



# FTC's Invitation Homes Settlement: Federal Consumer Protection Laws In Rental Property Management

October 4th, 2024 | [Jay Harris](#) and [Mark D. Metrey](#)

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The Federal Trade Commission (FTC) announced a groundbreaking settlement with Invitation Homes, a large single-family rental home owner/operator, on September 24. The settlement, which includes a \$48 million monetary judgment and substantial injunctive relief, introduces novel applications of Section 5 of the FTC Act (15 U.S.C. § 45) in excess of state and local law to: advertising rents and services, disclosing rents and fees in leasing, managing security deposits, credit reporting rent obligations, and advising residents of resident relief during the evictions process.

The settlement continues a recent trend of federal regulators' attention to market-rate residential property management practices. For example, last November, the FTC [proposed](#) a broad trade regulation rule covering unfair or deceptive fees; after tens of thousands of comments, a final rule is expected. In April, the Department of Housing and Urban Development (HUD) released guidance about the Fair Housing Act's application to [resident screening](#) and [digital marketing](#) practices. The Federal Housing Finance Agency (FHFA) [announced](#) in July resident notice and late fee protections tied to rental properties with Fannie Mae or Freddie Mac loans. Most recently, the Consumer Financial Protection Bureau (CFPB) focused on rental debt and the "financialization" of rent payment obligations in its September [annual report](#) on debt collection. More action by federal regulators is likely as housing remains a top issue for Americans across the country.

Below are the key provisions of the FTC settlement with Invitation Homes, with implications for rental operations:

- **Advertising and Disclosure of "Total Monthly Leasing Price" and Property Conditions**

The agency alleged that consumers were misled by the failure to disclose mandatory fees for services in advertised rental prices. The settlement requires Invitation Homes to disclose, more prominently than any other pricing information, a new "Total Monthly Leasing Price" – to include all recurring mandatory fees or charges associated with the property. Further, fees or charges are to be disclosed clearly and conspicuously, and such disclosures are to include the fee or charge's nature and purpose, amount, and whether it is mandatory. Finally, the settlement enjoins misrepresentations about property conditions, maintenance and inspection practices, and security deposit processes.

- **Fair Practices in Security Deposit Management**

The FTC also challenged security deposit practices, accusing the company of unfairly withholding deposits for normal “wear and tear” or for damages that existed prior to occupancy. Under the settlement, the operator must train its security deposit management professionals on applicable law, provide unit inspection records (such as photos) to residents on request, and deliver itemized statements when withholding any portion of a security deposit, outlining the specific reasons for each deduction.

- **Debt Validation for Credit Reporting**

Under the settlement, where a consumer gives notice of potentially erroneous charges in a debt obligation, unless the company has written verification of the debt, it is to instruct a consumer reporting agency to delete the account as inaccurate and confirm that its appointed collections agency will stop collection on the debt.

- **Eviction Practices and Notice of Tenant Resources During COVID-19**

Another significant aspect of the settlement addresses the company’s eviction practices during the COVID-19 pandemic. The complaint alleged that the housing provider steered tenants away from federal and state renter hardship subsidies. The settlement mandates that renters in eviction be notified of relevant rental assistance programs; also, eviction proceedings, in many cases, are to be abandoned once the resident has vacated the property.

- **Ongoing Compliance and Monitoring**

To ensure long-term compliance with the terms of the settlement, the respondent is subject to robust monitoring and reporting requirements over the next 15 years. The company must train its employees and contractors about the settlement’s terms, state and local rental laws, and best practices in handling resident relationships. Additionally, the company must maintain detailed records of renter complaints, property inspections, and security deposit transactions, which will be subject to FTC review.

## **Implications**

The FTC’s leading-edge settlement is a caution to rental property operators and their vendors: increased enforcement and litigation over market-rate rental management practices brought by consumer protection agencies and private parties using unfair, deceptive, or abusive acts and practices (UDAAP) authority in the FTC Act, Dodd-Frank Act, and comparable state laws may be on the horizon. Rental housing operators and vendors will also be watching to see if the new Total Monthly Leasing Price and service advertising and disclosure concepts in this settlement are reflected in any FTC fee disclosure and description rule and in state laws.

Operationally, the FTC’s interpretations in the settlement present a useful checklist for property operators and vendors to review with counsel. Even where a housing provider’s ad disclosures and operating practices meet or exceed applicable state laws, the FTC’s novel extension of the FTC Act may appear in future enforcement and private party complaints. Thus:

- Ad Disclosures – Are rents with mandatory fees available for presentation transactionally on property websites and third-party platform advertising? Are fees and charges described and available for applicant review before an application fee is charged? Are property management services, such as maintenance services, and resident responsibilities accurately described to the consumer?

- Security Deposit Management – In practice, is sufficient documentation maintained to demonstrate damages beyond normal wear and tear and costs of repair? What details are provided to the resident on a request for documentation of charges against the deposit?
- Debt Documentation – Where a resident's debt is provided to a collections agency for recovery, does appropriate documentation support the charges in the debt? In some cases, a debt may need to be adjusted before or after placement to reflect available documentation or a subsequent disputed item.
- Available Resident Resources – While COVID-era supplemental rental aid has been allocated and spent, many operators continue to support residents with payment difficulties by creating payment plans, offering short-term loans, and providing information about local rental aid programs. Operators may wish to increase resident awareness of these resources.

Rental housing providers deliver the housing and services consumers demand. Though federal and state consumer protection regulators do not provide affordable housing, they and private party plaintiffs can be expected to assert a growing role in rental property management practices even after the general election. Industry challenges to creative new applications of UDAAP laws can be expected. Smart property operators would do well to stay abreast of novel applications of general consumer protection laws to market-rate rental operations.

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