



**Division of
Human Rights**

ANNUAL REPORT

FY2015-16

Annual Report FY2015-2016

A Message from the New York State Division of Human Rights

The New York State Division of Human Rights (“the Division”) is honored to present to Governor Andrew M. Cuomo, the Legislature, and the people of New York its Annual Report for Fiscal Year 2015-2016.

The Division of Human Rights is the agency in charge of enforcing the New York State Human Rights Law. The law ensures equal opportunity in employment, housing, credit, places of public accommodation, volunteer firefighting, and non-sectarian educational institutions.

The mission was important when the law was enacted in 1945, and it is even more important now, 71 years later.

The Division of Human Rights enforces this law through, among other things, the investigation, hearing, and resolution of complaints filed by individuals against alleged discriminators; the creation of studies, programs, and campaigns designed to inform and educate the public on the effects of discrimination and their rights and obligations under the law; and the development of human rights policies and proposed legislation for the State.

Each year, the Division makes every effort to continue protecting citizens from discrimination and ensuring that its operations are carried out efficiently and effectively. In addition, the Division continues to be actively engaged in dealing with hate crimes.

The Division will continue to take the necessary steps to fulfill the agency’s mission and fulfill the Human Rights Law’s mandate that “every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the state.”

History

The present New York State Division of Human Rights can trace its history back to the State War Council of the State of New York Temporary Committee on Discrimination in Employment, created in 1942. One of the main accomplishments of the Committee was the passage of the 1945 Ives-Quinn Anti-Discrimination Bill. Signed on March 12, 1945 by Governor Thomas E. Dewey, the law effectively made New York the first state in the nation to enact legislation prohibiting discrimination in employment based on race, creed, color, and national origin. In doing so, New York also became the first state to establish a permanent agency to enforce such legislation, the State Commission Against Discrimination (SCAD). Federal institutions were not introduced until nearly 17 years later.

In 1968, the Ives-Quinn Anti-Discrimination Law was renamed the Human Rights Law, and the State Commission Against Discrimination was renamed the New York State Division of Human Rights.

In its inception, SCAD had jurisdiction only over employment issues and dealt strictly with discrimination based on race, color, creed, and national origin.

In subsequent years, the Law was expanded to stay current with the changing culture and needs of New Yorkers.

For example, in 1974, the Law was broadened to protect people with disabilities; in 1991, the Law was amended to protect families in the area of housing; in 1997, the Law was changed to include an express provision requiring reasonable accommodations in employment for persons with disabilities; in 2002, the Law was amended to protect both religious practices and religious observances; in 2003, the Sexual Orientation Non-Discrimination Act was passed so to include sexual orientation among the protected traits/characteristics; and in 2003, the Law was extended to encompass military status.

In 2009, the Law was amended to provide protections for domestic violence victims from employment discrimination, and in 2011, it was amended to protect domestic workers from sexual harassment and discrimination based on gender, race, religion or national origin.

In 2014, the Law was amended to include protections for unpaid interns from harassment and other forms of unlawful discrimination in the workplace.

In 2015, the Law was amended to expand the definition of “employer” in sexual harassment cases to cover all employers within New York, so that an employee of any business can file a workplace sexual harassment complaint. Additionally, the Law was amended to prohibit employers, employment agencies, licensing agencies, or labor organizations from discriminating against workers based on their familial status. The Law was also amended to clarify that employers must perform a reasonable accommodation analysis for pregnant employees.

In 2016, the Division adopted regulations to prohibit harassment and discrimination on the basis of gender identity, transgender status or gender dysphoria. The regulations confirm that the agency will continue to accept and process Human Rights Law complaints alleging discrimination because of gender identity, under the protected categories of both sex and disability.

Complaint Process

Filing a Complaint

If an individual feels he or she has been the victim of illegal discriminatory behavior, a complaint can be filed at any of our 11 offices throughout the state within one year of the date the last discriminatory incident occurred. Complaints can be filed in person in any of our offices, or they can be downloaded from the Division's website at www.dhr.ny.gov, completed as instructed, signed before a notary public and mailed to our offices. Complaint forms can also be obtained by requesting them from any of the Division's offices.

The Investigation

Once a complaint is filed, an investigator will be assigned to investigate the complaint. This may be done through, among other methods, written correspondence, telephone interviews, and visits to the site where the alleged discrimination took place. Based on the evidence collected during the investigation, a determination will be made as to whether there is probable cause that unlawful discrimination occurred. A determination of no probable cause will result in the dismissal of the case. If the Division determines that there is probable cause that illegal discrimination took place, the case will advance to the hearing process.

The Administrative Hearing

An Administrative Law Judge will conduct a hearing based on the allegations in the complaint. During the hearing both sides will be able to present evidence to support their positions. The Division will provide an attorney free of charge to present the case in support of the complaint. Complainants may also bring their own attorneys.

Resolution

Based on the evidence presented at the hearing, the Administrative Law Judge will issue a recommended order advising the parties and the Commissioner how he or she believes the case should be resolved. The Commissioner will review the allegations, evidence, and the recommended order and will issue a final Commissioner's Order. If the ruling is in favor of the complainant, the Order will specify a remedy. In housing cases, remedies may include a change of policy or practice, provision of services, compensation for emotional distress, punitive damages, and/or civil fines and penalties, among others. In employment cases, remedies may include change in policies and practice, back pay with interest or benefits lost due to the discriminatory practice and/or compensation for emotional distress.

Appeals

Any final order of the Division can be appealed to the New York State Supreme Court within 60 days after it is issued. Appeals from Commissioner's Orders after hearing are transferred to the Appellate Division for disposition.

Budget and Finances

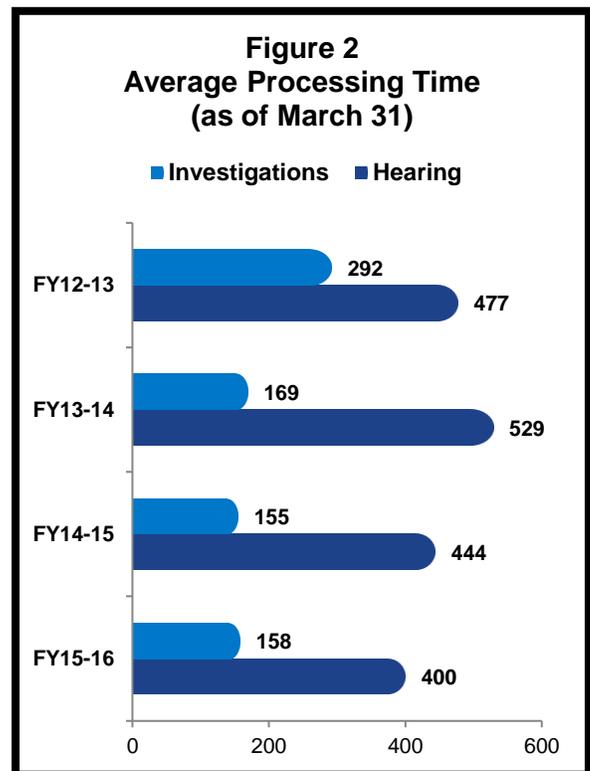
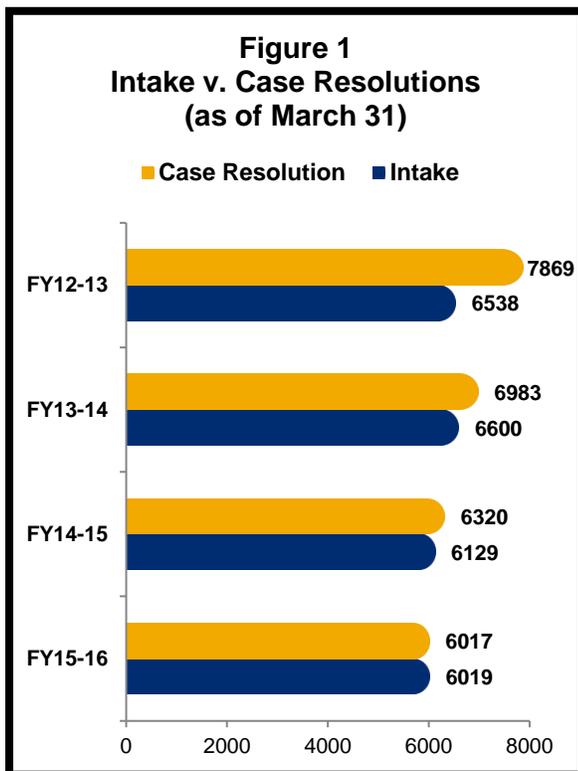
The State of New York operates on a fiscal year commencing each April 1, and ending the following March 31. The Governor submitted the SFY 2015-2016 Executive Budget in January 2015 for consideration by the Legislature. This year's budget was enacted by the Legislature in March 2015.

The Division's enacted budget for the 2015-16 fiscal year provided for an all funds appropriation of \$18,010,000, consisting of \$12,010,000 in General Fund (State tax-levy) appropriations and \$6,000,000 in Special Revenue Funds, which are monies provided by the federal government for the Division's program contracts with the U.S. Department of Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC).

Division Operating Statistics

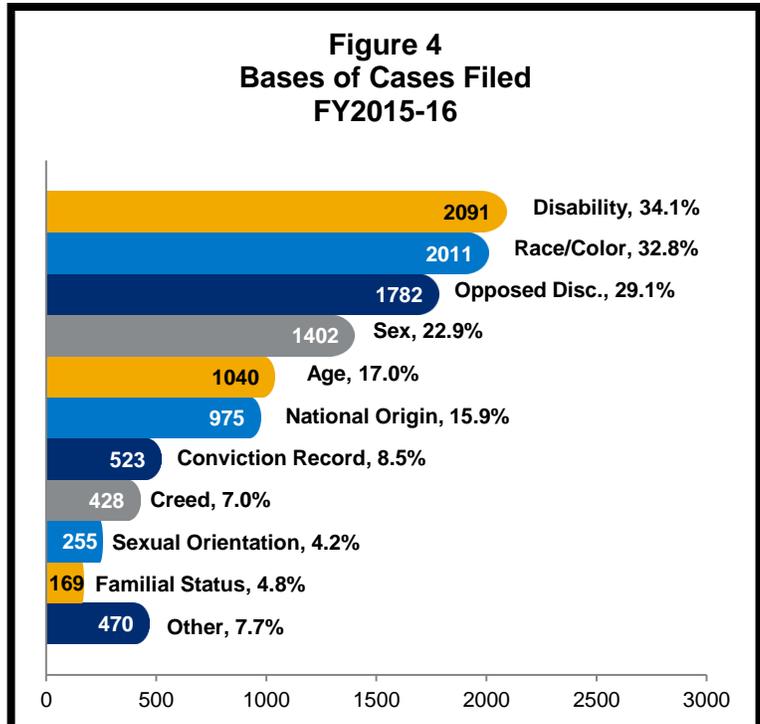
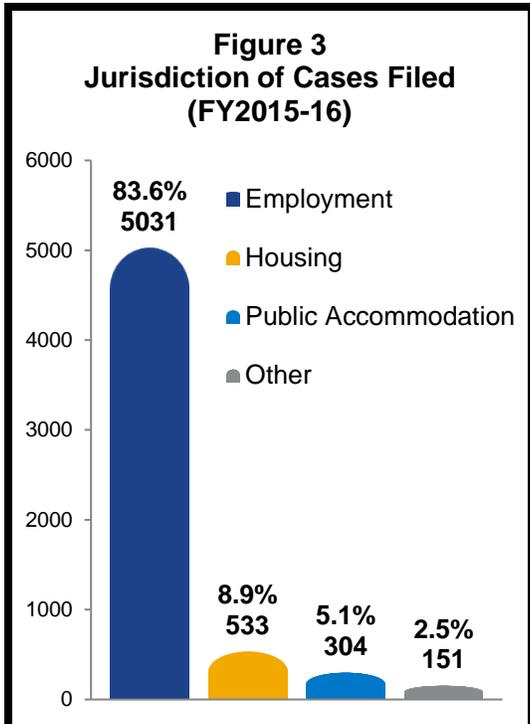
There were 6,019 complaints filed with the Division in FY2015-16. During this same period, the Division resolved 6,017 complaints (see Figure 1).

The average processing time for complaints through the investigation process for FY2015-16 was 158 days. The average processing time for cases through the Hearing Process for FY2015-16 was 400 days (see Figure 2).



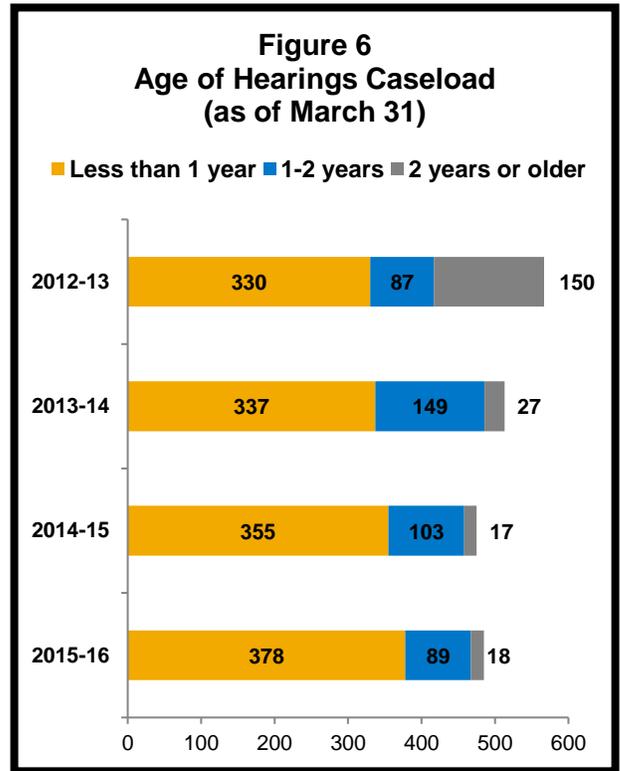
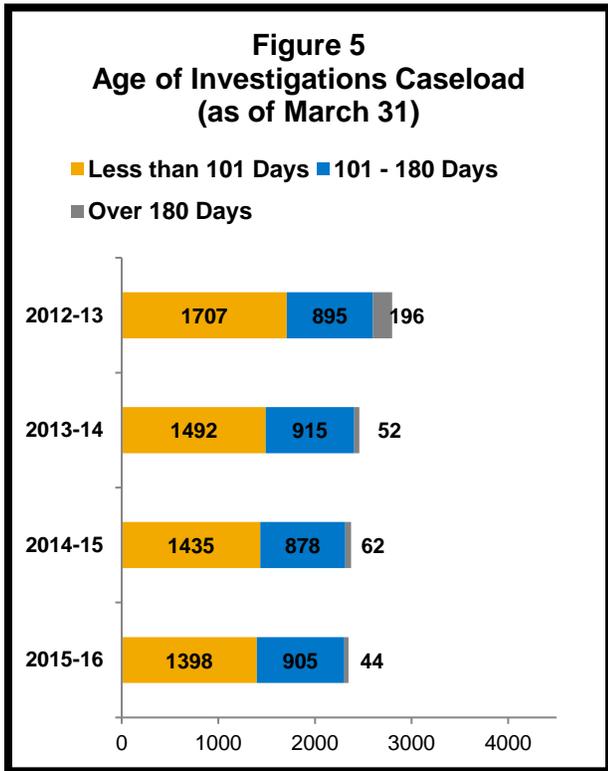
In FY2015-16, the majority of complaints filed were in the area of Employment (approximately 83.6%), followed by Housing (approximately 8.9%), Public Accommodation (approximately 5.1%), with the sum of all other areas comprising approximately 2.5% of all cases filed (see Figure 3).

The most frequently cited basis of complaints filed in FY2015-16 was Disability (34.1%), followed by Race/Color (32.8%), and Opposed Discrimination/Retaliation (29.1%). It is important to note some complaints allege more than one basis; therefore, the total percentage of bases cited will be more than 100% (see Figure 4).



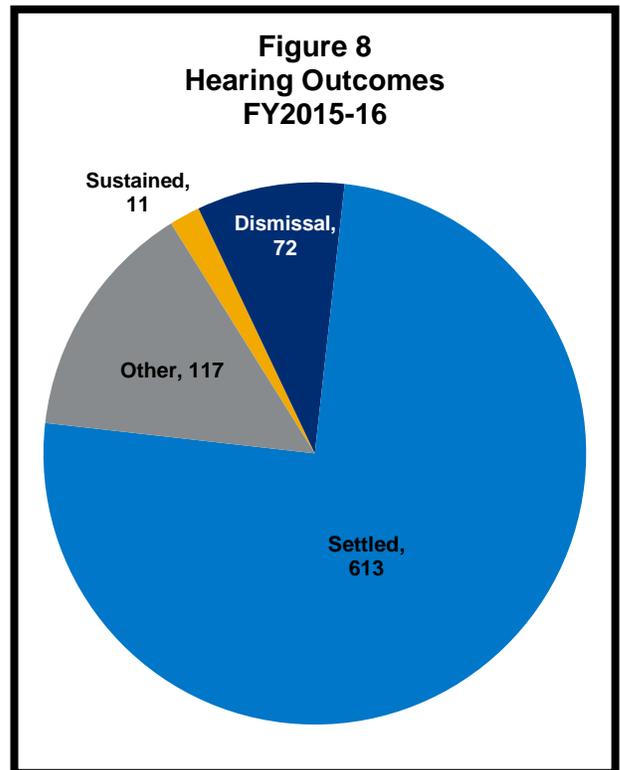
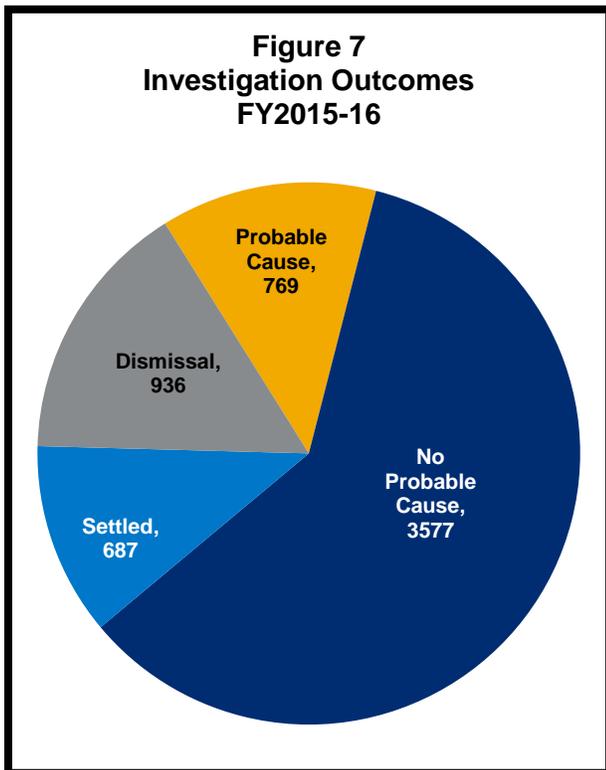
As of the end of FY2015-16, 59.6% of cases under investigation were less than 101 days old, 38.6% were between 101 days and 180 days old, and 1.9% were over 180 days old (see Figure 5).

Of the cases in the Hearing Process that received investigative determinations of Probable Cause, 77.9% were less than one year old, 18.4% were between one and two years old, and 3.7% were two years old or older at the end of FY2015-16 (see Figure 6).



During FY2015-16, the Division issued 5,969 investigative determinations (see Figure 7). Of these, 59.9% were No Probable Cause, 15.7% were Dismissals and 11.5% were settlements; 12.9% were Probable Cause determinations, which resulted in those cases advancing to the Hearing Process.

In FY2015-16, the Commissioner issued 817 Commissioner's Orders (see Figure 8). Of these, 75.0% were settlements. An additional 14.3% of commissioner's orders were dismissals prior to the completion of the Hearing Process, generally at the request of complainants who wished to proceed in federal or state court. 8.8% were dismissed after Hearing, while 1.8% were sustained after Hearing.



Commissioner's Orders

The following is a sampling of cases adjudicated during FY2015-16. All orders can be found on the Division's website at www.dhr.ny.gov.

Age

10166975 Kevin J. Ormsby v. City of Niagara Falls; Charles Walker; Kristen Grandinetti; Andrew Touma

The Division found that the complainant, who served as Council Secretary to the Niagara Falls City Council, was terminated based on his age.

Complainant was awarded \$15,000 in emotional suffering damages and the respondent was ordered to pay \$10,000 in civil fines and penalty to the State of New York for violating the Human Rights Law.

Sexual Harassment

10167844 Brittany Fragale v. AMG Managing Partners LLC; Michael Aronica; Michael Giangreco; John Suppa

The complainant, a female administrative assistant at a collection agency in Amherst, was found to have faced sexual harassment and verbal abuse on a daily basis.

Complainant was awarded \$70,720. DHR fined the respondent \$15,000, payable to the State of New York, as a civil penalty.

Notable Court Decisions in which the Division was a Party

Sexual Orientation

10157952, 10157963 Melissa McCarthy & Jennifer McCarthy v. Liberty Ridge Farm, LLC; Cynthia Gifford; Robert Gifford

Gifford v. McCarthy, 137 A.D.3d 30, 23 N.Y.S.3d 422 (3d Dept. 2016)

The complainants, Melissa and Jennifer McCarthy, were a couple looking for a venue in the Albany area to celebrate their wedding. When they contacted Robert and Cynthia Gifford, the owners of Liberty Ridge Farm, to inquire about their venue's availability, they were denied use of the premises because they were a same-sex couple. In declining the couple's request, the farm owners cited their religious belief about marriage.

The Commissioner's Final Order determined that Liberty Ridge Farm was a place of public accommodation and that the farm owners discriminated against the couple by denying them use of the accommodation solely because of their sexual orientation. The Division ordered the farm owners to pay \$1,500 in compensatory damages for pain and suffering to each of the complainants and \$10,000 in a civil fine and penalty to the State of New York for violating the Human Rights Law.

The Appellate Division, Third Department upheld the Commissioner's Final Order in its entirety.

Division-Initiated Investigations

The following Division-Initiated Investigations were resolved in FY2015-16 or are under way:

Age Discrimination: The DII Unit investigated and filed complaints against companies that have discriminated against individuals based on age. Most of these complaints were resolved through conciliation or settlement involving the payment of civil fines by the companies and agreement to adopt equal employment policies and be monitored by the Division. In addition, the DII Unit identified additional employers that appear to be discriminating in hiring based on age and is investigating them.

Arrest and Conviction Discrimination in Employment: The Division continues its investigation into the hiring of persons with criminal records within the security guard, retail, building services, and telecommunications industries. Four complaints have been filed and settled against security guard companies.

Accessibility of Medical Services: The DII Unit continues its investigation into failures by certain categories of medical service providers to accommodate patients with mobility impairments. Three complaints have been filed, two of which have been resolved through conciliation and one of which was issued a Probable Cause determination and is scheduled for pre-hearing.

Retail Store Accessibility: The DII Unit has begun a broad review of retail store and professional office accessibility in New York City. The review is ongoing, with many businesses having already agreed to correct accessibility barriers.

Outreach and Education

During FY2015-16, the External Relations unit executed the following initiatives:

- DHR coordinated a public education campaign on protections for people with HIV/AIDS under the Human Rights Law. The statewide multi-media campaign ran from February to March and urged members of the public living with HIV/AIDS to learn more about their rights under the law and to file complaints with the Division if they feel they have been discriminated against. Advertisements for the campaign appeared on posters on the NYC subway, Metro North, and Long Island Rail Road platforms; billboard advertisements appeared in Albany, Buffalo, Rochester, and Syracuse; and radio advertisements ran on the web stream of Power 105.1 FM and LaMega 97.9 FM. This campaign was made possible through a \$90,000 grant from the NYS Department of Health's AIDS Institute.
- In April, the unit launched the agency's fair housing public information campaign targeting people with Limited English Proficiency (LEP). The campaign, funded by the U.S.

Department of Housing and Urban Development, included five ads depicting housing discrimination, appearing on mass transit, radio and in seven non-English publications. The ads ran in Korean, Chinese, Spanish, Russian, Haitian Creole and Italian. (See below).

- In December, DHR coordinated and executed an event to commemorate the 70th Anniversary of the New York State Human Rights Law. The event was held at New York Law School in Lower Manhattan. Christine Quinn, CEO of Women in Need (WIN) and former New York City Council Speaker, gave the keynote address. The event also included a panel discussion on relevant civil rights issues with Caroline Downey, DHR General Counsel; John Herrion, DHR Director of Disability Rights; and Arthur S. Leonard, Law Professor and Editor, Lesbian/Gay Law Notes, NY Law School.



I would love to move to that new apartment building in the neighborhood, but the stairs at the entrance are a big problem.

Me encantaría vivir en ese edificio nuevo, pero con mi silla de ruedas, las escaleras de la entrada son un problema.

The New York State Human Rights Law requires that covered multi-family buildings constructed after March 13, 1991 to be accessible. Buildings constructed before that date may also be required to be modified to accommodate persons with disabilities. To find out more contact the New York State Division of Human Rights 1-888-392-3644 or WWW.DHR.NY.GOV.

La Ley de Derechos Humanos del Estado de Nueva York dispone que los edificios multifamiliares construidos después del 13 de marzo de 1991 sean accesibles. También se puede exigir modificaciones razonables en los edificios construidos antes de esa fecha para proveer acceso a personas con discapacidades. Si desea más información, contacte la División de Derechos Humanos del Estado de Nueva York al 1-888-392-3644 o visite WWW.DHR.NY.GOV.

This advertisement is sponsored by the U.S. Department of Housing and Urban Development. Este anuncio es auspiciado por el Departamento de Vivienda y Desarrollo Urbano de Estados Unidos.


New York State Commission Against Discrimination

1945 Henry C. Turner, Chairman
Charles Garside, Chairman
Edward W. Edwards, Chairman
Ward Arbury, Chairman

1955 Charles Abrams, Chairman
1959 Elmer A. Carter, Chairman
1961 Ogden Reid, Chairman

New York State Commission for Human Rights

1962 George Fowler, Chairman
1967 Robert J. Mangum, Chairman

New York State Division of Human Rights

1970 Jack M. Sable, Commissioner
1975 Werner Kramarsky, Commissioner
1982 Robert Shaw, Acting Commissioner
1983 H. Carl McCall, Commissioner
1984 Douglas H. White, Commissioner
1990 Margarita Rosa, Commissioner
1995 Edward Mercado, Commissioner
1999 Jerome H. Blue, Commissioner
2000 Evonne W. Jennings Tolbert, Commissioner
2003 Michelle Cheney Donaldson, Commissioner
2007 Kumiki Gibson, Commissioner
2008 Galen D. Kirkland, Commissioner
2013 Helen Diane Foster, Commissioner

General Counsels

1945 Henry Spitz
1975 Beverly Gross
1977 Ann Thatcher Anderson
1983 Roberto Albertorio
1985 Margarita Rosa
1988 Lawrence Kunin
1999 Gina M. Lopez
2007 Caroline Downey