the fairly substantial difference in outcomes between Virginia and the outcomes in other

states as reported by the JLARC survey. These include differences of opinion between the FHO and the Office of the Attorney General, limited use of testing during investigations, and limited coordination between the investigation and conciliation of complaints. This section examines these aspects of Fair Housing Office operations and makes recommendations for improvements.

### **Differences of Opinion Between Fair Housing Office and Attorney General's Office**

The operations of the Fair Housing Office have been characterized and affected by frequent differences of opinion between the fair housing administrator and legal staff in the Office of the Attorney General's commerce and trade section concerning whether reasonable cause exists to believe that the Virginia Fair Housing Law has been violated. There have been several complaints for which, based upon an investigation, the fair housing administrator recommended that the Real Estate Board make a reasonable cause determination but the OAG subsequently advised the Real Estate Board to make a determination of no reasonable cause. While each complaint is unique, the OAG's recommendations against reasonable cause typically have been based on one or more of the following:

- The investigation by the Fair Housing Office was inadequate in that insufficient evidence had been obtained to prove the allegations. Or:
- The investigation was not completed in a timely fashion to allow adequate time for review of the file prior to the expiration of the one-year time period within which the Attorney General believes the Real Estate Board must act on a complaint. Or:
- The case as developed by the investigation would not prevail in court due to exculpatory evidence contained in the file or to other mitigating factors.

The following case examples illustrate how these concerns by the Attorney General's Office have affected the outcome of some fair housing complaints:

*A complainant alleged he was discriminated against on the basis of familial status when he tried to rent a three-bedroom apartment for his six-person family. He was turned down by the apartment complex on the grounds that it would have exceeded its five-person occupancy standard for a three-bedroom apartment. The complainant subsequently found an apartment elsewhere. The fair housing administrator recommended a reasonable cause determination based on the following: (1) the respondent did not deny limiting number of people in three-bedroom unit to five, which was in violation of fair housing occupancy guidelines issued by HUD which are based on the number of square feet per person rather than the number of rooms per person;*

and (2) testing evidence provided by a private fair housing organization which showed other families of six also being denied rentals.

*The Office of the Attorney General recommended a no reasonable cause determination on the grounds that (1) the HUD guidelines were evolving and did not constitute a requirement; (2) the respondent sought guidance from HUD concerning occupancy standards and willingly changed its occupancy policy once the complaint brought the matter to its attention and feedback had been obtained from HUD on the occupancy standards issue; (3) there was exculpatory evidence contained in the testing information; and (4) the respondent denied that the complainant ever visited the complex.*

*The complaint file appears to show that the respondent was given the benefit of the doubt at the expense of the complainant. First, the respondents never sought guidance from HUD concerning occupancy standards, but rather were provided with a copy of the standards that had been requested and obtained by a private fair housing organization. Second, the FHO investigator strongly refuted the respondent's claim that the complainant had never visited the apartment complex by noting that the complainant correctly described the interior and exterior of the rental office as well as how to get to the complex. Third, the OAG's description of exculpatory testing evidence did not mention testing conducted in June 1995 during which another family of six was told that it could not rent a three-bedroom apartment.*

\* \* \*

*A complainant confined to a wheelchair alleged that he was discriminated against on the basis of disability when he tried to purchase a condominium unit. The complaint alleged that the builder of the condominium had violated fair housing statutes that require new buildings to be designed and constructed in a manner that makes them accessible to, and adaptable for use by, handicapped individuals. The complainant stated that (1) the condominium did not have an accessible route to and through the dwelling unit; (2) kitchens and bathrooms lacked sufficient space to maneuver rendering appliance and fixtures unusable; and (3) all of the doors designed to allow passage within the dwelling unit were not sufficiently wide for a wheelchair. The dispute over the accessible route to the dwelling unit focused on the use of a lift, rather than a ramp, to get from the building entrance to the elevators leading up to the dwelling units. One of the respondent's primary defenses was that building code officials from the local government had approved the site and design plan.*

*This complaint involved issues that the Fair Housing Office had not had to investigate before. In fact, the Fair Housing Office did not even*

*have a copy of HUD's design and construction requirements for handi-capped accessibility. During the investigation, the FHO requested technical assistance from HUD personnel but none was received. Consequently, the fair housing administrator hired a private consultant to assist with the investigation by inspecting the property to determine if it had complied with the accessibility requirements. The consultant advised that while the respondent was generally in compliance with the law, it was nevertheless not in compliance based on the design of the entrance, doors, and kitchen. Based on the investigation, the fair housing administrator recommended a reasonable cause determination.*

*According to the fair housing administrator: "It's not a perfect case, none are. But it's a good case to seize the attention of builders and developers to say we're going to enforce the accessibility requirements. I can't think of a better case to take some risks with than one involving an emerging area (disability rights) of significant importance."*

*The OAG stated that it never received a complete investigative file from the FHO. Based on its review of the available evidence, including the anticipated testimony of State and local building officials and HUD officials, the Office of the Attorney General recommended that the complaint not be pursued on the grounds that there was insufficient evidence to believe that reasonable cause existed that the law had been violated.*

\* \* \*

*A complainant alleged that his attempt to rent an apartment had been denied in a discriminatory manner because of his race and sex. The complainant alleged he had been living in the apartment with his girlfriend, but then the girlfriend left and he tried to rent the apartment on his own. The complainant alleged that the respondent said that he did not rent to single, white males. The respondent admitted he made the statement but that it was a slip of the tongue, and the real reason he wanted the complainant to leave was that he had failed to pay his rent, and that complaints had been received concerning alleged drug use and that he had beat-up his former girlfriend.*

*The fair housing administrator recommended a reasonable cause determination based on the respondent's admitted statement, and based on a review of rental records which found that none of the respondent's dwelling units were rented to white tenants.*

*Based on its review of the file, the Office of the Attorney General advised against a reasonable cause determination on the grounds that the case was unwinnable given the nature of the complainant, in that*

*the complainant may have assaulted his girlfriend and may have used drugs on the premises. The investigator had interviewed the former girlfriend but, based on the summary statement provided in the final investigative report, she was not asked about any violence or drug use by the complainant. The Attorney General also cited a lack of corroborating evidence of discrimination.*

### **Relationship between Real Estate Board and Fair Housing Administrator**

Although the fair housing administrator in effect works on behalf of the Real Estate Board, the Board does not have any authority to hire, fire, or compensate the fair housing administrator. That is the exclusive authority of the Director of DPOR. On the other hand, the Real Estate Board can and does provide feedback to the DPOR Director concerning their level of satisfaction with the fair housing administrator.

One area of the fair housing administrator's performance that has been a source of concern for the Real Estate Board is the provision of legal advice, and the undertaking of legal analysis, by the fair housing administrator. While the fair housing administrator happens to be an attorney, this is not a specified requirement for the position. Nevertheless, the fair housing administrator has frequently cited legal precedent and case law in making recommendations for reasonable cause determinations. However, the Real Estate Board does not want the fair housing administrator to provide it with any type of legal advice. Rather, the Real Estate Board looks to its assigned counsel from the Office of the Attorney General to provide it with legal advice on fair housing cases. Consequently, in cases in which the fair housing administrator and OAG have differed in terms of whether or not reasonable cause exists, the Real Estate Board has without exception followed the recommendation of the OAG.

Another recent source of concern on the part of the Real Estate Board has been the direct approval of conciliation agreements by the fair housing administrator. The Board's fair housing regulations, as published in 18 VAC 135-50-470 delegate authority to the fair housing administrator to approve conciliation agreements. This regulatory provision stands in contrast to the Board's statutory responsibility to approve conciliation agreements. Approval by the fair housing administrator of the conciliation agreement described in the following case example led the Board to revoke, as a matter of policy, the fair housing administrator's authority to sign off on conciliation agreements without Board approval

*A married couple complained that they had been discriminated against on the basis of familial status when their apartment complex raised the monthly rent by \$100 by deciding to treat the couple's child as a third-party occupant under an existing provision of the lease. The complainants had the child prior to moving into the apartment. Rather than pay the increased rent, the complainants moved and then filed their complaint. Based on the investigation, the fair housing admin-*

*istrator recommended a reasonable cause determination on the grounds that the third-party occupant provision disproportionately affected families with children versus families without children. The Office of the Attorney General recommended a no reasonable cause determination based on the conclusion that the rent increase applied equally to families with children and to other tenants with adults as third-party occupants.*

*The Real Estate Board took no action on this complaint upon receiving the cause and no cause recommendations. Therefore, efforts to conciliate the complaint continued. The fair housing administrator approved a conciliation agreement, under authority delegated by the fair housing regulations, which awarded \$5,000 to the complainant. The fair housing administrator announced the conciliation at the October 24, 1996 board meeting. At that same meeting, the Real Estate Board revoked the authority of the fair housing administrator to approve conciliation agreements. However, this authority continues to exist in the State's fair housing regulations, which have not been revised.*

As a result of this Board decision, the scope of the fair housing administrator's authority and responsibility within the administrative process has been reduced in a manner that is inconsistent with the State's fair housing regulations.

### **Collection and Consideration of Evidence Could Be Improved**

The State's fair housing regulations define three purposes of an investigation:

- to obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice,
- to document policies and practices of the respondent involved in the alleged discriminatory housing practice, and
- to develop factual data necessary for the administrator on behalf of the board to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

One of the stated responsibilities of Fair Housing Office field investigators is to conduct "effective" investigations "that allow the Real Estate Board to make a reasoned determination of the complainant's allegation."

According to a HUD official who is responsible for monitoring the performance of the Fair Housing Office, the investigations are generally satisfactory but some problems have been noted:

They approach the investigations wisely and their strategies are correct. As a result, complainants are getting a pretty fair shake. Staff make their best effort to be even handed in the application of the law. They have done some very good investigations, as good as any fair housing agency in the country.

However, there are times when not all witnesses are interviewed. This does not happen in every case, but we have brought certain cases to their attention. In addition, their written case determinations do not always document and express all the relevant factors, even though these factors may have been identified and evaluated during the investigation.

JLARC staff reviewed more than 60 Fair Housing Office complaint files. During this review, JLARC staff identified several instances in which the FHO investigation could have been more effective through improved collection and consideration of evidence.

***Collection of Evidence.*** In one recently completed investigation, the Fair Housing Office failed to (1) interview all relevant witnesses, (2) recognize that the respondent was being investigated by HUD in response to a prior complaint, and (3) adequately evaluate the merits of all of the complainants' allegations.

*In May 1996, a white complainant alleged that she was discriminated against on the basis of race in that she was denied a transfer from her two-bedroom apartment to a three-bedroom unit, and served with a notice evicting her from her apartment, because of visits to the apartment by her son's black friends. According to the complainant, the failure to obtain a three-bedroom apartment was despite the fact that she was on the waiting list prior to other families who subsequently received transfers to three-bedroom units. The complainant also alleged that the respondent, an employee of a HUD-subsidized apartment complex, made racially-prejudiced statements to her.*

*At the time this complaint was received, the Fair Housing Office failed to recognize that a previous complaint against the same respondent had been received in 1993, received some investigation, and then had been returned to HUD for completion of the investigation when the 365-day statutory time limit expired in 1994. Had the FHO reviewed its database and identified the prior complaint, it would have been able to coordinate its investigation with HUD.*

*Based on the Fair Housing Office investigation, a no reasonable cause determination was made in August 1997. Shortly thereafter, the complainant's attorney submitted a letter criticizing the investigation in that not all of the witnesses were interviewed, and also disagreeing with the no cause determination. The fair housing administrator re-*



sponded by acknowledging that the investigator had not interviewed every person named by the complainant but stated that the investigator had interviewed "everyone whose testimony was relevant and should have been reliable." However, the prior complaint file, which the Fair Housing Office did not refer to during the investigation, identified two other individuals who stated that the respondent made racially-prejudiced statements directly to them. If these individuals had been interviewed by FHO staff, it could have helped to corroborate the complainant's allegation that the respondent made racially-prejudiced comments to her.

It is questionable whether the Fair Housing Office adequately investigated the complainant's allegation that her request for a transfer to a three-bedroom apartment was denied on the basis of race. The investigator obtained from the respondent the waiting list for three-bedroom apartments. The race of the individuals was not stated on the list. The final investigative report stated that review of the list "indicated tenants were not transferred to three-bedroom units based on their application dates. It can not be determined whether race was a factor in the decision to transfer residents to three-bedroom units. There does not appear to be a pattern." The investigator told JLARC staff that he independently obtained the race of each individual on the list. However, information concerning the race of the individuals is not stated in either the final investigative report or the case summary.

If the Fair Housing Office had been properly aware of the prior complaint filed in 1993, it could have contacted the HUD investigator to share information potentially relevant to both investigations. Had this been done, the Fair Housing Office may have learned that the respondent was cited by HUD for deficiencies concerning leasing and occupancy standards, including the failure to maintain or properly manage a tenant waiting list.

In November 1997, three months after the no cause determination by the Real Estate Board, HUD made a reasonable cause determination and issued a charge of discrimination stemming from the complaint originally filed in 1993. The charge issued by HUD cited as support the same racially-discriminatory statement that was alleged in the complaint filed with the Fair Housing Office in 1996.

There have been occasions in which the Fair Housing Office staff failed to obtain significant evidence that might have changed the outcome of their investigation.

A black complainant alleged that he was discriminated against because the respondent failed to sell him a residential lot and a new home due to race. The complaint stated that the builder kept a deposit

*check but never intended to build the house requested by the complainant, and only returned the check upon being contacted by the complainant's attorney. Following an investigation, the fair housing administrator wrote to the complainant and stated that, hearing the respondent's side of what happened "convinced me that you do not have a strong case." The fair housing administrator encouraged the complainant to seriously consider the respondent's settlement offer. Soon thereafter, the complainant withdrew the complaint, retained an attorney, and filed a private lawsuit in federal court. Based in part on additional evidence developed by the plaintiff's attorney, showing that the respondent had negotiated in bad faith with the complainant, the complainant was awarded punitive damages of \$100,000.*

**Consideration of Evidence.** In one particular complaint, the field investigator and the fair housing administrator disagreed on whether or not there was reasonable cause to believe that the Virginia Fair Housing Law was violated.

*A white complainant alleged that she was discriminated against on the basis of race, in that she was evicted from her apartment because her daughter was black. The complainant received a notice from the respondent that she needed to vacate her apartment so that new sewer and water connections could be installed. Based on the recommendation of the fair housing administrator, who believed the evidence was insufficient to establish reasonable cause, the Real Estate Board made a no reasonable cause determination. Significant reliance was placed upon the respondent's statement that he issued the eviction notice before knowing that the complainant's daughter was black. The case analysis did state that the investigation "raised certain concerns about how the complainant was treated." For example: (1) none of the other tenants had received any notice of new water and sewer connections nor had they been asked to move; (2) the local government had no record of a building permit which would be required for the type of utility work described by the respondent; (3) the notice to vacate was received ten days after the daughter moved in with the complainant; and (4) the daughter stated under oath that the respondent saw her moving in. The field investigator told JLARC staff that she felt a reasonable cause determination should have been made in this case, and actually considered bringing the case to HUD's attention.*

In the following case the Real Estate Board, upon the advice of the Office of the Attorney General, reversed a reasonable cause determination that it had previously made based on the original recommendation of the fair housing administrator.

*A complainant alleged that she was discriminated against on the basis of her daughter's disability, in that her townhouse complex refused to provide reasonable accommodations by allowing them to keep a service dog in the dwelling unit. The function of the service dog was to*

*alert other family members when the daughter began to have an epileptic seizure. The respondent replied that the complainant (1) failed to provide written verification of the dog's medical necessity when originally requested, and (2) that written verification was finally furnished only after an eviction notice had been issued .*

*Three months after preparation of the final investigative report, and two months after the expiration of the statutory 365-day time period for processing complaints, a supplemental response was received from the respondent. The supplemental response stated that the complainant had refused an offer to move to a unit in another part of the complex where pets are permitted. This information was not reflected in the final investigative report.*

*The fair housing administrator recommended a reasonable cause determination. Based on that recommendation, two months after the supplemental response was received by the Fair Housing Office, the Real Estate Board issued a charge of discrimination and referred the case to the OAG for filing of a civil lawsuit. The OAG subsequently advised the Real Estate Board to reverse its earlier reasonable cause determination, and revoke the charge, after reconsideration of the respondent's supplemental response. During an interview with JLARC staff, the fair housing administrator acknowledged a failure to fully consider information in the supplemental response prior to making his recommendation to the Board.*

The importance of careful collection and consideration of evidence during the investigation of fair housing complaints can not be overemphasized. Without constant attention to the fundamental aspects of investigations, fair adjudication of complaints is threatened and public confidence in the State's fair housing function could suffer. The collection and consideration of evidence by the Fair Housing Office can and should be improved.

***Implementation of 365-Day Rule Can Impact Consideration of Evidence.***

As previously discussed in Chapter II, there are different interpretations of statutory time limits for the completion of complaint processing. While Virginia's statutory provision is rather unique, it is potentially useful as a means of promoting efficient operations provided that it is administered in a reasonable manner and allows for carefully-chosen exceptions. On the other hand, problems could develop if the 365-day time limit on investigations serves as justification to block proper consideration of evidence received shortly after expiration of the deadline, thereby lessening the adequacy of the investigation. To that extent, the statutory 365-day rule would benefit by providing authority to make reasonable exceptions in appropriate cases.

*A complainant alleged that she was discriminated against on the basis of disability by the respondent's failure to make reasonable accommodations for her wheelchair-confined son. The complainant alleged*

*that, following a change in management, the apartment complex re-neged on the reasonable accommodation provided by the prior management of maintenance of a clear path for the wheelchair to and from the apartment. The complainant alleged that the new management blocked the path with maintenance trucks and other vehicles. Based on the recommendation of the fair housing administrator, the Real Estate Board made a no cause determination.*

*The complainant's attorney claimed that the Fair Housing Office had failed to interview all of the witnesses originally identified by the complainant. The fair housing administrator and field investigator replied that they interviewed everyone identified by the complainant. After learning on her own that two witnesses had not been interviewed, the complainant's attorney contacted the fair housing administrator who informed her that a no cause determination had been reached but not yet issued. The complainant's attorney asked the fair housing administrator to postpone issuance of the letter of determination until after she submitted affidavits for the two witnesses. The letter of determination was nonetheless issued the same day.*

*The complainant's attorney wrote to HUD criticizing the conduct of the investigation. HUD informed the fair housing administrator that it believed the investigation did not adequately address whether the respondents made any attempts to accommodate the complainants' request that the apartment exit be kept free of obstructions. In a response to HUD, the fair housing administrator acknowledged that the testimony of the additional two witnesses would have been important because it would have directly contradicted the testimony of the respondent's witness, but it couldn't be considered because the one-year statute of limitation was expiring. However, the 365-day time period had already expired more than one month prior to the final investigative report being written.*

The *Code of Virginia* is vague as to whether in fact the General Assembly intended for a 365-day time limit to apply just to completion of the investigation, or also to final Board action on the complaint. Virginia's statutory 365-day rule would benefit from clarification to distinguish between the time in which an investigation must be completed, and the time in which investigative evidence can be considered and a determination made.

**Recommendation (9).** The General Assembly may wish to amend Sections 36-96.10 and 36-96.11 of the *Code of Virginia* to (a) clarify whether a 365-day time limit applies to the issuance of a complaint determination by the Real Estate Board; and (b) provide statutory authority for an investigation of a fair housing complaint to extend beyond 365 days if completion of the investigation within 365 days is impracticable.

## Use of Testing Could Be Enhanced to Strengthen Investigations

As previously discussed in Chapter I, testing has been used by many fair housing organizations as an effective means of gathering evidence during an investigation. If conducted properly, testing can provide comparative evidence that can be used to help determine whether or not an individual was treated unfavorably in the housing market solely due to his or her membership in a protected class. Not all types of fair housing complaints are equally appropriate for testing. For example, complaints alleging a refusal to rent or sell are readily testable. On the other hand, complaints arising from evictions or failure to provide adequate services are less amenable to testing.

The presence of several elements can help to make testing an effective and integral part of the investigation of fair housing complaints. First, staff within the Fair Housing Office need to systematically identify new complaints for which testing could help to determine whether or not discriminatory practices occurred. Second, the Fair Housing Office needs to have adequate arrangements for the performance of the testing and evaluation of the results. Third, the Fair Housing Office, particularly the field investigators, needs to effectively communicate with the testing organization. For example, investigators should interview testers concerning their training, methodology, and debriefing in order to have a full understanding of what evidence was obtained and how it was interpreted.

***Current Use of Testing by the Fair Housing Office Is Limited.*** At present, information obtained through testing is used to a limited extent during the investigation of complaints. Frequently, new complaints filed by fair housing organizations have testing reports attached to them as exhibits. This information can be used by the Fair Housing Office during its investigation. However, in order to make effective use of the information there needs to be some follow-up by the investigator concerning how the testing was conducted and how the results were evaluated and interpreted. Otherwise, the information could be underutilized as evidence in determining whether or not a discriminatory housing practice occurred. Some complaints investigated by the Fair Housing Office could potentially benefit from better utilization of information previously-obtained through testing. For example:

*A black complainant who was also pregnant alleged that she was discriminated against on the basis of race and familial status in that the respondent refused to rent her an apartment. The complainant alleged that she made a telephone call in response to a newspaper advertisement for an apartment. Upon arriving at the appointed time to view the apartment, the complainant alleged that the respondents began to misrepresent the actual availability of the apartment once they realized she was black. The results of three tests conducted by a private fair housing organization over a three-day period were attached to the complaint. Based on the results of the investigation, the fair housing administrator recommended a reasonable cause determination. The file contains no indication that the FHO investigator ever interviewed*

*the testers, or took any other steps to understand how the testing evidence was obtained, evaluated, or interpreted.*

*The Office of the Attorney General recommended that the Real Estate Board make a no reasonable cause determination for a number of reasons, including that the evidence had not been developed. The OAG also noted the lack of sworn witness statements from the testers.*

The Fair Housing Office may also initiate testing on its own in response to complaints. The complaint intake specialist is responsible for identifying newly-received complaints that are appropriate for testing, and discussing those with the fair housing administrator. Over the past year, two such complaints have been identified. However, in each case the complaint was withdrawn prior to any testing being done. Over the past few years, other complaints investigated by the Fair Housing Office could have potentially benefited from testing initiated upon receipt of the complaint.

*A black complainant alleged that she was discriminated against on the basis of race in that the respondent misrepresented the availability of rental housing. The complainant stated that (1) she spoke with the respondent by telephone and made an appointment to see the house; (2) the respondent did not keep the appointment; (3) a silver or gray mid-size car drove past slowly while she was waiting for the respondent and that the car's white occupants stared at her; (4) she called the respondent the next day and he said another applicant would probably get the rental; and (5) one of her co-workers called the respondent a few minutes later and was told the house was still available. The investigation revealed that the respondent owned a silver/gray Oldsmobile. No testing was conducted during the investigation. Based on the fair housing administrator's recommendation, the Real Estate Board made a reasonable cause determination, issued a charge of discrimination, and referred the case to the Office of the Attorney General for filing of a civil lawsuit. The OAG did file a lawsuit, but subsequently had the case dismissed due to concerns with the adequacy of the evidence.*

The Fair Housing Office relies on informal arrangements with private fair housing organizations, particularly HOME, to conduct testing upon request. Provided that the complaint is from the regular service area of the fair housing organization, and provided that the private fair housing organization has sufficient staff resources at the time of the request, testing is generally conducted at no charge to the Fair Housing Office. However, to the extent that a complaint is from outside the organizations' normal service areas (that is, anywhere in the State other than Northern Virginia or the Richmond metropolitan area), the ability of the Fair Housing Office to obtain evidence through testing is extremely limited.

***Use of Testing by Other State Fair Housing Agencies.*** The use of testing appears to be more extensive, and is performed utilizing a more structured approach,

by fair housing agencies in some other states than it is in Virginia. For example, some states responding to the JLARC survey, such as Georgia and Kentucky, report having formal contracts for the performance of testing and the evaluation of testing results.

*Georgia has a one-year \$25,000 contract with a private vendor to recruit testers, develop testing criteria and methodology, and evaluate the data obtained from the tests. Under the contract, testers are paid \$50 per test. Georgia's fair housing agency had previously relied upon private fair housing organizations to perform testing, but it became dissatisfied with the methodology that was used. These testing expenditures have been allowed by HUD under its Special Enforcement Efforts (SEE) grant.*

\* \* \*

*Kentucky's fair housing agency staff establish the parameters for its testing program and supervise the performance of a private contractor which conducts the testing. Testing is conducted both prior to notifying the respondent of the complaint, and during the actual investigation. Kentucky is also working on a pilot project in which one real estate company and two apartment management associations will perform self-testing under the auspices of the fair housing agency, and develop corrective action plans based on the tests that are subject to review by the fair housing agency.*

Other states, including Maryland and Ohio, also have used testing as an audit tool, rather than simply in response to complaints, in order to assess the level of voluntary compliance with fair housing laws. These two states funded their audit testing using Fair Housing Initiatives Program grants from HUD. Since 1995, more than \$2 million in FHIP grants have been obtained by fair housing agencies in 12 other substantially-equivalent states to support both administrative enforcement as well as education and outreach activities. Virginia's Fair Housing Office has not applied for or received any FHIP grants in at least the past five years.

Audit testing can also be used by fair housing agencies as a means of developing agency-initiated complaints as part of the overall enforcement of the fair housing law. The *Code of Virginia* and the Virginia Fair Housing Regulations both authorize the Real Estate Board to file complaints on its own initiative. Based on JLARC's staff analysis of the Fair Housing Office complaint database, four Board-initiated complaints were filed in the early 1990's. The last such complaint was filed in 1994.

***Plans for Greater Use of Testing by the Fair Housing Office.*** The Fair Housing Office budget for FY 1998 contains \$5,000 to pay for testing services. It is anticipated that these funds will be sufficient to perform five tests. As of late October 1997, one-third of the way through FY 1998, no tests had been conducted and none of these funds had been used. There is considerable opportunity for the FHO to expand its use of testing. A well-designed and structured approach to the use of testing could

make the investigation of fair housing complaints more efficient and more effective. Systematic planning concerning how budgeted funds will be expended for testing would aid in the development of such an approach.

***Recommendation (10).*** The Virginia Fair Housing Office should develop a written management plan to better incorporate the use of testing into its overall procedures for investigating complaints by (a) establishing an effective structure for the performance of testing and the evaluation of information obtained during the test in response to appropriate complaints; and (b) better utilizing testing data submitted with new complaints by taking necessary steps to determine how the information was obtained and interpreted so that it may serve as effective evidence in determining whether or not discriminatory housing practices occurred.

***Recommendation (11).*** The Virginia Fair Housing Office should use audit-testing and self-testing activities as part of a broader program of ensuring voluntary compliance with the Virginia Fair Housing Law. The results obtained from audit-testing should be used by the Real Estate Board and the Fair Housing Office in appropriate instances as a basis for developing and filing complaints to enforce the provisions of the Virginia Fair Housing Law.

### **Investigation and Conciliation Should Operate More Cohesively**

A key aspect of Fair Housing Office operations is that the conciliation and investigation of complaints occurs simultaneously but independently of each other on parallel tracks by different staff. This approach to conciliation is appropriate in instances where the Fair Housing Office is attempting to determine if the complainant and respondent can arrive at a mutually agreeable resolution prior to the commencement of an investigation. Among the conciliation agreements approved in FY 1996 and FY 1997, 51 percent were approved prior to the initiation of an investigation and 39 percent of those included a monetary award.

However, if initial attempts at conciliation fail and the investigation commences, continued strict reliance on a parallel approach to investigation and conciliation could limit the likelihood that the complaint will be resolved in a just and appropriate manner. This is primarily a result of evidence gathered during the investigation not being utilized in a meaningful way during later-stage conciliation efforts. At the request of the Real Estate Board, the Attorney General's Office is observing the conciliation process to determine how it operates in practice and to make any appropriate recommendations. Modifications to current practices employed by the Fair Housing Office, consistent with guidance that HUD provided to fair housing agencies in 1995, could help to better ensure a just resolution of complaints. This would be in the best interests of both complainants and respondents.

***HUD Guidelines Provide for a More Cohesive Approach.*** Based on the content of the guidelines published in 1995 by HUD in the *Title VIII Complaint Intake*,



*Investigation, and Conciliation Handbook*, the investigation and conciliation functions performed by a fair housing agency can legitimately operate more cohesively than as currently performed by the Virginia Fair Housing Office. The relevant HUD guidelines are summarized in Exhibit 2.

***Use of Final Rebuttal Interviews and Fact Finding Conferences During Investigation.*** The fair housing administrator expects the field investigators to conduct final rebuttal interviews, along the lines recommended by HUD, prior to preparing the final investigative report. It is anticipated that during preparation for these interviews, the investigators will develop questions based on information that has been obtained which contradicts or does not support the respective positions of complainant and respondent. Based on the results of JLARC's survey, one other state was identified as moving beyond the mere use of rebuttal interviews by incorporating fact-finding conferences into its investigation and resolution of complaints.

*Pennsylvania's fair housing agency utilizes fact finding conferences during the investigation of complaints. During a face-to-face meeting conducted by the investigator, the complainant and respondent may present evidence in support of their positions on the complaint, and may reply to the position of the other. Also, they may consider the possibility of a voluntary, negotiated settlement. The fact-finding conference is neither an administrative hearing nor a trial. Rather, it is considered to be an effective and direct way for the investigator to secure the facts by getting the concerned parties around a conference table and is consistent with the agency's statutory authority to conduct interviews and obtain documents.*

*During the fact-finding conference, the investigator is not an advocate for either party but rather, in an impartial manner, probes the issues to obtain information and documentation from the two parties regarding their respective positions. Witnesses who have direct knowledge of the issues, or who have other relevant information, may also participate.*

*The investigator questions one party and then questions the other concerning the individual incidents or practices which are alleged to be discriminatory. The complainant and respondent are given alternate opportunities to respond and/or rebut the statements of the other, as well as present documents or testimony in support of their own position. The investigator identifies further documentation necessary to resolve the complaint.*

*Either party may be represented by legal counsel, provided the attorney has entered a notice of appearance. However, the attorneys have a strictly advisory role toward their clients and may not testify except to matters of which they have first-hand knowledge. Attorneys may not ask direct questions of either party*

## Exhibit 2

**HUD Guidelines for a Cohesive Approach  
to Investigation and Conciliation of Fair Housing Complaints**

1. At least one late-stage conciliation effort should be initiated, preferably at the close of investigative fact-finding, and after the final rebuttal interviews have been conducted.
2. Investigation and conciliation can be performed by the same person in relation to a complaint, but must occur separately and not simultaneously. Fact-finding and discussion of the merits of the case should not occur during conciliation. Parties must be notified whether a discussion to be held concerns the investigation or an attempt at conciliation.
3. Evidence obtained through investigation may be used during conciliation, but the conciliator should meet separately with each individual, provide the evidence in a fair and balanced fashion, and not comment on the merits of the evidence nor suggest that it will support a particular finding.
4. The conciliator's role is to create a non-stressful environment in which the facts of the case can "speak for themselves."
5. The conciliator may initially inquire whether the complainant has had an opportunity to think about the facts of the case since the completion of fact-finding and, if so, whether there has been any change in his or her position with respect to conciliating the complaint.
6. The conciliator should emphasize that any evidence that is produced on behalf of a party during conciliation cannot be disclosed to the investigator, nor can it be used to support a determination. If a party wishes to offer evidence that he or she believes should influence the outcome of the case on its merits, the party should discuss it outside the conciliation discussion so that it can be included in the final investigative report.
7. There are potential negative impacts to disclosing evidence which should be assessed in advance. For example, disclosure could possibly create hostility between the parties and impede a settlement. Disclosure could also possibly make witnesses reluctant to cooperate or make them targets for reprisal.

Source: JLARC staff analysis of *Title VIII Complaint Intake, Investigation, and Conciliation Handbook* (HUD, September 1995).

*Fact-finding conferences are not required by law, and in some cases the fair housing agency will not utilize them. Neither party is compelled to attend, and the complainant or respondent may opt for a regular investigation.*

The Virginia Council on Human Rights uses a fact-finding conference with the parties prior to making a determination on a discrimination complaint. According to council's administrative regulations, the fact-finding conference is "an investigative forum intended to define the issues, to determine the elements in dispute, and to ascertain whether there is a basis for a negotiated settlement of the complaint."

***Recommendation (12).*** The Virginia Fair Housing Office, the Department of Professional and Occupational Regulation, and the Real Estate Board should review their practices for conciliation and investigation of complaints including the feasibility of using fact-finding conferences during investigation of complaints and the use of investigative evidence during conciliations. The evaluation should be based on guidance provided by the U.S. Department of Housing and Urban Development in the *Title VIII Complaint Intake, Investigation and Conciliation Handbook*. This evaluation should be undertaken to ensure that procedures for the investigation and conciliation of complaints function in a cohesive manner to support the ultimate objective of identifying, and providing appropriate relief for, discriminatory housing practices.



**Appendix A**  
**Study Mandate**

**Item 14 N - 1997 Appropriation Act**  
**Operations of the Virginia Fair Housing Office**

The Joint Legislative Audit and Review Commission shall study the operations of the Virginia Fair Housing Office, and make recommendations to the 1998 Session of the General Assembly regarding the appropriate allocation of resources, considering caseload, case processing time, office staffing, staff training and such other issues as may seem appropriate.



## **Appendix B**

### **Agency Responses**

As part of an extensive data validation process, State agencies involved in a JLARC evaluation are given the opportunity to comment on an exposure draft of the report. Appropriate technical corrections resulting from written comments have been made in this final report. Page references in the agency responses relate to the earlier exposure draft and may not correspond to the page numbers in this version.

This appendix contains responses from:

- The Department of Professional and Occupational Regulation
- Office of the Attorney General







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