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>> The broadcast is now starting. All attendees are in listen-only mode.
>> Good morning, everybody, we're going to give everybody just a couple of more minutes to join. You know, everybody has -- there's always some sort of technical difficulty, so we're probably going to get started here in about five minutes. I'm going to put up -- we do have a question, we kind of want to gauge how knowledgeable everybody is, what our audience type is, so I'm going to go ahead and put up the poll, if you don't mind answering the question on that as well. I'm going to go ahead and put that up now.

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April 8, 2020.
Texas Department of Housing and Community Affairs.

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>> Good morning, everybody, my name is Nathan Darus. You'll notice that we do have a poll up, if you haven't had a chance to answer that, go ahead. If you don't mind. Just a couple of pieces of housekeeping before we go ahead and get started. You will notice that we do have closed captioning, so even if you're having some audio issues, you should be able to follow along with us, the transcript is also going to be available when we get a chance to put it up on the website.

If you are familiar with the GoToWebinar software, great. If you're not, a couple of things to know. If you have questions throughout the webinar, there is a questions box. Go ahead and ask your questions there. And one of a couple of things will happen. We'll either try to answer it for you directly through that question box. If your question is widely or broadly applicable, we'll try to answer it during the webinar. If your question is one that we need to gather a little bit more information or it's situation-specific, we're going to take your information and go ahead and we'll get in contact with you after the webinar, because a lot of times we don't have the ability to get all of the information you need in those types of questions.

We are going to have other polls throughout the webinar, so just be ready to answer those and I think that should cover all of our -- that should cover all of our housekeeping items.

So, do you want to go ahead and do our introductions?

>> Sure, good morning. This is Cate Tracz.

Thank you all for joining us this morning, as Nathan said, we're doing this, we appreciate your patience with any technical glitches. Please feel free to reach out to us through the questions box, the chat box, we'll be sure to get your questions and any technical assistance handled.

So like Nathan said, we've got closed captioning at the bottom just in case, you know, that you wanted to follow along that way as well.

I just want to go ahead and plug the next couple of -- the next webinar that we're going to have next week on Tuesday 14th, at the same time on HUD's new guidance for assistance animal.

So you can register the same way through our website.

Which is on the screen right now. You know, we're going to go through all the new guidance that HUD has put out, take questions on that as well. I wanted to mention that on the line in addition to Nathan, we've got Marilyn, from the Texas Workforce Commission. Marilyn Diaz, she will be presenting a lot of the material today. In addition, we have Alana Rodriguez, she is also from the Texas Workforce Commission civil rights division, and any additional information as we get to the questions portion.

So I'm going to hand it back to Nathan, if you guys want to take it away, I appreciate everyone for being here.

>> Darus: Sure. Just real quickly again, my name is Nathan Darus the fair housing Resource Specialist at the Texas Department of Housing and Community Affairs. I handle any housing issues that the department that touch fair housing issues. I'm kind of what you might call a utility in-fielder in the department. Marilyn?

>> Diaz: Good morning, everybody. So I'm Marilyn Diaz, I'm with the Texas Workforce Commission Civil Rights Division. Right now I'm assisting with the training and outreach, doing the fair housing webinars and the EEO webinars, so I'm also doing a lot of the admin work, the legwork of our little section there.

I think that is it. Alana, do you want to introduce yourself a little bit.

>> Good morning, welcome, everyone, my name is Alana Rodriguez, I'm the civil rights division manager for outreach compliance. It's my privilege today to be with you this morning to discuss reasonable accommodations and I will do my best to provide additional information and technical assistance to Ms. Diaz through today's presentation. Thank you for joining us.

>> Darus: This webinar today will not cover TDHCA's Texas Workforce Commission policies on COVID 19 currently. It's not going to provide any guidance on reasonable accommodations

related to COVID 19, for TDHCA current guidance on the topic, you can visit the TDHCA website, we have set up specifically for COVID 19 related information, and that is up on your screen, the link -- it's pretty clear, if you go to the TDHCA website, the COVID 19 page is listed prominently right in the center.

So, if that's the information you came to look for, I would say go to that website, but also stick around.

>> Thank you, Nathan.

Okay, so our mission at the Civil Rights Division, so we're really trying to reduce discrimination and harassment in employment and housing through education and enforcement of state and Federal Laws. So 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 and from harassment.

You know, we want to make sure that, you know, the people of the great State of Texas can, you know, go to work and enjoy being in their office, enjoy doing whatever, you know, their calling is, and we want to make sure that they can have a place to go home to that is welcoming, inviting, and they don't have to worry about their landlord harassing them or, you know, discriminating against them.

They can go step into an apartment complex and, you know, have equal opportunity to get housing. Next slide, please.

So our agenda, today we're going to be doing over the purpose of the fair housing -- the Federal Fair Housing Act and the Texas Fair Housing Act.

We'll be going over reasonable accommodations. We'll go through some case scenarios. We'll look at some other accessibility issues. And then we'll go through -- we'll kind of go down the mediation process.

So our objective for today will be to identify the purpose of the Acts.

When I say "Act", I mean the Federal Fair Housing Act and the Texas Fair Housing Act.

We'll define disability.

We'll recognize a request for reasonable accommodation.

We'll recognize appropriate responses to a request for reasonable accommodations and we'll identify some resources.

And we'll also identify other accessibility issues.

Next slide, please.

So the purpose of the fair housing act is to within constitutional limitations provide for fair housing throughout the US.

The Texas Fair Housing Act, it essentially mirrors the Federal Fair Housing Act.

So it provides housing practices for the State of Texas instead of the entire US.

It creates a procedure for investigation and settling complaints.

And it provides rights and remedies substantially equivalent to the Federal Law.

Next slide, please.

So you're protected classes are going to be race, color, national origin, familial status, religion, sex and disability.

Next slide.

>> So the purpose of the disability protected classes, because the Texas Fair Housing Act is substantially equivalent to the fair housing act, it also gives people with disabilities greater

freedom to choose where they will live, and greater visits to visit friends and relatives. It's important to note the fair housing act uses the term handicap instead of disability, but will be using the term disability throughout the presentation.

The Texas Fair Housing Act also has the same broad institutions in that it proactively addresses the needs of an evolving population, so it's looking ahead at future needs.

With the aging population, companies aging, significant number of people will be able to remain and safely use their dwelling longer.

So for example, housing design in accordance with the act will have accessible entrances, wider doors, provisions to allow for easy installation, like grab bars around toilets and bathtubs.

So essentially, any feature that will make the house safer and more responsible to all users.

Next slide, please.

Thank you.

So how is disability defined?

So under the act, any person who has a physical or mental impairment, in a substantially limits one or more major life activity, or has a regular impairment or is regarded as having an impairment.

Next slide, please.

What are some major life activities?

Major life activities include seeing, breathing, learning, working, performing manual tasks.

Pretty much anything that you need to do to live a normal, healthy, active life.

Those would be major life activities.

So while the access protects persons who are covering from substance abuse; it does not protect persons who are currently engaging in illegal use of controlled substances.

The act does not protect an individual with a disability whose tendency would constitute a direct threat to the health or safety of other individuals or result in substantial damage -- physical damage to the property of other, unless it can be eliminated or significantly reduced by a reasonable accommodation.

So some examples impairment, which may result in a disability, are going to be visual, speech and hearing, autism, cancer, diabetes.

And like I just said, drug addiction.

Other addiction caused by current illegal use of a controlled substance.

Alcoholism.

But, again, they have to be in active recovery, you know, doing their step and seeking help, so it has to be an active recovery.

They cannot be currently using.

Next slide, please.

So what is a reasonable accommodation?

So it is attained an exception on adjustment in rule, policies, practices or services necessary to afford a person with a disability equal opportunity to use and enjoy the dwelling.

Under the fair housing act, it's unlawful for any person to refuse to make a reasonable accommodation, and the rules, policies, practices, or services, when such an accommodation may be necessary to afford a person with a disability equal opportunity to use and enjoy their dwelling.

Next slide, please.

Thank you.

So why grant a reasonable accommodation?

One, it's the right thing to do.

And because policies, practices, and services may have a different effect on persons with disabilities than other persons.

And treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.

So even though we may think that we're doing the right thing by treating that individual the exact same as everybody else, in the long run, we could be doing them more harm than good.

So next slide, please.

So what do state and Federal Laws require?

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

So essentially, it is I said this statement over and over because essentially that's what it is.

You know, you're trying to make sure that everybody has equal opportunity to enjoy their housing situation, and you're going to hear this statement over and over throughout this entire webinar.

Next slide, please.

So scenario 1, I'm not sure -- do we have a poll for this one, Nathan?

>> Darus: Yes, we do.

>> Diaz: Perfect.

I will go ahead and read it off.

So 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.

So in looking at this, what do you make of this request and do you think this is a reasonable accommodation?

>> Darus: I am now launching the poll.

If you want to go ahead and let us know -- I'm sorry, have I the wrong poll up.

I don't have a poll for this one.

>> Diaz: Okay.

Not a problem.

So we can go to the next slide.

So in this situation, the provider must make an exception to its payment policy to accommodate the tenant.

It's not much -- I don't think, in my opinion, it would be much of a hassle to, you know, let somebody mail in that payment.

It's a small request, so I think, in this situation, the provider makes the exception and the payment is able to be mailed in by that friend.

Next slide, please.

So scenario number 2, 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.
So the question is how should the manager respond, and is this a reasonable request?
>> Darus: There is no poll for this one either.
>> Diaz: Okay.
Can we go to the next slide?
So in this situation, the manager denied the reasonable accommodation.
And then it went to TWC and it went through the investigation process.
They found that, you know, they came to a settlement and the property agreed to refund the rent -- the tenant's rent for three months.
The tenant agreed to vacate the unit.
And the property agreed to take a fair housing training.
You'll see throughout these scenarios that there's different, you know, they'll be different terms and conditions once they go through the whole investigation process or the mediation process or even they go to court.
There will be some type of settlement agreement or conciliation agreement, and they will have different terms in them.
A reasonable accommodation request guidelines.
The requester must make a request in a manner that is reasonable -- that a reasonable person would understand.
So the request for an exception, the change or adjustment to a rule, policy, adjustment to practices or services because of the disability, the request does not have to be made in writing or on a certain form.
So there's no magic form that you can give the potential tenant, and an individual making a reasonable accommodation request does not need to mention the act or use the word "reasonable accommodation."
Otherwise there's no magic words here.
They just really have to make the request, you know, verbally or in writing, or however they make that request, and it's your job as the housing provider to follow through with it and actually take the steps.
The request can be made by a family member or someone else who is acting on the person's behalf.
So what inquiries can I make as a resident if a resident asks for a reasonable accommodation?
So as a housing provider, what questions can you ask?
So you can ask for information relevant to determining if a request -- a requested reasonable accommodation is necessary because of a disability.
So for a disability that is not obvious, or the need is not obvious, a housing provider may request reliable disability-related information that is necessary to verify the person meets the act definition of disability, or if that information describes the needed accommodation, or it shows the relationship between the person's disability and the need for the requested accommodation.
So let's just say somebody is in a wheelchair and they're requesting a ramp.
Well, that would be a good relationship there, you know, obviously need a ramp maybe to get into their apartment.

Or their home.

So a doctor, other medical professional, a peer support group, a nonmedical 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.

So scenario number 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 -- disability-related need for the dog.

So why can't I ask -- so what can't I ask, I'm sorry.

So when it comes to reasonable accommodation, a housing provider may not ask -- may not ordinarily ask the following questions.

They can't ask the nature and severity of an individual's disability.

They can't ask 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.

So examples of some exceptions, so if the housing provider offers accessible units to persons with disabilities, meaning the features of these units on a priority basis, so some housing complexes, mostly apartment complexes already have units that are made up and ready for -- they're accessible.

They have, you know, possibly have ramps ready nearby.

They have close parking.

They have the lowered countertops.

They have the lowered light switches and grab bars that are needed.

So they're already prepared.

So an exception -- another exception would be if the housing provider operates housing that is legally limited to persons with a specific diagnosis, such as chronic mental illness.

So what should I do when I receive a request?

So as a housing provider, you should review and ensure your reasonable accommodation policy is consistent with the act, and the HUD DOJ memorandum on reasonable accommodations.

You should accept all verbal requests.

You should engage in the interactive process with the requester, and that is what I was talking about earlier when, you know, asking your appropriate questions, getting your appropriate documentation.

Just engage with the interactive process, just keep it going.

So 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.

And document your actions.

Always keep documentation even if they don't hand you a form, a written request, you know, document on your own end, write it down in a logbook or wherever you might have put it down in the system.

Just keep documentation for your safety and for theirs.

Nathan, I had a question on the -- so the response times, the reasonable accommodation

response time, what is your -- can you remind me of what TDHCA's time limit on that is?

>> Darus: So there are actually a couple of time limits.

I'm going to move back to that slide for just a second.

You'll see the note at the bottom, undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

Under TDHCA's rules, if you are a property that is -- that is overseen by TDHCA or you participate in the new TDHCA programs, our rules require you to respond within 14 calendar days.

The HUD guidance regarding assistance animals is even a little bit more strict on that, and they say that for an assistance animal request, you should respond within ten days.

>> Diaz: Okay, thank you, Nathan.

So other accessibility issues are reasonable modifications, design and construction issues, terms, conditions, privileges, for the sale or rental of a dwelling, and provision of housing services.

Next slide, please.

So a reasonable modification, if a person is disabled, a landlord cannot refuse to let that person make a reasonable modification to the dwelling or common use areas.

At that person's own expense unless 504 applies.

They can make that modification if necessary for that person to use the housing unit.

So Texas property code chapter 301.025, so a refusal to permit at the expense of the person having a disability a reasonable modification of existing premises occupied or to be occupied by the person if the modification may be necessary to afford the person full enjoyment of the dwelling is discriminatory.

So let's say a tenant has a mother who comes to visit and she uses a wheelchair.

The tenant requests a modification to build a ramp for the entry steps to his unit.

It would be illegal to deny the request if the tenant is going to do it at his own expense, and will remove it when we moves.

So essentially, he can put that ramp in there as long as he puts it back to the way it was before. Exactly the way it was before.

Next slide, please.

Design and construction requirements.

So for all covered multi-family dwellings that were built for the first occupancy after March 13th, 1991, they have to be designed and constructed in a manner that is accessible and usable.

Some requirements are accessible building entrances 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.

And accessible route into and through each coverage unit.

So covered building should have at least one building entrance on an accessible route, just like I explained, unless it is impractical because certain unusual characteristics to the site.

These unusual characteristics have to be determined and documented before, not after, the property is built.

So some public and common areas that need to be accessible include laundry, fitness centers,

theater facilities, playgrounds, fire alarms, mailboxes, storage areas, access to the pool, the activity center, any dumpsters or trash can areas.

And other requirements are going to be, you know, light switches and electrical outlets, thermostats and other environmental controls, have to be an accessible location.

Reinforcement in bathroom walls, grab bars, you know, near the toilet area or in the shower area.

Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

So who pays? Housing providers may claim undue financial and administrative burden or that the requested reasonable accommodation constitute as fundamental alteration of the provider's operation.

So the following would be consideration: The financial resources of the provider.

The cost of the reasonable accommodation.

And the benefits to the requestor of the requested.

Like I said before, if it doesn't have a relationship with their disability, then that could be, you know, a reason to either deny or say that, you know, we're not going to pay for this.

And another consideration would be the availability of other less expensive alternative accommodations.

So if we were to do some research and find a less expensive, you know, ramp on a different site, that could be a consideration.

So 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.

Nathan, did you guys have anything to add about who pays?

>> Darus: Yes, we definitely did.

So one of the handouts that you will see in the handouts box in the GoToWebinar software is regarding who pays for a reasonable modification.

One of the examples -- and this may be many of the properties -- in fact, it is many of the properties that TDHCA oversees.

Any low income housing tax credit property that was built after 2001, reasonable modifications are paid for by the property, not by the tenant, so there are other laws and rules that may alter this -- that may alter this and make the property owner or the provider responsible for paying as opposed to the tenant.

The handout is going to be really great.

I refer to it all the time and then this is what I do for a living, and I still -- the handout is fantastic.

So I actually recommend people print that out, because it goes through all of the different possible funding sources and it can answer pretty much any property.

>> Diaz: Perfect.

Thank you, Nathan.

So questions to determine who pays for the modification.

When a renter asks a housing provider to install accessibility features in the rental property, there are several key questions that need to be answered to determine who is responsible for paying for these structure changes.

So is it a family -- a single-family or multi-family dwelling unit?

Does the property receive federal financial assistance?

When was the property built for first occupancy?

And does the property participate in low income housing or -- and Texas credit program?

What type of accessibility feature is being requested?

And does an agreement exist between the parties?

Next slide, please.

Implications for properties subject to 504.

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

So offer to submit 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 the dwelling unit, or public and common use areas, if they don't amount to undue financial and administrative burden.

>> Darus: So Marilyn, I'm going to jump in here.

This was the flow chart that I was talking about of who pays.

This is one of the handouts that is available.

Just as a quick reminder, all the handouts will be available on TDHCA's website, along with these slides and the transcript from today.

So, you know, if you don't have a chance to print it out right now, you're going to have a chance to print it out after the presentation is well.

And a quick reminder, if you have a question, go ahead and type it in the questions box.

We, at this point, are not going to take any questions over the -- by audio, so if you've had your hand raised for awhile and you have a question, go ahead and type that question into the question box.

>> Diaz: Thank you, Nathan.

So reasonable accommodation.

When can I deny a request for a reasonable accommodation?

So you can deny a request if the housing provider has reliable objective evidence that a person with a disability poses a direct threat to others.

And you can -- if the request was not made by or on behalf of a person with a disability, or if there's no disability-related need for the accommodation.

You can deny a request if providing the accommodation is not reasonable, such as if it would impose an undue financial or administrative burden on the housing provider or if it would fundamentally alter the nature of the provider's operation.

You can deny a reasonable accommodation if -- if it's not reasonable and consider whether there's an alternative accommodation that would effectively address the requestor's disability-related need.

So like I said before, if there is another option, an alternative to that accommodation such as maybe something that's cheaper, but will work the same, that would be a reason to deny the request, if there is no alternative, and it's just outrageously expensive, and it's causing financial burden on the housing provider.

So we're going to get into another scenario.

I can go ahead and read this one off.

Do we have -- I don't think we have a poll for this one, do we?

>> Darus: No, we do not.

We don't have anymore polls.

>> Diaz: Okay.

So because of the 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.

So if it is the provider's practice to assess tenants for any damage they cause to the premises.

So if-- that just means, you know, the standard security deposit that you're asked for when you're going into rent an apartment or rent a home, that housing provider would have to say, you know, that would have to apply to everybody who causes damage to the property, not just that person with the disability.

So in this scenario, the 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 on his personal belief that alcoholics are likely to cause damage, the manager rejects the applicant.

So in that scenario, the manager is in the wrong, and the rejection is unlawful because it's based on a generalized stereotype related to a disability.

So like I said before, alcoholism is a disability and as long as they are seeking treatment, and in that scenario she was, she was in a group home, she was getting the treatment she needs, so she was actively in the process of bettering herself and getting help.

The housing provider may not treat the applicant differently than other applicants based on his subjective perception 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, so he could have made a call to her -- you know, her case worker and asked questions.

He could have made calls to her family and asked questions, or prior, you know, employers, but he didn't do that in this case.

So if the reference check will revealed objective evidence showing the applicant posed a direct threat to persons or the property in recent past, and the direct threat had not -- not been eliminated, the manager then could have rejected the applicant based on direct threat.

So he didn't do -- he didn't do -- he didn't follow the interactive process, basically, and he didn't do his job in calling the references, as he would be somebody normally -- some normal applicant who didn't have, who wasn't living in a group home, so he automatically assumed that she was just going to be a problem.

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 have shopping services for these tenants, so granting this request would require a fundamental alteration in the nature of the provider's operation. The request can be denied but the provider should discuss with the requester whether there is an 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 their car close to the tenant's unit so they can help transport, you know, to the grocery store and assist him with shopping or any other needs that they need.

So in scenario number 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, or ESA. The college representative refused to waive the college's pet rule and stated the tester's ESA would be required to remain indoors. The college rep also indicated that students with ESAs were encouraged to reside in a specific dormitory. So the question here, does this issue violate fair housing laws? Some in this issue, the respondent agreed to pay the complainant \$1,000 for staff time for intake and investigation for providing educational and outreach services and for diverting the organization's resources. The respondent agreed to modify its fair housing policies so that they comply with the Texas Fair Housing Act, and the Federal Fair Housing Act, and the UT Department of Housing and urban development guidance reporting reasonable accommodations. And the respondents agreed to take fair housing training. So the end result in that one was, yes, they did violate the fair housing laws.

Scenario number 8, the complainant alleged that the 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 fee of \$10. They also threatened to send a lease violation notice to the Housing Authority. The complainant alleged the manager was aware of her disability. The manager asked the complainant to come to the office, and when she went to the office, the manager told her to find an animal addendum for her cat. So in this situation, the complainant alleged that she was subjected to a different term -- to different terms and conditions of the rental and she was denied a reasonable accommodation due to her disability. So in this instance, the investigation found that the complainant's disability was not obvious, and she did not provide the respondent with information from a reliable third party as requested to show the need for the cat. So during the investigation, during the whole investigation process, the respondent was given reliable third party information that showed that the complainant was indeed disabled and the

reason why she needed the cat.

The respondent approved and -- approved the complainant's request for her cat, in the end she didn't have to pay the pet deposit or the monthly fee.

Scenario number 9, the complainant is a person with disabilities, which prevent him from walking and talking, and the complainant uses a wheelchair.

The complainant lived with his brother who has a general power of attorney which allowed the brother to act on the complainant's behalf.

The complainant's brother purchased a wheelchair carrier in order to safely transport him and his wheelchair.

The brother parked the wheelchair carrier in his driveway in front of his home; however, the homeowner's association, also known as the HOA, demanded that he remove the wheelchair carrier citing a deed restriction.

So the complainant in this scenario alleged the HOA failed to make a reasonable accommodation of allowing an exception to the deed restriction.

When the HOA disapproved of his request to keep the wheelchair carrier in the driveway.

So the question would be is -- did the -- were the fair housing laws violated.

The respondent was charged with violating the Texas Fair Housing Act, and the case was settled before the trial began.

The respondent agreed to a monetary individual, so monetary relief for the complainant, and to take fair housing training.

Scenario number 10, the complainant alleged she was subjected to different terms and conditions, privileges or services, and facilities, and denied a reasonable accommodation request because of her disability.

She stated that the respondent's manager -- manager's representative and the staff at the apartment discriminated against her by denying her reasonable accommodation request.

And to be allowed to pay her rent according to the day she received her Social Security disability check.

Her check arrived the third Wednesday of every month.

The complainant alleged that instead she received numerous late fees which she-- which put her in a financial bind.

So the -- did the housing provider in this scenario violate the fair housing laws?

So before the investigation was completed, the respondent and the complainant entered into a conciliation agreement.

The respondent agreed to allow the complainant's rental payment to be due on the third Wednesday of each month, in conjunction with the -- with her receiving her Social Security disability income.

Her check.

As well as a three day grace period.

The respondent also agreed to reimburse all late fees that were occurred because of their denial.

So during investigation, the Civil Rights Division will use these elements in this slide as proof of questions to develop an investigation plan.

So part of the plan will be to ask the complainant and respondent to provide information, documentation, and witnesses to support their position, and to answer the question.

So some of these elements are does the resident or applicant have a disability?

Do 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?

And 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 into a denial of that request?

Next slide, please.

So when talking about terms and conditions, it is illegal to set different terms and conditions or privileges for a sale or rental because of a disability, so an example would be the housing provider may not treat a disabled tenant differently when it comes to the issuing of lease violation because of the disability of the person.

The housing provider may not require disabled persons to sign an extra addendum to use the pool at the property.

So any -- any terms and conditions that are set in your policy, they have to apply to everybody, not just -- you can't pick and choose who they apply to.

It has to be equal and they have to be -- apply to everybody and that is entire complex or all of the housing units that you have.

So this right here is just talking about other disability laws, mainly the -- mainly talking about service animals, so Title III of the American -- Americans with Disabilities Act or ADA covers public and common-use areas at housing developments.

When these public areas are, by nature, open to the general public or when they're made available to the general public.

So for example, if the cover -- it covers the rental office since by its nature the rental office is open to the general public.

So if a day care center or community room is made available to the general public, it would be covered by Title III.

And Title III applies in retrospect whether the public or common-use areas are operated by a federally assisted provider or by a private entity.

If the community room or day care center were only open to the residents of the building, Title III would not apply.

>> Darus: So for TDHCA specifically, 10TAC1.204 does require a recipient that owns a low income housing tax credit property or multi-family bond development property with no federal or state funds awarded before September 1, 2001, does still require you to allow a reasonable accommodation modification, but does not necessarily require that the property pay for the modification or accommodation except in the case of an accommodation that is requested that should have been made as part of the original design and construction requirements under the fair housing act, or is identified by the US Department of Justice as a change with a de minimis cost, that means near zero or basically zero cost.

So some of those examples would be assigned parking spots.

No deposits for service and assistance animals.

So no matter when your property was built or your property funding streams or lack of funding streams, those are some of the things that a property still has to do and not charge the tenant for.

Some of the other examples might be even if you were a property that was built and awarded low income housing tax credits before September 1, 2001, but after -- say after 1991, say, if you don't have blocking in the shower walls so that grab bars can be installed, that would be a situation where the design requirements would have already required you to have blocking in the walls, at least I believe that's the case, so that would be a situation in which you -- the property owner would still need to pay for the modification.

>> Diaz: Thank you, Nathan.

>> Darus: And here is a little bit more about reasonable accommodations, and we went over this a little bit before, but TDHCA does require properties that participate in its programs to respond to reasonable accommodation requests within 14 calendar days.

It does give a couple of different ways that you can respond, you can either grant the request, deny the request, offer alternatives to the request, or request additional information to clarify what the reasonable accommodation request is about or what they -- what the individual is meaning.

Should additional information be required, an interactive process necessary, you need to also complete that process within a reasonable amount of time.

An undue delay is still may be considered a failure to provide a reasonable accommodation, and in some cases, 14 days is -- may even be considered too long, say in the case of assigned parking -- an assigned parking spot.

Generally speaking, it does not take 14 days to say, yes, we have a parking spot available, yes, it's yours, we will reserve it for you.

So that's one of the situations even if you wait until the 13th or 14th day and respond, that may still be an undue delay.

So some examples of some of these reasonable accommodations, right?

A resident requests a designated -- it would not be considered reasonable to wait 4 days to respond to this request.

I already said this -- excuse me -- asks a designated accessible parking space.

If the disability status and the connection to the reasonable accommodation requests are not clear, the documentation must be requested by the property within fourteen calendar days to clarify the resident's request and gauging in the interactive process, to determine the nature of the request and the needs of the resident.

So that needs to start within fourteen days.

You also have the example of an applicant with a disability who requires a service animal to alert him or her of impending seizures, the shelter, or property in this case, has a no pets policy. It would not be reasonable to wait fourteen calendar days to respond to this request.

A couple of more example, a person with a disability requests modifying door knobs to levers. The property must respond within fourteen calendar days, although it is reasonable that it may take additional time to install the modified door knobs.

So this is important.

You just want to make sure that it doesn't necessarily mean that you have to finish an accommodation or modification within fourteen days, but you do need to be responsive within

fourteen days.

Another example is a housing provider requires the tenants sign 12 months -- 12-month leases, household signs the lease, but after a few months has to move out in order to live in a nursing home.

Household requests the reasonable accommodation to be let out of this lease early without a fee.

The property may request additional information if the disability and the relationship between the request is not clear, but you've got to ask again within 14 days.

The last example, an applicant requests a reasonable accommodation to have assistance in filling out a program for the housing trust fund program.

It is not reasonable to wait 14 calendar days to respond to this request.

So here is another example.

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

A reasonable accommodation includes relocating and enlarging an existing space that will serve the van.

Another example, 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 allow adequate space to enter the doorway.

The changes must be provided even though they may exceed specifications for such alterations. We have another example, a resident with quadriplegia requests a replacement of the 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 the roll-in shower in that unit is not possible.

So the on-site manager in that case should meet with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

If it's impossible, you can't just say no, you still need to work in that interactive process with the resident.

All right. Marilyn, I think this is back to you now.

>> Diaz: Awesome, thank you, Nathan.

So the complaint process, property management, if you have a complaint filed against you, you will be notified of the allegations.

You will likely be invited to mediate, and if you decide not to mediate, you may file an answer that is in writing, under penalty of perjury, and may be amended at any time.

The complainant, if you need to file a complaint, you can visit us at the [Texas Workforce.org /civil rights](http://TexasWorkforce.org/civilrights) and fill out the electronic form there.

You can also call our office and request a form be e-mailed to you or sent to you by mail.

Next slide, please.

So mediation is a free service that's offered from the time of the complaint, the complainant filing until it's resolved.

It eliminates lengthy investigations and expensive litigation.

It's a speedy resolution of complaint and it saves time and money.

It opens up the lines of communication between disputing parties and allows each party to understand the position of the opposing party.

The agreement made in the mediation is binding on both complainant and the respondent. So in other words, the mediation process is a way to get in front of each other and come to an agreement and find terms that work for both of you, whether that be to take training or sometimes there is monetary relief involved, but in most times, it does require training. So this chart shows how this individual may file a complaint under more than one protected class.

So the percentages are calculated based on a total complaint filed, and do not full to 100%. This chart right here shows how multiple issues may be involved in a complaint, so it doesn't have to be just one specific issue when filing a complaint.

There could be multiple issues that come up.

Next slide, please.

>> Darus: Just want to add one quick note on these two slides.

This first slide here, one thing to notice is that the number of complaints that are filed in the State of Texas that are fair housing complaints, if you look, disability accounts for nearly half or more of all complaints in a given year, and over that same time frame, failure to make a reasonable accommodation is the second-most common type of complaint in a disability-related for housing complaints.

>> Diaz: Thank you, Nathan.

So as a housing provider, what can you do?

So you can get educated, so know the laws, know your responsibilities as a housing provider. We at the Civil Rights Division really like to push training and education.

It's a free service that's offered to housing providers and to really anybody who just wants to, you know, get educated on fair housing laws.

It -- you can establish policies and procedures that are nondiscriminatory.

You can implement nondiscriminatory policies and procedures and consistently apply them. So consistently apply them to everybody, not just somebody who is requesting a reasonable accommodation or somebody who has a disability or somebody within the protected classes. You can recognize a request for reasonable modification or accommodation, and you can document all reasonable accommodation interactions.

Like I said before, going through an interactive process is always important and documenting everything.

Document, document, document.

So as a consumer, what can you do?

You can also get educated.

Like I said before, our training sessions that we have with the Civil Rights Division are for everybody.

They're for everybody's knowledge, for everybody's education experience.

You can read and be familiar with your lease, your addendums, and any other housing provider information concerning your tenancy or residency.

You can comply with those terms of the lease.

You can also document interactions with the housing provider, so the whole interactive process and the documentation doesn't just apply to the housing provider.

That also applies to the housing consumer.

And you're able to file fair housing complaint.

That is your right and you're able to do that.

I just wanted to point out so we have a newsletter, publication that goes out quarterly.

We just had one out -- go out April 1.

It's the civil rights reporter, and this link right here will take you to that, and you can sign up for that to receive that, and it has -- this month it's all fair housing, because of fair housing month, and all the articles in it are written in house, they're usually written by an investigator or one of the managers or even our director.

There's a training -- there's a training section that goes over our conferences that we attend.

It has information for these webinars on there.

But it's just some good information, normally on any other addition that we put out, we'll have employment -- we'll have some EEO articles on there, and we'll have some housing so it's a bit of a mixture, but they're really interesting to read, and I recommend you sign up for them.

>> Darus: All right, so at this time we can go ahead and if you have questions, go ahead and type them in the question box, we've had a couple come in.

I just want to let you know, just because I haven't answered any of your questions in the question box yet, generally that means we're either going to reach out to you individually or we are going to answer them now.

I've held back a couple of questions that I think are generally useful.

The first is -- and I think, Marilyn, the first two are going to be for you and Alana.

Is a property owner obligated to amend a binding lease agreement to stipulate any reasonable accommodations that are being provided?

>> I'll take this one on.

Good morning, everyone, my name is Alana Rodriguez.

I would really encourage you to look at your, as a business, policies and procedures.

You want to make sure your policies and procedures are applicable across the board, and in order to make -- when you make an exemption to your policies and procedures that is considered a reasonable accommodation.

So long as you ensure it does not (indiscernible) hardship on your business, meaning when you're identifying an undue hardship, it needs to impede the daily operations and/or financials operation of your organization, your agency.

>> Darus: Thank you so much, Alana.

>> Yeah.

>> Darus: So second question that we have is -- it's actually kind of a two-parter.

If someone has an approved reasonable accommodation for reserved parking spot, should the handicap logo be on the signage?

And also should the property designate an already handicapped space or use a regular parking space and make it reserved?

>> So again, have I to go back to your policies and procedures.

It's very important, as a housing provider and as a business ensure that your policies and procedures are distributed and handled evenly for all tenants.

If you have a system in place regarding a signed or reserved parking, you want to make sure that you abide by that policy.

If for some reason it creates an undue disparate impact on someone who is an excepted class, you can make an exemption and that would be considered a reasonable accommodation.

Let's say you're a property for first come first served assigned parking for all tenants, but let's say that's not going to be reasonable, and let's say you have applicants and tenants that do have disability and/or parking requirements.

You can make an exemption to your policy, specifically for those individuals and implement a new system in how to fairly distribute your limited parking spaces if that is applicable.

>> Darus: Thank you so much on that one.

Do you have a question about emotional support animals.

So just a quick little plug.

We are going to have on the 14th of April at this same time, 10:00, an assistance animal webinar.

It's going to go over all of the new HUD guidance related to assistance animals.

And dare I say, will answer all of the questions you were -- you ever wanted to ask about assistance animals, but let's get this one right now since you're here.

So can a resident get in trouble for having a guest with an emotional support animal?

>> Can you repeat the question again, please.

>> Darus: Uh-huh.

Can a resident get in trouble for having a guest with an emotional support animal?

>> In general I would say no, however, if you have a -- do look back at your rental lease agreements, when it comes to guests, what actions are you legally requiring your tenants to do?

You may learn that you may need to do a revision in order to better serve all your tenants and to eliminate litigation or perception of disparate treatment.

Look at your lease agreements and see what that says and make accommodations or exemptions or modifications to those policies and procedures to accommodate -- to allow yourself that opportunity to provide reasonable accommodations.

In the overall the general is no, however, if you have a policy in place, and particularly your rental agreement states guests who are staying longer than X number of days must sign up and be notified in the us a, you want to make sure that also includes guests that have service and/or emotional support animals.

That's one way to eliminate confusion and provide consistency across your properties.

>> Darus: Great.

We have another question here.

This one is a little bit more technical.

So in scenarios 8 and 9, and I can go back to those slides, I don't necessarily know that I need to based on this question.

So when a case is settled or a case goes to court, where a -- and it's found that a property owner did in fact violate the fair housing act, what does that look like at the end?

Is it settled monetarily or is it settled through other means?

>> So from the Civil Rights Division enforcement perspective, it can be resolved in a variety of methods.

There is no pre-designated formula.

It really has to determine on the unique situations and done case by case.

I would encourage, if you find yourself involved in an allegation, whether as a property provider, a housing provider, and/or a tenant, that I really would encourage to avoid the litigation process, and especially the investigation process, and utilize mediation services. It is a voluntary program and it does not cost either party money.

And it keeps it -- the allegation from going into in-depth investigation which then, if it is conducted through investigation, is subject to open records requests.

Which can create a PR issue for most property providers.

So something to consider.

>> Darus: Okay.

I think that is all of the questions that we have gotten so far.

So --

>> I would like to make one more plug regarding the service and emotional support animals. As Marilyn pointed out earlier, as the web link you see before you now, the civil rights reporter, we have an in-depth review of the HUD's service and emotional support animals.

You can find that information on that -- provided through that link in the current edition that was released April 1.

So that will give you additional clarification and from the perspective of an actual housing investigator regarding the new HUD guidelines.

>> Darus: Great.

We actually got another question in, and actually I think this one is for you and I -- you and me, Cate.

We mentioned that all tax credit properties built after 2001, the owner incurs cost for reasonable accommodations and modifications.

However, can we still consider if the accommodation will be a financial hardship as a means -- as a reason to deny the request?

Do you want to take this, Cate, or would you like me to.

>> I'll let you take that, Nathan.

Thank you so much.

>> Darus: Absolutely.

So the answer is, yes, you can still consider whether or not the accommodation would be an undue financial and administrative burden or if it would constitute a fundamental alteration of the nature or the operation of your business.

So just because you would be responsible for paying doesn't mean you are required to provide the accommodation.

It would still need to go through -- right, you would still need to go through the same process to determine whether or not you should approve the reasonable accommodation, and in fact, the financial hardship portion sort of comes before the payment portion even, so, if it's a financial hardship, you're not going to -- if it ends up it's an administrative hardship, financial burden, then you're not going to be approving the reasonable accommodation request anyway, so payment is kind of like a separate question that isn't -- I don't know that it's even necessary to have that question, or to ask that question.

I hope that helps.

And I think that is all of our questions.

We haven't gotten any new ones.

So do want to say thank you all for joining us.

If you do have any need for technical and training assistance, as Marilyn and Alana said, you can contact the Texas Workforce Commission Civil Rights Division.

We have the phone number up there.

And their e-mail address as well.

We also here at TDHCA, if you are property that participates in any of our programs, we may also be able to give you training and technical assistance.

So feel free to reach out to us and, again, if we did not answer your question today, know that we probably asked you to reach out to us with additional detail, and I will be reaching out to you all individual -- or somebody at TDHCA will be reaching out to you as well so that we can get your questions answered.

Please join us next week on the 14th at 10:00 for our assistance animal webinar, and I hope you all have a wonderful day.

>> Diaz: Thank you so much, Nathan, thank you, everybody for attending.

>> Thank you, everyone.

Have a wonderful day.

>> Thank you.

>> Darus: Thank you.

[End of webinar]