

GIBSON DUNN



Administrative Law & Regulatory | Consumer Protection | Real Estate Update

April 21, 2026

27 State Attorneys General Urge FTC to Pursue Rulemaking on Rental Housing Fees

This update reviews where the FTC's Advance Notice of Proposed Rulemaking and related agency activity suggest the rulemaking could be heading, how the state Attorneys General are seeking to shape that process, and what affected companies should be doing now to prepare.

On April 13, [27 state Attorneys General submitted comments](#) on the Federal Trade Commission's (FTC) Advance Notice of Proposed Rulemaking (ANPR), urging the Commission to move forward with [rulemaking](#) on rental housing fees and adding pressure on the agency to [adopt a federal rule](#) governing how rent and fees are disclosed. Any such rule could require "all-in" pricing (i.e., disclosing the total price, including mandatory fees, up front), heighten scrutiny of common fee practices, and—if ultimately adopted—create civil-penalty exposure for covered entities. Depending on how the rule is framed, that exposure could extend beyond property owners and managers to certain intermediaries involved in the display of pricing information. The Attorneys General are also urging the FTC to preserve states' ability to impose even stricter requirements, raising the prospect of overlapping federal and state regulation.

The proceeding remains at an early stage. The FTC is currently deciding whether to issue a notice of proposed rulemaking. Although the ANPR comment period has closed, companies would still have a meaningful opportunity to shape the rule if the Commission moves to the next stage of the process. This alert reviews where the FTC's ANPR and related agency activity suggest the rulemaking could be heading, how the state Attorneys General are seeking to shape that process, and what affected companies should be doing now to prepare.

What a Proposed Rule Could Require

The FTC [initiated this proceeding on March 13](#) by issuing an [ANPR](#), an early-stage notice used to gather information before deciding whether to propose a rule. In that notice, the agency asked 74 questions about rental housing fee practices, including how rent and fees are advertised, when fees are disclosed, how application and holding fees are imposed, and what role third-party providers—including property management software providers, listing services, and online rental platforms—play in displaying total rent and other pricing information. The ANPR follows major FTC enforcement actions resulting in \$72 million in monetary relief against rental housing companies over allegations of deceptive rental pricing and fee practices, including the omission of mandatory fees from advertised rents. In December 2025, the FTC also [sent warning letters](#) to 13 property management software providers, signaling continued agency interest in whether software tools and platform design may contribute to incomplete rental price disclosures.

Taken together, the ANPR, the FTC’s recent enforcement actions, and the agency’s warning letters to software providers point to a proposed rule that could:

- **Mandate all-in pricing.** Require rental housing providers that advertise a price to disclose total rent, including mandatory fees and charges, upfront and more prominently than other pricing information.
- **Require fee substantiation or otherwise restrict certain fees.** Subject at least some fees to heightened scrutiny, potentially including a cost-justification, reasonableness, or other substantive limitation on charges that exceed the cost or value of the underlying service.
- **Require pre-application disclosure.** Compel disclosure of mandatory fees before any application, screening, or holding fee is imposed.
- **Regulate security deposits.** Restrict deductions for normal wear and tear or preexisting damage, require documentation supporting deductions, and limit withholdings to actual repair costs.
- **Extend liability to third-party platforms.** Impose obligations not only on owners and managers, but also on certain third-party providers involved in how pricing and fees are displayed.

What Companies Should Be Doing Now

Companies should consider preparing on two tracks at once: building the record for the next phase of the FTC’s rulemaking and assessing exposure under existing state law.

Prepare for the Next Phase of the Rulemaking

The FTC will now review [the comments submitted](#) in response to the ANPR and decide whether to issue a proposed rule with regulatory text. If it does, the proceeding will move forward under the FTC’s Magnuson-Moss rulemaking authority, which is substantially more procedurally demanding than ordinary notice-and-comment rulemaking. Among other things, that process requires the FTC to provide opportunities for informal hearings and cross-examination on

disputed facts, and to show that the practices it seeks to regulate are prevalent across the industry. Those requirements can materially constrain the Commission and heighten the importance of developing a robust evidentiary record. In [Custom Communications, Inc. v. FTC](#), No. 24-3137 (8th Cir. July 8, 2025), [Gibson Dunn obtained unanimous vacatur](#) of the FTC’s last major rule—the “Click-to-Cancel” Rule—because the court concluded that the Commission had not satisfied key procedural requirements under that same Magnuson-Moss framework.

The defensibility of any future rule—and the strength of any eventual challenge to it—will depend in significant part on the record developed during the comment process and any hearings. Companies that use or impose rental housing fees, or that provide software used to display them, should therefore consider building that record now in anticipation of any proposed rule and the next comment phase. If the FTC issues a proposed rule, comments will be most effective if they do more than object in general terms: they should address the agency’s assumptions with concrete operational examples, economic data, compliance-cost evidence, and analysis showing how particular requirements would work—or fail in practice. Gathering that information across properties, platforms, business units, and jurisdictions takes time. Several issues are likely to shape both the substance of any proposed rule and the record on which it will be judged, including:

- **All-in pricing may be harder to operationalize in this market.** Unlike a hotel room or event ticket, a rental lease is an ongoing relationship in which total cost may depend on tenant-specific factors that may not be known when a unit is advertised, including unit selection, lease duration, parking, pet ownership, and utility usage.
- **Fee restrictions could raise housing costs, not lower them.** If the FTC restricts or prohibits fees without reducing the underlying costs they are intended to recover, operators may respond by folding those costs into base rent. That could change how charges are presented without lowering the overall cost to residents.
- **Screening fee limits could undermine fraud detection.** Rental application fraud is a growing operational problem—industry reports [indicate that a significant share of applications](#) at some properties contain fabricated income statements, falsified bank records, or fraudulent identification, increasingly generated using AI tools. Limits on screening fees could make it harder to fund the verification tools and processes needed to detect those risks, weakening protections for both operators and existing residents.
- **Platform liability would raise separate issues.** Extending compliance obligations beyond the owners and managers who set the underlying charges would raise questions about how responsibility should be allocated among owners, managers, and technology providers.
- **A federal rule could compound, not replace, state compliance obligations.** Many states and localities already regulate fee disclosure, fee caps, and security deposit practices. A federal rule operating alongside those requirements could add another layer of compliance for companies operating across multiple jurisdictions.

Assess Current State Enforcement Risk

State Attorneys General are already acting independently, and states continue to adopt new fee caps, disclosure requirements, and restrictions on security deposit deductions and other rental-fee practices. For example, the multistate AG comment letter points to a New Jersey law capping

certain rental application fees at \$50, [effective May 1, 2026](#). For companies operating across multiple jurisdictions, current practices may therefore already face scrutiny under existing state and local law.

Affected companies should consider reviewing their practices now against applicable state and local requirements, including how rent and fees are advertised, when fees are disclosed, how screening and application charges are calculated, how security deposit deductions are documented, and whether contracts and platform arrangements clearly allocate responsibility for fee-setting and fee display. For multi-state operators, third-party managers, and software providers, that review should focus in particular on where overlapping state-law, federal, and contractual obligations could create compliance gaps or enforcement risk.

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Gibson Dunn's Administrative Law and Regulatory, State Attorneys General, Consumer Protection, and Real Estate teams are available to assist companies navigating both the FTC's rental housing fee rulemaking and [related state enforcement activity](#). Our lawyers advise clients on [federal agency rulemakings](#), including FTC proceedings under the Magnuson-Moss framework, and regularly [defend companies](#) in multistate consumer protection investigations and enforcement actions.

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