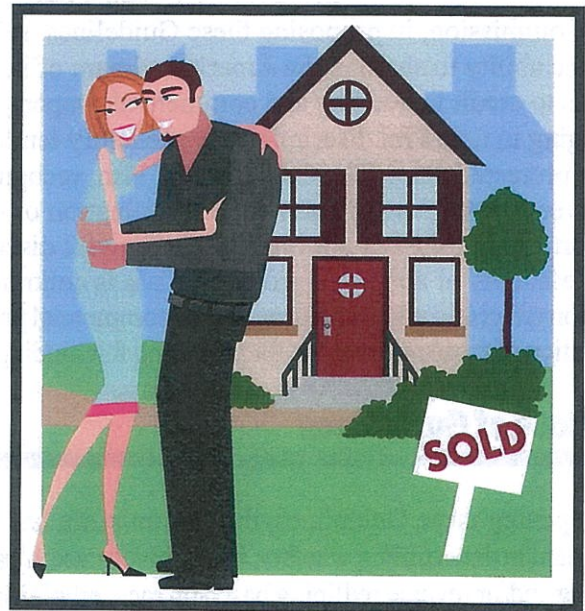


Unlawful Discriminatory Predatory Lending and Reverse Redlining

Guidelines



In Housing and Commercial Property

Prepared by the
Pennsylvania Human Relations Commission

Unlawful Discriminatory Predatory Lending and Reverse Redlining Guidelines In Housing and Commercial Property

(Adopted by the Pennsylvania Human Relations Commission on June 27, 2005)



Introduction

The Pennsylvania Human Relations Commission (hereinafter Commission or PHRC), cognizant of the fundamental guarantee found in the Pennsylvania Human Relations Act (hereinafter PHRA) that the opportunity to obtain any housing accommodation and/or commercial property must be provided irrespective of race, color, familial status, religious creed, ancestry, disability, age, sex or national origin, sets forth the following Guidelines for use by those responsible for providing fair lending opportunities or otherwise involved in the lending of money and/or real estate-related transactions within the Commission's jurisdiction. Those responsible for providing fair lending, include, but are not limited to, the following: lenders; mortgage brokers; appraisers; loan servicers; title companies; home improvement companies; state and local government agencies; and all others involved, whether directly or indirectly, in the mortgage loan process or home finance industry.

The Commission, in proposing these Guidelines, recognizes that all persons are entitled to fair access to credit and the ability to share in the American dream of homeownership. The Commission further recognizes that fair access to credit in housing and commercial property requires the elimination of the policy or practice of engaging in unlawful discriminatory predatory lending and/or reverse redlining based on race, ethnicity or any other protected class. The Commission, also, recognizes that action or inaction, whether direct or indirect, overt or covert, which fosters unlawful discrimination or segregation in the area of housing and/or commercial property, including but not limited to, unlawful discriminatory predatory lending and reverse redlining based on race, ethnicity or any other protected class is contrary to the public interest. Whenever any such action or inaction adversely affects housing and/or commercial property transactions within the Commission's jurisdiction, it is the obligation of those responsible for providing fair lending to correct the situation.

Purpose of Guidelines

In proposing these Guidelines, the Commission has set forth factors that it considers to be important in determining whether, in any given case, a party has engaged in unlawful predatory lending and/or reverse redlining based on race, ethnicity or other protected classification in violation of Section 5 of the PHRA. In so doing the Commission reiterates its longstanding position that these Guidelines are not intended to be hard and fast rules that must be absolutely applied. They are intended to provide guidance and assistance to those who come under the jurisdiction of the Commission as it continues its effort to insure that the right to equal housing and commercial property opportunity as set forth in the PHRA is achieved.



Nothing in these Guidelines shall affect statutory or regulatory requirements. The Guidelines are not an adjudication or a regulation. There is no intent on the part of the PHRC to give the Guidelines that type of binding force or effect. They are nonbinding Guidelines that indicate the manner in which the PHRC intends to exercise its administrative discretion in the future, unless it is convinced otherwise during the course of a specific proceeding. The Commission, as in the past, remains committed to insuring that its adjudicative determinations are made on a case-by-case basis after consideration of all evidence of record in the given matter.

To this end, the Guidelines are not binding and may be deviated from whenever the PHRC believes that any statute or regulation requires it, or that it is otherwise appropriate to do so. The Guidelines may not be cited as authority for any PHRC ruling, adjudication or other binding action. The legal rationales set forth in a policy may be cited as the basis for PHRC action to the extent that the Commission believes the rationale is valid in the context of the specific proceeding.

Unlawful Discriminatory Predatory Lending as a Violation of the PA Human Relations Act



Predatory lending is primarily concentrated in the sub-prime mortgage lending market in the area of home refinancing loans. The sub-prime market is intended mainly for people who are unable to obtain a conventional prime loan at a traditional financial institution due to blemished credit histories or some other problem. Such sub-prime lenders may charge more for their loans to compensate for the potentially greater risks and costs associated with lending to such borrowers. In short, sub-prime lenders may use risk-based pricing to serve borrowers who cannot obtain credit in the prime market. The Commission recognizes that by providing credit to borrowers who otherwise would be unable to obtain it, the sub-prime lending market may perform a significant service.

In determining whether a predatory loan or practice constitutes unlawful discrimination and/or reverse redlining in violation of the PHRA, the Commission will evaluate the loan in the context of the totality of the circumstances surrounding the real estate-related transaction. The Commission will examine whether the loan contains any abusive or onerous terms that cannot be justified on the basis of the lender's additional risk and cost; the suitability of the loan for the purposes and interests of the borrower; and the behavior of the parties in relation to the transactional circumstances surrounding the loan. Furthermore, the Commission recognizes that, while predatory lending may violate a number of federal and state laws, these Guidelines are applicable to predatory lending in the context of the Commission's jurisdiction within the dictates of unlawful discrimination in violation of Section 5 of the PHRA.

Reverse Redlining as a Violation of the PA Human Relations Act



Redlining is the practice of denying credit to specific geographic areas due to race, ethnicity or some other protected class of its residents. In contrast, reverse redlining is the practice of extending credit on unfair terms to specific targeted geographic areas due to race, ethnicity or some other protected class of its residents. Such practices lead to the formation and maintenance of racial and ethnic segregation, which the Fair Housing Act and PHRA were designed to combat. Courts and the Commission have held that reverse redlining violates the Fair Housing Act and the PHRA.

In order to prove a claim based on reverse redlining, a complainant must show that a respondent's lending practices and/or loan terms are unfair and/or predatory, and that respondents either intentionally targeted a protected class, or that there is a disparate impact on a protected class. Upon such a showing, a respondent must demonstrate that its loan or lending practices are justified by business necessity. Such lending policies and/or practices render housing "unavailable" to minorities and other protected classes and subjects them to discriminatory loan terms and conditions, thereby reducing their ability to use and enjoy housing. By adopting these Guidelines, the Commission seeks to provide guidance on each of the above-noted relevant factors necessary to examine an unlawful discriminatory predatory loan and/or reverse redlining claim.

Abusive Loan Terms as a Factor in Determining Whether a Respondent Has Engaged in an Unlawful Discriminatory Predatory Lending Practice and/or Reverse Redlining



Abusive loan terms are a factor in determining whether a respondent has engaged in an unlawful discriminatory predatory lending practice and/or reverse redlining based upon protected class membership in violation of the PHRA. Typically, the predatory nature of many loans is not the result of a single loan term or feature, but a series of features that in conjunction with each other impose substantial financial hardships on the borrower. As a result, the Commission will examine the totality of the circumstances surrounding all loan terms when there is a complaint or an allegation of unlawful discrimination. Predatory or unfair loans often include a variety of abusive loan practices, including but not limited to, potential abuses associated with the following:

Points: A borrower may pay discount points in order to buy down the interest rate on a mortgage loan. A predatory lender, however, may charge discount points with no corresponding reduction in the borrower's interest rate. The discount points may be financed as part of the loan and, thus, increase the amount borrowed.

Prepayment Penalties: A lender assesses prepayment penalties when a borrower either pays the remaining loan balance before the end of the loan term or refinances with another financial institution. Prepayment penalties lock a borrower into a loan and prevent a borrower from shedding a high interest loan in favor of a prime loan and/or a lower interest rate loan.

Yield Spread Premium: A yield spread premium is a payment that a mortgage broker receives from the lender based on the difference between the interest rate and points of the loan the broker entered into with the borrower, and the par rate offered by the lender to the mortgage broker for a particular loan. The broker receives payment for the value of the extra increment of interest, while the lender receives the higher interest rate over the life of the loan.

The above-mentioned potentially abusive factors do not represent an exhaustive list. Furthermore, the Commission's examination of any potentially abusive factors will consider any relevant or applicable state or federal laws. To the extent that the Guidelines are inconsistent with any federal or state law, the Commission may deviate from said Guidelines. The Commission will examine any non-discriminatory reasons or business necessities offered by the Respondent for a loan term in an effort to determine if the loan was unfair and/or predatory.

The Manner in Which a Loan Is Made as a Factor in Determining Whether a Respondent Has Engaged in an Unlawful Discriminatory Predatory Lending Practice and/or Reverse Redlining



The manner in which a loan is made is a factor in determining whether a respondent has engaged in an unlawful discriminatory predatory lending practice and/or reverse redlining based upon a protected class in violation of the PHRA. In determining whether a loan is unfair or predatory, it must also be examined in the context of the transactional circumstances surrounding the loan or real estate-related transaction. Predatory lending is as much a function of the manner in which the loan is made as the oppressive terms that it may contain. Furthermore, predatory lending may involve making of a loan that, on its face, lacks the appearance of abuse but which may be completely unsuitable for the particular borrower. Therefore, the Commission will attempt to understand the borrower's knowledge and understanding of the implications of the loan transaction; the suitability of the loan for the borrower in light of his or her financial circumstances; whether the borrower was represented during the loan transaction; and whether the borrower had any infirmities or vulnerabilities that would have been apparent to the lender, broker, or any other person participating in the loan transaction.

In addition, the Commission will examine the lender's behavior in the transaction and in other similar situations. Furthermore, the Commission will examine the lender's sales and underwriting practices and policies. The Commission will regard as relevant any indications of the following conduct, including, but not limited to: making loans without regard to a borrower's ability to pay; utilizing high pressure sales tactics to induce the borrower to enter into a loan; obstructing borrowers from refinancing with other loan or finance companies which offer better terms; misrepresenting the loan terms; misrepresenting a borrower's income or debt level on loan documents; forging a borrower's signature; steering a borrower to a high cost lender, even though the person may be eligible for a prime loan; utilizing bait and switch tactics by changing the loan terms at or near settlement; backdating loan documents; failing to disclose to the borrower all material information regarding the terms of the loan; falsifying information on loan applications or other loan documents. Such factors possibly reflect a respondent's intent to engage in unlawful discriminatory predatory lending practices.

Abusive Loan Practices That Target or Have a Disparate Impact Upon Certain Identifiable Groups as a Factor in Determining Whether a Respondent Has Engaged in an Unlawful Discriminatory Predatory Lending Practice and/or Reverse Redlining



In determining whether a respondent has engaged in an unlawful discriminatory predatory lending practice and/or reverse redlining based upon protected class in violation of the PHRA, abusive loan practices that target certain identifiable groups are a factor. In conjunction with the above-mentioned abusive lending practices, predatory lenders often target and prey upon certain protected classes under the PHRA, including but not limited to, females, elderly, and minorities. Certain identifiable groups, such as African Americans, may be targeted by such predatory lenders due to existence of a dual housing finance market, which is inextricably linked to the practice of redlining. Historically, numerous financial institutions engaged in the practice of redlining minority communities, resulting in a credit vacuum in such areas. Where mainstream financial institutions abandoned entire communities, the residents of those areas were forced to turn to other sources of credit. This process resulted in the creation of a dual housing finance market. Such a dual market presented attractive prey to unscrupulous predatory lenders who exploited such circumstances through the practice of unlawful discriminatory lending practices and/or reverse redlining.

Several factors are relevant in determining whether certain identifiable groups are being targeted for unlawful discriminatory predatory or unfair loans or subjected to policies and practices that have a disparate impact upon a particular protected class. Statistics, such as the Census Bureau statistics and Home Mortgage Disclosure Act statistics, are relevant for determining possible patterns of segregation in the housing and credit market, thereby offering insight into a vulnerable market segment. Furthermore, statistics relating to a respondent's lending activities in certain racially or ethnically identifiable neighborhoods may offer evidence of targeting based upon protected class status. In addition, the respondent's marketing polices and practices may reflect an intent to target certain identifiable neighborhoods for unlawful discriminatory predatory loans and/or practices. For example, a respondent's exclusive utilization of minority media outlets such as radio, television, and newspapers may be relevant in determining whether there is a pattern of targeting based upon a protected class.

The Commission recognizes that there is a substantial gap in the rates of homeownership between white households and minority households and seeks to encourage minority homeownership. The Commission recognizes that homeownership is a source of stability for families and communities and it represents the primary store of personal wealth for American families. As a result, the Commission seeks to encourage access to credit in minority communities and recognizes that marketing polices and tools aimed at minorities or other protected classes are not, in and of themselves, a violation of the PHRA. Rather, the combination of targeting of a protected class for predatory or unfair loans, also know as reverse redlining, may violate the PHRA.

Remedies For Unlawful Predatory Lending and Reverse Redlining In Violation Of The PHRA



Following a finding of discrimination, the Commission has broad discretion in fashioning awards to effectuate the purposes of the PHRA. Any remedy awarded under the PHRA has three purposes. The first is to insure that the unlawful discriminatory practice is eradicated.

The second is to restore the injured party to pre-injury status and make him or her whole. The third is to deter future discrimination. The Commission's specific authority to award relief is found in Section 9 of the PHRA. In the context of reverse redlining, the Commission may award a remedy that seeks relief for any actual damages caused by a predatory loan. Furthermore, the Commission has the authority to award damages for humiliation and embarrassment and assess civil penalties of \$10,000 to \$50,000. Finally, the Commission has the authority to award relief to injured individuals who are not identified in the complaint.



Finding a home can be hard. Discrimination shouldn't make it harder.

Fair housing is your right in Pennsylvania. The PA Human Relations Act makes it illegal for anyone to deny you the sale or rent of a home **OR** a home loan, based on your **race, color, age (40 or over), sex, religion, national origin, ancestry, family status (having children who are under 18), pregnancy, disability, relationship to someone with a disability, or because you use, handle or train a service animal for a disability.** It is also illegal to offer you different terms and conditions for home sales, rental or loans based on any of those protected factors, and it is illegal to retaliate against you for filing discrimination complaints or otherwise opposing discrimination.

Signs of Illegal Housing Discrimination

Signs of housing discrimination are rarely as obvious as the "whites only" signs of the past, but they still exist. **You can protect yourself if you know your rights.**



- **No children allowed.***
- **Extra fees for teenagers.**
- **Support animals for disabilities denied, or fees charged.**
- **Able-bodied adults only.**
- **English only.**

These are examples of prohibited practices.

Ads, including television, print, online and verbal statements, cannot indicate a preference for or exclude people based on protected factors such as race, religion, disability, etc. Language such as "perfect for empty nesters," "near Catholic school" or "great for singles," suggests that certain people are unwelcome or more desirable than others.

*The law specifically defines housing for older persons. In housing meeting this definition, it is legal to restrict the age or family status of residents.

Unlawful Practices:

These actions are prohibited if based on protected factors listed above.

- Refusing to sell, lease, finance, or otherwise withholding housing or commercial property.
- Discriminating in :
 1. terms or conditions of sale, lease or financing; or
 2. provision of facilities, services or privileges connected with ownership, occupancy or use of housing or commercial property.



(Continued on back)

(Unlawful practices continued)

- Printing or circulating statements indicating a preference or limitation, or making inquiry or record in connection with the sale, lease or financing of housing or commercial property.
- Attempting to induce the listing, sale or other transaction, or discourage the purchase or lease of housing or commercial property by referring to the composition of the neighborhood related to protected factors such as race, religion, etc.
- Refusing to allow a person with a disability to make and pay for changes to existing premises to enable them to use a facility. A renter who makes changes must agree to restore the interior of the facility back to its original condition, minus reasonable wear and tear.
- Refusing to make reasonable accommodations in rules, policies, practices or services necessary to afford a person with a disability equal opportunity to use and enjoy housing.



Accessible Housing for People with Disabilities

It is unlawful to construct, operate, offer for sale, lease or rent or otherwise make available housing or commercial property that is inaccessible to persons with disabilities. If you or your landlord have questions about building alterations or assistive devices, we can refer you to government and private resources to help make housing accessible.

Filing Housing Discrimination Complaints

If you believe you have experienced housing discrimination, you have a right to file a complaint and we will investigate. **You must file your complaint within 180 days of the discriminatory act.**

For help filing a complaint, call **toll-free**

PA FAIR HOUSING HOTLINE
855-866-5718

or contact the PHRC regional office serving your county:

Harrisburg • (717)787-9780 • Adams, Bedford, Berks, Blair, Bradford, Cambria, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming & York counties

Philadelphia • (215)560-2496 • Bucks, Chester, Delaware, Montgomery & Philadelphia counties

Pittsburgh • (412)565-5395 • Allegheny, Armstrong, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Venango, Warren, Washington & Westmoreland counties

Language translation services and accommodations for persons with disabilities are available on request.

Learn more about your rights and how to file a housing discrimination complaint at:

www.phrc.state.pa.us

• **Fair housing is your right in PA. It's the law** •

THE PUBLIC HEARING

If there is no settlement after a probable cause finding, PHRC may hold a public hearing. At a hearing, both sides present testimony under oath. The commission will then review the record, render a decision and issue a legally enforceable order. This order may be appealed to Commonwealth Court.

ACCESSIBILITY & LANGUAGE TRANSLATION

If you require accommodation for a disability, have questions about accessibility, or require language translation, please contact the regional office that serves you (listed below) for assistance with any proceeding.

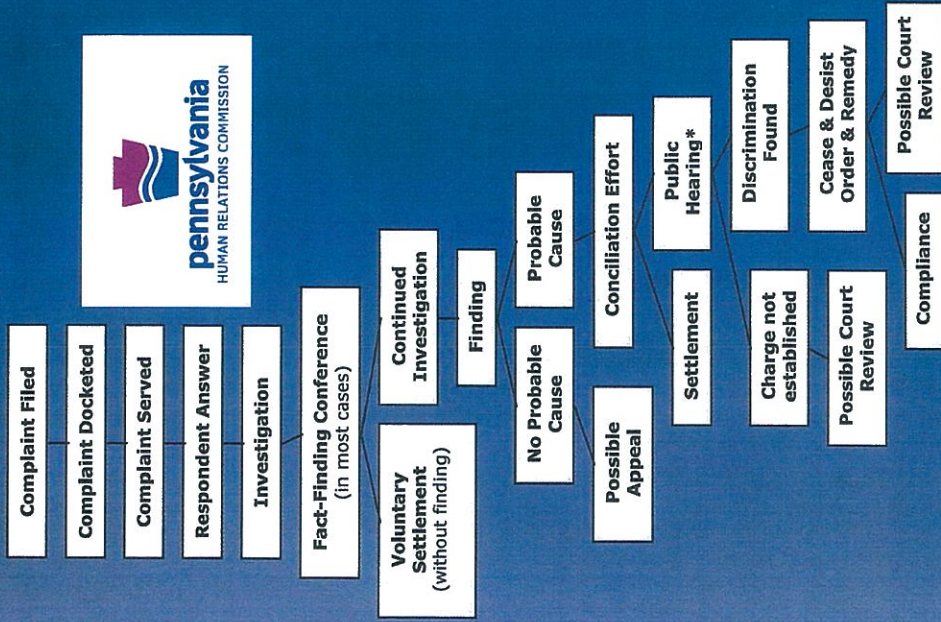
File complaints with the regional office serving your county:

Harrisburg Regional Office • Riverfront Office Ctr., 5th Floor • 1101-1125 S. Front St., Harrisburg, PA 17104 • 717-787-9780 • serves Adams, Bedford, Berks, Blair, Bradford, Cambria, Carbon, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Toga, Union, Wayne, Wyoming and York counties

Philadelphia Regional Office • 110 N. 8th St. Suite 501 • Philadelphia, PA 19107 • 215-560-2496 • serves Bucks, Chester, Delaware, Montgomery and Philadelphia counties

Pittsburgh Regional Office • 301 5th Ave., Suite 390, Piatt Place • Pittsburgh, PA 15222 • 412-565-5395 • serves Allegheny, Armstrong, Beaver, Butler, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Venango, Warren, Washington and Westmoreland counties

The Complaint Process



*In certain housing cases, parties can elect court action.

General inquiries:

- PA Human Relations Commission • Central Office • 301 Chestnut St., Suite 300 • Harrisburg, PA 17101 • 717-787-4410 •

Illegal Discrimination & Your Civil Rights: How to file a discrimination complaint in Pennsylvania



The Complaint Process

THE LAW

The PA Human Relations Commission enforces Pennsylvania's anti-discrimination laws.

In general, the PA Human Relations Act makes it unlawful in employment to discharge, refuse to hire, refuse to contract with certain independent contractors, or otherwise discriminate in any term or condition of employment because of race, color, religion, ancestry, age (40 and above), sex, national origin, non-job-related disability, association with a person with a disability or because a person holds a high school diploma based on a GED.

In housing, commercial property and public accommodation, it is unlawful to refuse or deny housing or public accommodation, or to make different conditions because of a person's race, color, sex, religion, ancestry, national origin, disability, association with a person with a disability, use of a guide or support animal due to blindness, deafness or physical disability, or because the user is a handler or trainer of such animals.

In housing and commercial property cases, a person's age and familial status are also protected.

PA Law also protects you from retaliation. This means no one is allowed to take any action (such as firing or eviction) against you for filing a complaint, opposing unlawful activity OR helping with an investigation.

THE COMPLAINT

If you believe you have been the victim of unlawful discrimination, you may discuss your concerns with a PHRC staff member

who will answer your questions and help you decide whether you should file a complaint.

Our staff can help you draft your complaint and prepare it for your verified signature. Before you sign the complaint, make sure it is an accurate account of what happened to you, to the best of your knowledge and belief.

You must file your complaint within 180 days of the alleged act of discrimination, unless you are able to convince the commission you are legally justified in not filing within this period.

You have the right to be represented by a private attorney, but it is not required. Your complaint will be assigned a case number and sent to the respondent (the person or company named in your complaint as responsible) within 30 days after it is docketed. The respondent will be required to answer your complaint within 30 days of the date it was received and provide you with a copy of their answer.

THE INVESTIGATION

PHRC staff will investigate. Please remember to:

- Give all relevant facts and details to your investigator, including names, dates and addresses.
- Answer all questions you are asked, even if you think the answer might weaken your complaint.
- Provide any witnesses or documents, such as a payroll slip or rent receipt, which may substantiate your charges.
- Inform your investigator of any change in your address or phone number, or those of your attorney.

PHRC has the power to subpoena relevant witnesses or documents if it becomes necessary to do so.

FACT-FINDING CONFERENCES & FURTHER INVESTIGATION

PHRC often holds a Fact-Finding Conference at which you and the respondent present evidence and documents. This is designed to speed up the investigation and possibly help reach a fair settlement of your complaint.

A Fact-Finding Conference may not be held in your case for any of these reasons:

- The case settles.
- Either party refuses to participate.
- The investigator determines a conference is not necessary based on the circumstances.

At a conference, the investigator interviews the respondent and any other relevant witnesses, and reviews all pertinent records and documents. You may be asked to clarify your complaint in light of new information, or respond to the respondent's answers. If you learn or remember additional information, notify your investigator immediately.

If your complaint is not resolved at the Fact-Finding Conference, or if one is not held, the investigation will continue.

RESULTS OF THE INVESTIGATION

The investigation may conclude with a finding of **no probable cause** to credit the allegations or **probable cause**. PHRC may close the case after a no probable cause finding, a voluntary settlement prior to a finding, a court filing, lack of jurisdiction or other administrative reason.

If PHRC dismisses your case, you will be notified by mail and informed of your appeal rights. If your complaint has not been dismissed or resolved one year after it was filed, you can pursue court action in a Court of Common Pleas.

THE CONCILIATION

If the investigation finds probable cause, PHRC will attempt to settle the complaint as soon as possible by asking the respondent to: 1) stop the specific discriminatory act named in the complaint, and 2) take whatever corrective actions necessary to correct the discrimination found in the investigation.