



Fair Housing Month 2020

Reasonable Accommodations
and Accessibility Training

Fair Housing Webinar Series

- April 2 from 10:00 to 11:30 AM: Fair Housing Overview
- April 8 from 10:00 to 11:30 AM: Reasonable Accommodations and Accessibility
- April 14 from 10:00 to 11:30 AM: Assistance Animals

Webinar information located at <https://www.tdhca.state.tx.us/fair-housing/announcements.htm> or the calendar portion of [TDHCA's website](#).

For further information, please contact Cate Tracz, TDHCA Fair Housing, Data Management, and Reporting Manager at Cate.Tracz@tdhca.state.tx.us



Presenters

**Texas Department of Housing &
Community Affairs (“TDHCA”)**

Nathan Darus

Fair Housing Research Specialist

Nathan.Darus@tdhca.state.tx.us

512-475-0306

**Texas Workforce Commission, Civil
Rights Division (“CRD”)**

Marilyn Diaz

Training and Outreach

Marilyn.Diaz@twc.state.tx.us

512-463-4650



Note on COVID-19

This webinar will **not** cover TDHCA's or TWC's COVID-19 policies or provide any guidance on reasonable accommodations related to COVID-19. For TDHCA's current guidance on the topic please visit the TDHCA website:

<http://www.tdhca.state.tx.us/covid19.htm>



Mission and Vision of CRD

Our mission is to reduce discrimination in employment and housing through education and enforcement of state and federal laws.

Our vision is to help create an environment in which citizens of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.



Agenda

- ✓ Objectives
- ✓ Purpose of the Fair Housing Act and the Texas Fair Housing Act
- ✓ Reasonable Accommodations
- ✓ Case Scenarios
- ✓ Other Accessibility Issues
- ✓ Mediation



Objectives

- Identify the Purpose of the Acts
- Reasonable Accommodations
 - Define Disability
 - Recognize a Request for Reasonable Accommodations
 - Recognize Appropriate Responses to a Request for Reasonable Accommodations
 - Identify Resources
- Identify Other Accessibility Issues



Purpose

The purpose of the Fair Housing Act is to, within constitutional limitations, provide for fair housing throughout the United States.

The purpose of the Texas Fair Housing Act is to:

- Provide for fair housing practices in the state
- Create a procedure for investigation and settling complaints
- Provide rights and remedies substantially equivalent to federal law



Protected Classes

- Race
- Color
- National Origin
- Familial Status
- Religion
- Sex
- Disability



Purpose of the Disability Protected Class

- Give people with disabilities greater freedom to choose where they will live and greater freedom to visit friends and relatives.
- Proactively address the needs of an evolving population.
- Look ahead at future needs.
- Allow people to remain in and safely use their dwellings longer.



Disability

What are some major life activities?

- Seeing
- Hearing
- Breathing
- Walking
- Performing manual tasks
- Caring for one's self
- Learning
- Speaking
- Working



Disability

What are some examples of impairments which may result in a disability?

- Visual, speech, and hearing impairments
- Cerebral palsy
- Autism
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- Human Immunodeficiency Virus (HIV) infection
- Drug addiction (other than addiction caused by current, illegal use of a controlled substance)
- Alcoholism



What is a Reasonable Accommodation?

A change, exception, or adjustment in rules, policies, practices, or services necessary to afford a person with a disability equal opportunity to use and enjoy the dwelling.



Why grant a reasonable accommodation?

- Because policies, practices, and services may have a different effect on persons with disabilities than on other persons
- Treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.



What do state and federal laws require?

Housing providers to make reasonable accommodations to the rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.



Scenario 1



A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent.

A tenant has a disability that makes her afraid to leave her unit.

Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation.

Scenario 1



The provider must make an exception to its payment policy to accommodate this tenant.



Scenario 2



A tenant with a disability made a request for a reasonable accommodation to the apartment manager for an early termination of her lease because she was going to be hospitalized for treatment due to her disability.

How should the manager respond? Is this a reasonable request?

Scenario 2



The manager denied the reasonable accommodation.

Settlement terms:

- Property agreed to refund the tenant's rent for three months
- Tenant agreed to vacate the unit
- Property agreed to take fair housing training

Reasonable Accommodation Request Guidelines

- The requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.
- The request does not have to be made in writing or on a certain form.
- An individual making a reasonable accommodation request does not need to mention the Acts or use the words "reasonable accommodation" or use any magic words.
- The request can be made by a family member or someone else who is acting on the person's behalf.



What inquiries can I make if a resident asks for a Reasonable Accommodation?

- A housing provider may ask for information relevant to determining if a requested reasonable accommodation is necessary because of a disability.
- For a disability that is not obvious or the need is not obvious, a housing provider may request reliable disability-related information that
 - (1) is necessary to verify that the person meets the Acts' definition of disability;
 - (2) describes the needed accommodation; and
 - (3) shows the relationship (or nexus) between the person's disability and the need for the requested accommodation.
- A doctor or other medical professional, a peer support group, a non-medical service agency, or a **reliable third party** who is in a position to know about the individual's disability may also provide verification of a disability.

Scenario 3



A rental applicant who uses a wheelchair advises a housing provider that she wishes to keep an assistance dog in her unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Sample letter for Companion Animal

DATE

NAME OF PROFESSIONAL (therapist, physician, psychiatrist, rehabilitation counselor)
ADDRESS

Dear [HOUSING AUTHORITY/LANDLORD]:

[NAME OF TENANT] is my patient, and has been under my care since [DATE]. I am intimately familiar with his/her history and with the functional limitations imposed by his/her disability. He/She meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

[FIRST NAME] has certain limitations regarding [SOCIAL INTERACTION/COPING WITH STRESS/ANXIETY, ETC]. In order to help alleviate these difficulties, and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist [FIRST NAME] in coping with his/her disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [FIRST NAME]. Upon request, I will share citations to relevant studies, and would be happy to answer other questions you may have concerning my recommendation that [FULL NAME OF TENANT] have an emotional support animal. Should you have additional question, please do not hesitate to contact me.

Sincerely,
Signature

[NAME OF PROFESSIONAL]



What can't I ask?

Reasonable Accommodations

- A housing provider may not ordinarily ask the following:
 - The nature and severity of an individual's disability.
 - If an applicant has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant has a disability.
- Examples of exceptions:
 - If the housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis.
 - If the housing provider operates housing that is legally limited to persons with a specific diagnosis, such as chronic mental illness.



What should I do when I receive a request?

- Review and ensure your reasonable accommodations policy is consistent with the Acts and the HUD/DOJ Memorandum on Reasonable Accommodations.
- Accept verbal requests.
- Engage in the interactive process with the requestor.
- If the disability is not obvious or the need is not obvious, ask for appropriate reliable disability-related information.
- Provide prompt responses to reasonable accommodation requests.
- Document your actions.

Note: An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.



Other Accessibility Issues

- Reasonable Modifications
- Design and Construction
- Terms, conditions or privileges for sale or rental of a dwelling and provision of housing services or facilities



Issue: Reasonable Modification

If a person is disabled...

...a landlord cannot refuse to let that person make reasonable modifications to the person's dwelling or common use areas, at that person's own expense (unless 504 applies), if necessary for that person to use the housing.

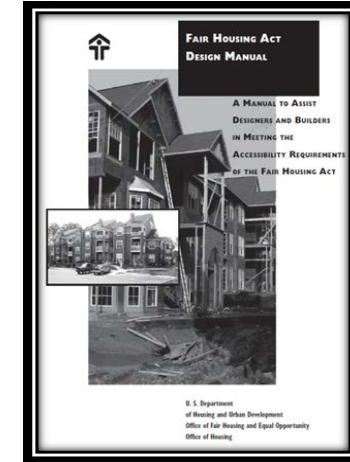


Issue: Design & Construction Requirements

For all covered multifamily dwellings that were built for first occupancy **after March 13, 1991**, they have to be designed and constructed in a manner that is accessible and usable.

Requirements

- Accessible building entrance on an accessible route into and through the dwelling.
- Accessible public and common use areas
- Doors that allow (wheelchair) passage into and within all rooms
- Accessible route into and through each covered unit



Issue: Design & Construction Requirements

Requirements (Cont'd)

- Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Reinforcements in bathroom walls so grab bars can be added when needed.
- Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.



Who pays?

- Housing providers may claim undue financial *and* administrative burden or that the requested **reasonable accommodation** constitutes a fundamental alteration of the provider's operations, so the following would be considerations:
 - The financial resources of the provider.
 - The cost of the reasonable accommodation.
 - Benefits to the requester of the requested accommodation.
 - The availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs.
- The Fair Housing Act provides that while the housing provider must permit the reasonable **modification**, the tenant is responsible for paying the cost of the modification. However,



Questions to Determine Who Pays for Modifications

Is it a single-family or multi-family dwelling unit?

Does the property receive federal financial assistance?

When was the property built for first occupancy?

Does the property participate in the Low-Income Housing Tax Credit Program?

What type of accessibility feature is being requested?

Does an agreement exist between the parties?



Source: Fair Housing Council of Greater San Antonio

Implications for Properties Subject to Section 504

Under the regulations implementing Section 504 of the Rehabilitation Act of 1973, structural changes needed by an applicant/resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations and must be paid for by the housing provider in most cases.

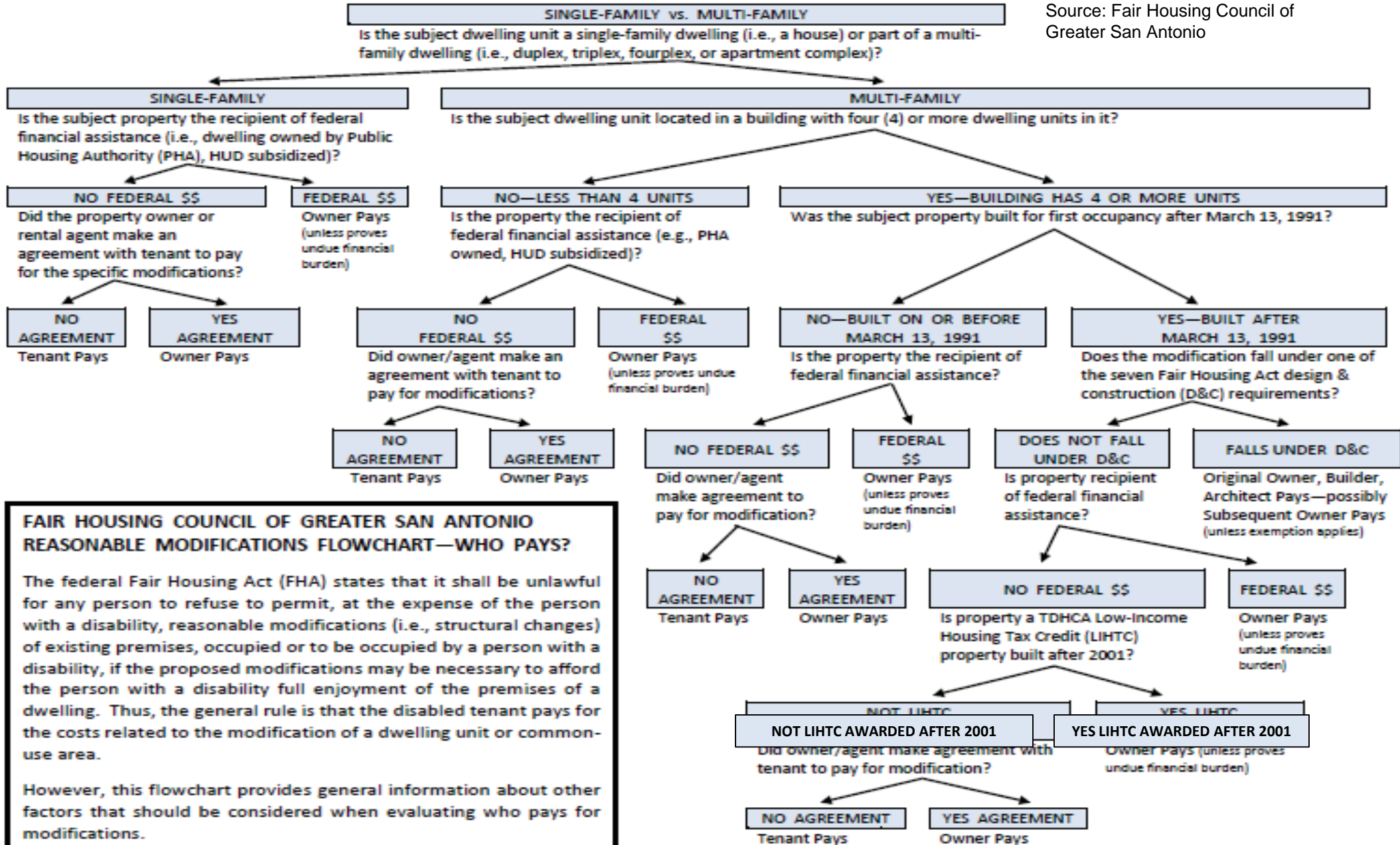
All participants in TDHCA's Low-Income Housing Tax Credit Program, awarded after 2001 are required to provide and pay for reasonable accommodations including structural modifications to dwelling units or public and common-use areas if they do not amount to an undue financial and administrative burden.



Source: Fair Housing Council of Greater San Antonio

Reasonable Modifications Flowchart – Who Pays?

Source: Fair Housing Council of Greater San Antonio



**FAIR HOUSING COUNCIL OF GREATER SAN ANTONIO
REASONABLE MODIFICATIONS FLOWCHART—WHO PAYS?**

The federal Fair Housing Act (FHA) states that it shall be unlawful for any person to refuse to permit, at the expense of the person with a disability, reasonable modifications (i.e., structural changes) of existing premises, occupied or to be occupied by a person with a disability, if the proposed modifications may be necessary to afford the person with a disability full enjoyment of the premises of a dwelling. Thus, the general rule is that the disabled tenant pays for the costs related to the modification of a dwelling unit or common-use area.

However, this flowchart provides general information about other factors that should be considered when evaluating who pays for modifications.

Reasonable Accommodations

When can I deny a request for a reasonable accommodation?

- If the housing provider has reliable, objective evidence that a person with a disability poses a direct threat to others.
- If the request was not made by or on behalf of a person with a disability or if there is no disability related need for the accommodation.
- If providing the accommodation is not reasonable – i.e., if it would impose an undue financial *and* administrative burden on the housing provider *or* it would fundamentally alter the nature of the provider's operations.
- If not reasonable, consider whether there is an alternative accommodation that would effectively address the requester's disability-related needs.

Note: A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.



Scenario 4



Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Scenario 5



- A housing provider requires all applicants to complete an application that includes information on the applicant's current place of residence
- On her application a woman notes that she currently resides in Cambridge House, the manager knows that Cambridge House is a group home for people receiving treatment for alcoholism
- Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant

Scenario 5



- The rejection is unlawful because it is based on a generalized stereotype related to a disability
- The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit.
- A manager could have checked this applicant's references in the same extent and manner as he would have checked any other applicant's references. If the reference check revealed objective evidence showing the applicant posed a direct threat to persons or property in recent past and the direct threat had not been eliminated, the manager could have rejected the applicant based on direct threat.

Scenario 6



A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a **fundamental alteration** in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

Scenario 7



A tester from a nonprofit organization contacted a college by telephone. In the phone call, the tester identified his son as a disabled person who required an emotional support animal (“ESA”). The college representative refused to waive the college’s pet rule, and stated that the tester’s ESA would be required to remain indoors. The college representative also indicated that students with ESAs were encouraged to reside in a specific dormitory.



Scenario 8



Complainant alleged that Respondent's manager and assistant manager asked her to give them \$300 for a pet deposit for her emotional support cat and also to pay a monthly pet fee of \$10. They also threatened to send a lease violation notice to the housing authority. Complainant alleged the manager was aware of her disability. The manager asked Complainant to come to the office and when she went to the office, the manager told her to sign an animal addendum for her cat.

Complainant alleged that she was subjected to different terms and conditions of rental, and denied a reasonable accommodation due to her disability.



Scenario 9



Complainant is a person with disabilities which prevent him from walking and talking and Complainant uses a wheelchair. Complainant lived with his brother, who had a general power of attorney which allowed the brother to act on Complainant's behalf. Complainant's brother purchased a wheelchair carrier in order to safely transport Complainant and his wheelchair. The brother parked the wheelchair carrier in his driveway in front of his home. However, the Home Owners Association ("HOA") demanded that he remove the wheelchair carrier, citing a deed restriction.

Complainant alleged the HOA failed to make a reasonable accommodation of allowing an exception to the deed restriction when the HOA disapproved his request to keep the wheelchair carrier in the driveway.



Scenario 10



Complainant alleged she was subjected to different terms, conditions, privileges, or services and facilities and denied a reasonable accommodation request because of her disabilities.

She stated that the Respondent manager's representative and the staff at the Apartments discriminated against her by denying her reasonable accommodation request to be allowed to pay her rent according to the day she receives her Social Security Disability Income check. Her check arrives the third Wednesday of every month. Complainant alleged that instead she received numerous late fees which have put her in a financial bind.



Reasonable Accommodations Investigative Elements

When TWCCRD investigates cases involving reasonable accommodations, these are the elements of

- Does the resident or applicant have a disability?
- Did the housing provider know or reasonably should have known that the resident or applicant is a person with a disability?
- Did the resident or applicant request a reasonable accommodation in the rules, policies, practices, or services of the housing provider?
- Was the requested accommodation necessary to afford the resident or applicant an equal opportunity to use and enjoy the dwelling?
- Did the housing provider refuse the resident's or applicant's request to make such accommodation or fail to respond or delay responding to the request such that it amounted to a denial.



Issue: Terms and Conditions

It is illegal to set different terms, conditions or privileges for sale or rental because of disability.

Examples:

- Housing providers may not treat disabled tenants differently when it comes to issuing lease violation notices because of the disability of the person.
- Housing providers may not require disabled persons to sign an extra addendum to use the pool at the property.



Other Disability Laws

- ADA-limits definition of service animal to “dog”; does not include emotional support animals
- The dog has to be individually trained
- Applies to state and local governments
- Inquiries are limited to 1) is the service animal required because of a disability and 2) what work or tasks has the animal been trained to perform
- Entities cannot request documentation
- 504-includes emotional support and assistance animals; not considered pets
- Animals are not required to be trained or certified
- May accompany the person in all areas of the premises
- Breed, size, and weight limits may not be applied
- Owners are responsible for the costs of reasonable accommodations or modification in most cases



TDHCA Accessibility

10 TAC Rule § 1.204, Reasonable Accommodations

“A Recipient that owns a LIHTC or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001 must allow but may not need to pay for the Reasonable Accommodation, except if the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice with a de minimis cost (e.g., assigned parking spot, no deposit for service/assistance animals, etc).

In general, denial of reasonable accommodations often occurs due to misunderstandings of what reasonable accommodations are and how they work.



TDHCA Reasonable Accommodations

10 TAC Rule § 1.204, Reasonable Accommodations

(b) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 14 calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Should additional information be required and an interactive process is necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a reasonable accommodation request may be a failure to provide a reasonable accommodation.



TDHCA Reasonable Accommodations - Examples

1. A resident requests to move their rent due date to coincide with their social security disability check. It would not be considered reasonable to wait 14 calendar days to respond to this request.
2. A resident requests a designated accessible parking space. An individual's Disability status and the connection to the Reasonable Accommodation request are not clear. Documentation must be requested within 14 calendar days to clarify the resident's request, engaging in an interactive process to determine the nature of the request and the needs of the resident.
3. An applicant with a Disability requires a service animal to alert of impending seizures. The shelter has a no pets policy. It would not be reasonable to wait 14 calendar days to respond to this request.



TDHCA Reasonable Accommodations - Examples

4. A person with a Disability requests modifying door knobs to levers. The property must respond to the request within 14 calendar days, although it is reasonable that it may take additional time to install the modified door knobs.
5. A housing provider requires that tenants sign 12 month leases. A household signs the lease, but after a few months has to move out in order to live in a nursing home. The household requests a reasonable accommodation to be let out of his lease early without a fee. The property may request additional information if the Disability and relationship between the request is not clear, but must ask for this information within 14 calendar days.
6. An applicant requests a reasonable accommodation to have assistance in filling out a program application for the Housing Trust Fund Program. It would not be reasonable to wait 14 calendar days to respond to this request.

TDHCA Accessibility - Examples

A resident requires an accessible parking space that will accommodate her wheelchair-equipped van.

A Reasonable Accommodation includes relocating and enlarging an existing parking space that will serve the van.



TDHCA Accessibility - Examples

A resident uses a scooter type wheelchair which is 38 inches in width. She requests a ramp to enter her ground floor unit. The ramp which she requests must be at least 40 inches wide, it must have a slope of no more than 3%, and the landing at the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided, even though they may exceed the usual specifications for such alterations.



TDHCA Accessibility - Example

A resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair. She does not wish to move to an accessible unit. The Recipient must provide an accessible entrance at the resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.



TDHCA Accessibility - Examples

A resident with quadriplegia requests replacement of a bathtub in his unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that installation of a roll-in shower in that unit is impossible. The on-site manager should meet with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.



Complaints

Property Management – if you have a complaint filed against you:

- You will be notified of the allegations
- You likely will be invited to mediate
- If you decide not to mediate, you may file an answer that is
 - In writing
 - Under penalty of perjury
 - May be amended at any time

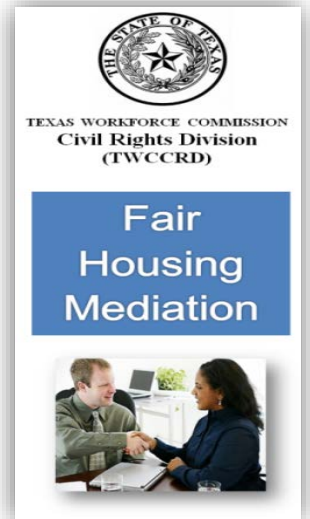
Complainant – if you need to file a complaint:

- Go to: texasworkforce.org/civilrights
- Fill out the electronic form

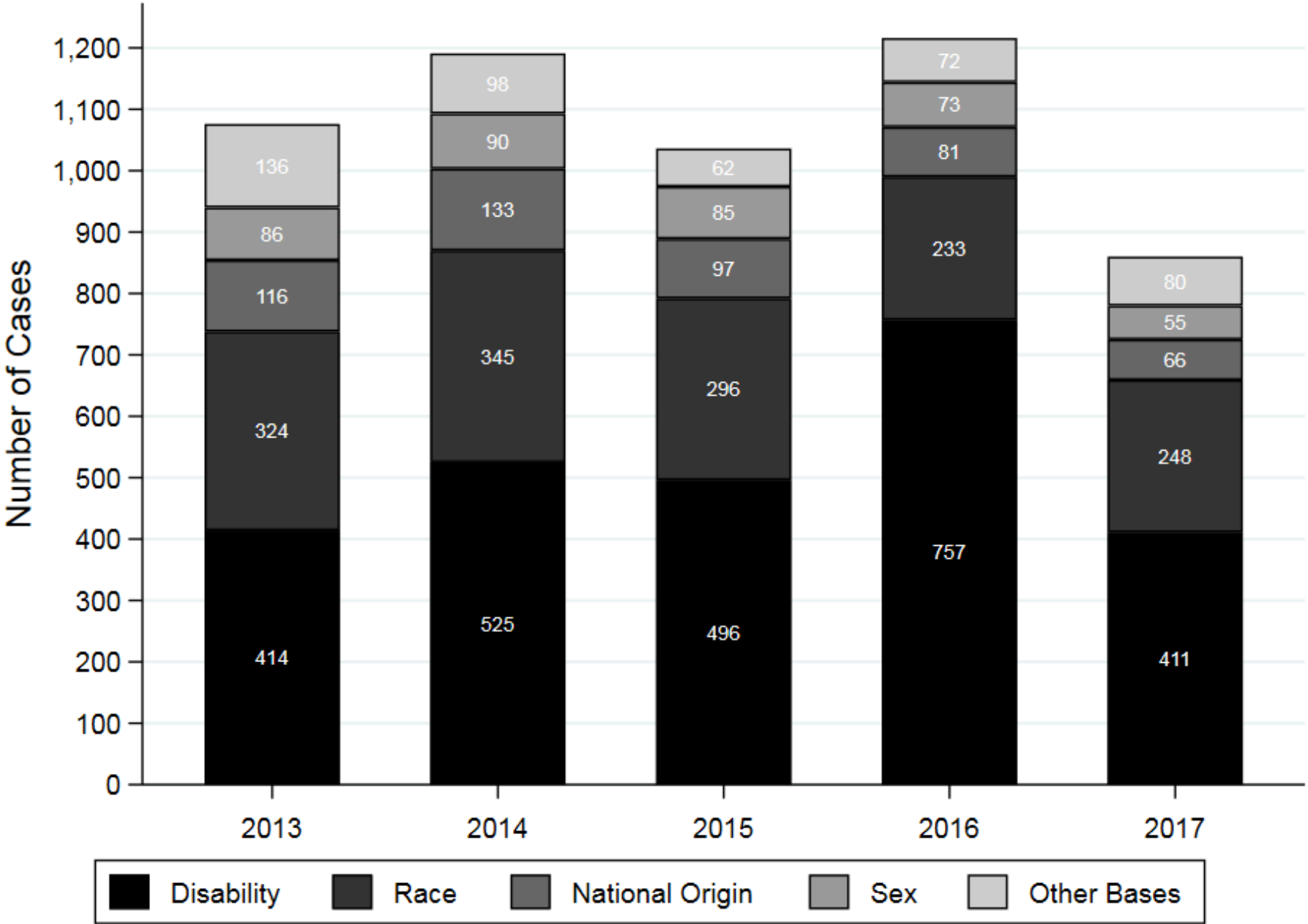


Mediation

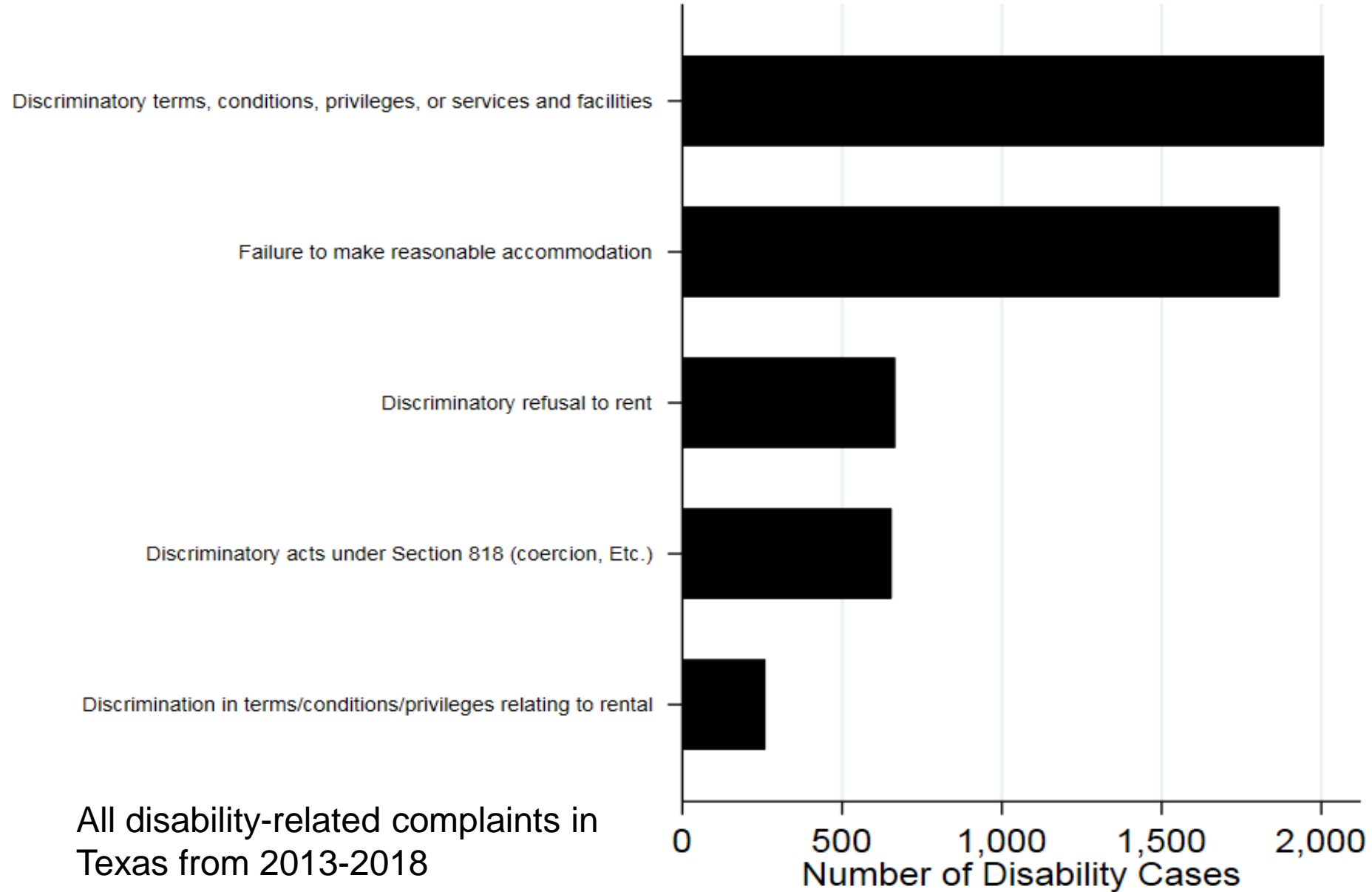
- Free service offered from the time of the complainant filing until resolved
- Eliminates lengthy investigations and expensive litigation
- Speedy resolution of complaints
- Saves time and money
- Opens lines of communication between disputing parties
- Allows each party to understand the position of an opposing party
- The agreement is binding on both the Complainant and the Respondent



State of Texas Fair Housing Complaints by Protected Class



State of Texas Fair Housing Disability Complaints by Issue



All disability-related complaints in Texas from 2013-2018



What Can Housing Providers do?

- Get Educated—know the law; know your responsibilities
- Establish policies and procedures that are non-discriminatory
- Implement non-discriminatory policies and procedures and consistently apply them (absent a reasonable request for accommodation/modification)
- Recognize a request for reasonable modification/accommodation
- Document reasonable accommodation interactions



What Housing Consumers do?

- Get Educated—know the law; know your rights
- Read and be familiar with the lease, addendums and other Housing Provider information concerning tenancy/residency; comply with the terms of the lease
- Document interactions with Housing Providers
- File a Fair Housing Complaint



Questions?

Please sign up for the Civil Rights Reporter at:

<http://www.twc.state.tx.us/partners/civil-rights-reporter>



Training & Technical Assistance



Contact the Texas Workforce Commission

Civil Rights Division at:

(888) 452-4778 or (512) 463-2642

crdtraining@twc.state.tx.us