

November 17, 2020 Fair Housing series: Reasonable accommodations and modifications.

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>> Good morning, everyone. You are joining the Reasonable Accommodations and Accessibility Webinar presented by the Texas Department of Housing and Community Affairs. We'll get started in about five minutes. Give people some time to log in here.

Feel free to download the handouts, which includes the PDF of the slides and other additional information that we have for you in the handout drop-down of the Go-to Webinar platform. And again, we'll start in about five minutes.

>> This is Nathan Darus, also with Texas Department of Housing and Community Affairs. This would also be a great time for everybody to check their audio tab in Go-to Webinar and use the "Sound check" option. This will make sure when we start the broadcast that you can hear everything.

>> Yes.

>> Good morning, everyone. Thank you for joining today's webinar. My name is Erin Phillips and I am the Fair Housing training specialist at the Texas Department of Housing and Community Affairs. I am so excited that so many of you have joined us today. Today's training is

the Reasonable Accommodations and Accessibility Training. This is the last of the three trainings that we are giving this month as part of our November Fair Housing series. So if you have been participating for all of these trainings we thank you so, so much and we're about to get started.

A disclaimer for today's webinar, this material is based upon work supported by the U.S. Department of Housing and Urban Development under the Fair Housing Initiatives Program Grant Education and Outreach Initiative. Any opinion, findings, conclusions or recommendations expressed in this material are those of the authors, and do not necessarily reflect the views of the U.S. Department of Housing and Urban Development.

Before we begin, I just wanted to note that all the materials and recordings of this webinar will be available on the TDHCA website. If you have any questions, please enter them into the question chat box. The question drop-down portion of the Go-to webinar platform. Nathan will be there to monitor and we will be answering your questions all throughout today's webinar. So any time you have a question that pops up just put them there.

This training is informational only and does not satisfy the requirement in 10 TAC 10.40(e)(1)(2) for post bond closing documentation for multi-family bond transactions and documentation submitted for the 10 percent test for housing tax credits.

Like I said, my name is Erin Phillips. I am the Fair Housing training specialist and presenting with me today is Nathan Darus. Do you want to say hello?

>> This is Nathan, I'm the Fair Housing research specialist with the department.

>> Great. Today's session or training will last about 75 minutes.

So the agenda for today's training includes the Federal and state regulations, Fair Housing Act, Texas Fair Housing Act, ADA and Section 504, reasonable accommodations and modifications, accessibility issues, and complaints and mediation.

After today's webinar you should be able to understand state and Federal legislation and regulations on reasonable accommodations and modifications. You should know the reasonable accommodation and modification, you should understand how to recognize and fulfill reasonable

accommodation request. You will learn the appropriate responses to reasonable accommodation request and you will understand the complaint process.

In this section we'll be discussing all of the Federal and state laws and regulations that apply to reasonable accommodations and modifications in housing.

So the Fair Housing Act. The Fair Housing Act is a cornerstone of civil rights history in this country. It represents Title VIII of the Civil Rights Act of 1968. The Federal Fair Housing Act is the policy of the United States to provide within constitutional limitations for Fair Housing through the United States. No person shall be subjected to discrimination because of their race, color, religion, sex, handicap, disability, familial status or national origin in the sale, rental or advertising of dwellings or in the provision of brokerage services or in the availability of real estate transactions.

You see that citation there at the bottom, CFR stands for Code of Federal Regulations, which is a document that contains all regulations published in the Federal register and is divided into 50 sections. Housing and

Urban Development is found in Title 24, which is also where the majority of Housing Act regulations are located.

The Texas Commission on Human Rights was established by the State Legislature when the Texas Commission on Human Rights Act passed in 1983. It was to handle my complaints by the commission or any complaints under the Equal Opportunity Commission. When the Fair Housing Act was passed by the Legislature on May 25th, 1989 the commission was further empowered to enforce its provisions.

Effective September 1st, 2015, the duties and authority of the Texas Commission on Human Rights were transferred to the Civil Rights Division of the Texas Workforce Commission.

Regulations for the Texas Fair Housing Act are found in the Texas Property Code and Texas Administrative Code.

The Texas Workforce Commission is the state agency in Texas responsible for enforcing the Fair Housing Act even in TDHCA monitored rental properties. TWC enforces the Fair Housing Act and processes all housing complaints in mediation, which we will discuss further on in today's webinar.

So let's discuss the protected classes and bases that are covered under the Federal and state Fair Housing Act that apply to all of the Fair Housing Legislation that we are talking about today.

The basis of Fair Housing is to essentially avoid and prevent discrimination. Discrimination is defined as a difference in treatment because of membership in one or more protected class. There are seven total covered protected class under Federal and state laws. They include race, color, national origin, familial status, religion, sex, disability -- went too far, and disability. The Texas and Federal Fair Housing laws prohibit the basing of housing decisions on a person's protected class. It also prohibits the application of different standards to anyone because of their protected class.

In addition, these laws prohibit harassing anyone based on a protected characteristic. The laws also state that you cannot retaliate against any applicant, tenant, buyer or consumer for engaging in protected activities such as complaining about alleged discrimination, filing discrimination complaints against the housing provider or

even testifying in hearings in court proceedings concerning discrimination complaints.

But for the purpose of today's webinar topic we will be focusing on disability as a protected class.

So an individual with a disability is a person who has a physical or mental impairment that substantially limits one or more of their major life activities.

Or they have a record of impairment or they are being regarded as having that impairment. Having a record of that impairment means they have a history of that impairment and being regarded as having an impairment means that they are being treated as having an impairment even if they do not have that impairment.

So for example, say if a prospective tenant is walking up to a property and they trip on a rock so they have a slight limp when they walk through the door, the leasing agency sees them in regards to having a limp and lets them know that they don't have any accessible units available to apply for, so unfortunately they cannot assist them that day.

That leasing agent has regarded that person as having a disability and thus are protected under this class.

So like I said before, an individual with a disability is a person who has a physical or mental impairment that substantially limits one or more of the major life activities. These life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

There are many modern and classic assistive tools that assist people in one of these activities, walkers, canes, or other people, beings that are aides that assist them in these activities that essentially help them gain more activities in their life. But even with those activities with another person, they're still a person with a disability and is protected in this class.

The Fair Housing laws protect persons who are recovering from substance abuse, but they do not protect persons who are currently engaging in the current legal use of controlled substances. Additionally the laws do not protect an individual with a disability whose tenancy would constitute a direct threat or physical damage to the property of others unless the threat can be eliminated or reduced by reasonable accommodation.

So this list shows some common improvements that

anyone could have as a person with a disability, including autism, cancer, diabetes, drug addiction or alcoholism. But this list is not exhaustive by any means, it is just a sampling of some common impairments that are common.

But the Act does not allow for the exclusion of individuals with disabilities based upon fear, speculation or stereotype about a particular disability or people with disabilities in general.

And it does not protect an individual whose tenancy again would constitute a direct threat, however as a housing provider it is necessary that you create -- that you conduct an assessment on what is a direct threat. So if a question arises regarding a direct threat a determination that an individual poses a direct threat must rely on individualized assessment that is based on reliable objective evidence. You need to consider the nature, duration and severity of the risk of injury, the probability that injury will actually occur and whether or not there are any reasonable accommodations that will eliminate that direct threat.

As a housing provider you must have reliable and objective evidence that a person with a disability poses

a direct threat for excluding them from housing on that basis.

As we continue to reference the Fair Housing Act in today's webinar we will be referencing the Fair Housing Amendments Act Of 1988 which amends the Civil Rights Act of 1968 to include further definition of discriminatory housing practices and includes the addition of disability in the Texas and familial status to the list of protected classes.

The Act was signed into law on September 13th, 1988 as an amendment to Title VIII of the Civil Rights Act. It became effective March 12th, 1989, and it's enforced by HUD's office of Fair Housing and equal opportunity.

So the other regulations that we'll be talk about today also include Section 504 of the Rehabilitation Act. The Act was drafted in 1973 and took effect May 1977. It is the states that no qualified individual with handicaps solely by reason of had his or her handicap be exclude from the participation in, be denied the benefits of, be subject to discrimination or under any program or activity receiving Federal financial assistance from the department of housing and urban development.

There are specific guidelines and restrictions for all housing providers who fall under their purview. These specifications are found in 24 CFR Section 8.4 and 8.53.

So under Section 504 you are required to, one, make and pay for reasonable structural modifications to units and/or common areas, two, operate housing that is not segregated based on disability and authorized by Federal statute or executive record. Three, provide axillary aids and services for effective communication or perform a self-evaluation of the owner's program and policies to ensure that they do not discriminate based on disability. Five, develop a transition plan to ensure that structural changes are properly implemented: Six, operate programs in the most integrated setting for the needs of a person with a disabilities. Seven, provide that newly constructed or rehabilitated housing include a minimum of five percent of units, one unit minimum, that are accessible for persons with mobility impairments and two percent of units with the one unit minimum be accessible for persons with hearing or vision impairments.

So in a housing development with 100 units, five must

be accessible for people with mobility impairments, and two, must be accessible for people with hearing or vision impairments.

If the development only has 10 units one of them must be accessible for individuals with mobility impairments or hearing or vision impairments.

And eight, if you employ 15 or more people you must designate at least one person to coordinate Section 504 counseling and guidance and adopt grievance procedures that incorporate due process standards and provides for prompt and equitable resolution of complaints from applicants for employment or housing residences.

Section 504 also has prohibitions that you have to follow. So on under Section 504 you cannot deny the opportunity to participate in a program, service or activity due to anyone's disability.

Deny or refuse to rent housing to a person with a disability because of their disability. Impose tenant construction, fees that are different from those that are required to or required for persons who do not have disabilities.

Require persons with disabilities to live on certain

floors or certain areas of the community.

You may not refuse to make repairs or limit access to public or common areas, parking privileges or services available to other residents and you may not deny opportunity to persons with disabilities to participate on advisory or planning boards.

These requirements and prohibitions are applicable to all housing programs except mortgage insurance, loan guarantee, but does include home programs and CBDG Community Development Block Grant programs. Section 504 also covers employees of federally assisted housing as well as applicants and tenants.

Section 504, the law itself, has paved the way for the Americans with Disabilities Act of 1990. It was signed into law on July 26th, 1990 and it provides protection against discrimination based on disability in many areas of life in the United States.

It is divided into five titles. Titles two and three apply to Fair Housing. Title II covers non-discrimination on the basis of disability by public entities and public entity in this case means any state or local government, any department, agency, special

purpose district or other instrumentality of a state or local government. This includes public housing authorities. And any other national or community authority.

Title III of the ADA covers public and common use areas of housing developments when public areas are by their nature open to the general public or when they're made available to the general public.

For example, it covers the rental office since by nature the rental office is open to the general public. Or in addition if a day care center or a community room is made available to the general public, it would be covered by Title III.

Title III applies irrespective of whether the public and common use areas are operated by federally assisted provider or by a private entity.

If the community room or day care were only open to residents of the building, then Title III wouldn't apply.

Any questions on Federal regulations before we move on?

I had a Title slide here, but I lost it.

Let's just discuss this first. The HUD DOJ, HUD and

Department of Justice memorandum of reasonable accommodation and modifications came out in 2004 and 2008 and are both under the Fair Housing Act. And both memorandums clarify questions regarding the implementation of the law, including clarifications on the verification of need for reasonable accommodation or modification of an individual with a disability.

Yes, now I'm at the Title slide. Any questions before we move on? Nathan, do you see any in the chat?

>> There have been no questions so far. Just as a reminder, if you do have questions, just go ahead and type them into the questions box and we will either get to them as you send them or we will answer them when we get to the relevant portion of the presentation.

>> Great. Awesome.

So what are reasonable accommodations and modifications? They are provided to persons with disabilities to ensure that they have an equal access to participate fully in the housing program, take advantage of the services provided and can live safely and enjoy the dwelling unit.

A reasonable accommodation is a change, exception or

adjustment to a rule, policy, practice and/or service. An example of an accommodation is making an exception to a pet policy to accommodate for a tenancies tense animal.

A reasonable mod for indication is a structural change to a dwelling or common area. For example, adding accessible ramps and accessible parking spaces.

Under the Texas Fair Housing Acting it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

So in general you must provide all reasonable accommodations requested unless doing so would result in a fundamental alteration of the program or undue financial and administrative burden.

If you have refused a request that is not reasonable you should engage in an interactive conversation to seek an alternative accommodation.

If a tenant has a disability a landlord cannot refuse to let that person make reasonable modifications to the person's dwelling or common use areas if it is necessary

for that person to use the housing and if the modifications are done at that person's own expense.

For example, a tenant who is a wheelchair user requests a modification to build a ramp to the entry steps to his unit. It would be illegal to deny the request if the tenant is going to do it at its own expense and will remove it when he moves out.

In the case of a rental, the landlord may where it is reasonable to do so conditionally permit a modification if the renter agrees to restore the interior of the premises to the condition that existed before the modification. With the exception of any reasonable wear and tear.

The landlord may not increase a customarily required security deposit for individuals with disabilities, however, where it is necessary to ensure with reasonable certainty that funds are available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of the agreement that the tenant pay into an interest-bearing escrow account.

There are some modifications such as a assigned parking space that the Department of Justice have said the

landlord must pay for just the cost is de minimis. For granting that modification a landlord may require a reasonable description of the proposed modifications, reasonable assurances that the work will be done in a workmanlike manner and assurances that require building permits will be obtained.

So essentially what do the acts require? Housing providers to make a reasonable accommodations to 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.

In this case may be necessary means there must be a nexus or a relationship between a specific disability and what is being requested.

Understand that policies, practices and services may have different effects on persons with disabilities than on 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 why grant a reasonable accommodation? I just said that. Treating people -- persons with disabilities exactly the same as others will deny them an equal

opportunity to use and enjoy a dwelling. We're not talking about exactly the same, we're talking about equitable services. Some may need more than others. It's just a way of life. However in granting reasonable accommodations for persons with disabilities it assures that they have equal opportunity to enjoy and use and live in the dwellings that you are providing them as a landlord or a property manager.

So here are some general rules for reasonable accommodation requests. One, you should accept verbal requests. A reasonable accommodation or request or modification request can be verbal. It does not have to be in a form or even be in writing.

The request should be made in a manner that a reasonable person would understand to be an exception, change or adjustment to a rule, policy, practice or service because of a disability.

The requester does not have to mention the acts or use any word like reasonable accommodation or request or any magic word necessary in terms of making a request for an accommodation.

The request can be made by a family member or someone

else who is acting on behalf of a person with a disability.

Two, when provided with a request for reasonable modification or accommodation you should start the interactive process immediately.

Three, you should carefully draft, review and revise the accommodation policy on a regular basis.

Four, if the disability is not obvious or the need is not obvious can you ask for appropriate, reliable, disability-related information. However you cannot ask for any detailed medical records and a doctor or medical professional, peer group, 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.

Five, you should provide prompt responses to reasonable accommodation requests. TDHCA does apply a 14-day rule which we'll discuss in the next slide, but undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

And finally, you should document, document, document all of the interactions and actions with a person with

disability in respect to a reasonable accommodation request.

So TDHCA guidance indicates that reasonable accommodations should be processed in a reasonable time, per 10 TAC rule 1.204. Responses to on reasonable accommodations requests must be provided within a reasonable amount of time and not to exceed 14 calendar days.

For TDHCA programs like the emergency solutions grant program, however, a reasonable processing time in this program is immediately. A 14-daytime period would not be reasonable given the nature of the program, so as immediate as possible an accommodation grant request should be granted.

So let's interact with you guys a little bit to get kiddo kind of your understanding of how our requests should be handled.

This first example number one, 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 gives her anxiety about leaving her unit. Because of her disability, she

requests that she be permit to have a friend mail her rent payment to the rental office as a reasonable accommodation.

What do you make of this request? Is it reasonable?

Nathan, could you pull up poll one and this poll will pick yes or no if it's reasonable from that example that I just gave. The tenant has anxiety about leaving her unit so she's made a request for have a friend mail her rent payment to the rental office as a reasonable accommodation. What do you guys think?

Okay. I think most of you voted. Do you want to see what everyone said? 97% said yes, that it's reasonable. And three percent said no. Interesting.

We'll have to close that poll and see what the answer is.

So the answer is that the provider must make an exception to the payment policy to accommodate this tenant. So in this case given that the housing provider has a policy with respect to coming into the rental office in person to pay their rent and the tenant has a disability that prohibits them from coming to the office in person, then yes, an accommodation should be made for that person

so that they can pay their rent on time because they just need to pay their rent, right? So the answer is yes.

Good job, everyone.

All right. So reactions and inquiries to avoid in respect to reasonable accommodation request. A housing provider may not ordinarily ask the nature and severity of an individual's disability. Or if the applicant has a disability or a person intending to reside in a dwelling or anyone associated with the applicant has a disability.

Some exceptions to this includes if you as a housing provider provide -- offer accessible units to people with disabilities and these units on a priority basis or if you as a housing provider operates a housing that is legally limited to persons with a specific diagnosis, such as a chronic mental illness.

So in those cases you may ask these questions.

What inquiries can you make if a resident asks for a reasonable accommodation? So you may ask for information relevant to determining if a requested reasonable accommodation is necessary. If a disability is not obvious you may, again, ask for verification or utilizing a third-party who is in a position to know the individual's

disability.

Always need to see the nexus or relationship between disability and the need for an accommodation is important as well.

Okay. We will go into the second example. And this example a tenant with a disability made a request for a reasonable accommodation to the apartment manager for an early termination of their lease because she was going to be hospitalized for treatment due to her disability.

Is this a reasonable request? And this is an example of a request for reasonable accommodation in a case that TDHCA investigated in 2017.

Do you want to pull up the second poll, Nathan, so people can answer? 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.

Is this a reasonable request?

Nathan, do you remember this or have any insight into this case at all?

>> No. This was not a TDHCA property, if I am not

mistaken. This was just a case that was investigated by the Texas Workforce Commission.

>> Great. So the response is 63% of you guys said yes and 37% of you said no, that the request was unreasonable. All right. Let's see what the -- what happened in this TDHCA case.

What happened was the manager denied the reasonable accommodation. However, in the settlement with respect to the complaint, the property agreed to refund the tenant's rent for three months. The tenant agreed to vacate the unit and the property agreed to take Fair Housing training.

Now, whether or not -- so in this case the manager saw it as unreasonable, but it did go all the way through the complaint process and they did have to settle in this case.

But 63% of you said yes and I think in that saying yes to the request then the settlement would not be necessary. And they would take Fair Housing training so maybe in the future a case like this wouldn't have occurred, but it is a very interesting topic, I think.

Okay. Moving on.

That leads us to when can you deny a reasonable

accommodation? Under the following conditions, if you as a housing provider has a reliable objective evidence that a person with a disability poses a direct threat to others, that includes service animals. If there is no disability-related need for the accommodation. If providing the accommodation is not reasonable, meaning if it would pose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. And if it's not reasonable you can consider whether there's an alternative accommodation that would effectively address the requester's disability-related needs.

Again, the Act does not protect against an individual who would constitute a direct threat, like I said, but you need to have reliable objective evidence that the person with a disability poses a direct threat or even if the service animal poses a direct threat.

So who pays for a reasonable accommodation and modification? 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. One, a 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.

It is important to note, though, for TDHCA developments with Federal or state funds or that were awarded tax credits after 2001, the owner is responsible for paying for the reasonable accommodations or modifications unless again it is a fundamental change to their operations or an undue financial and administrative burden.

Here are some questions to determine who pays for modifications. This is from the Fair Housing council of greater San Antonio and we'll show you a flow chart in a couple of slides too that will show these questions as well.

But essentially when a renter asks a housing provider to install accessible features in the rental property here are some questions that you can ask that should be answered to determine who is responsible for paying. Is it

single-family or multi-family? Does the property receive Federal financial assistance? When was the property built? Does the property participate in the low income housing tax credit program? What type of accessibility feature is being requested and does an agreement exist between the parties?

Under the regulations implementing Section 504 of the Rehabilitation Act, 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.

Like I said before, TDHCA, any participants in the low income housing tax credit program after 2001 are required to provide and pay for accommodations in dwellings.

It is codified in 10 TAC rule 1.204 with respect to any recipient owning a tax credit property with funds awarded after September 1, 2001, must pay for these accommodations.

In general denial of reasonable accommodations often occurs due to misunderstandings of what reasonable accommodations are and how they work, not because the

request is invalid in any way.

So like I said before, this is the flow chart from the Fair Housing council of greater San Antonio. It is available in handout section of this webinar platform so you can download and use, but essentially it kind of goes down through those questions that I was mentioning before. Is it single-family versus multi-family? Is it Federal funding? How many units are in the building? And at the very bottom the second row from the bottom indicates if it has an awarded tax credit funds after 2001 or not, which indicates if you pay or not.

Any questions about accommodations versus modification, who pays, anything like that before we get into accessibility issues in properties?

>> I have not seen any questions come in.

>> Okay. Awesome, guys.

Okay. So in this section we'll be talking about accessibility issues that are found commonly in properties with respect to people with disabilities.

So design and construction requirements. For all covered multi-family dwellings that were built for occupancy after March 13th, 1991, have to be designed and

constructed in a manner that is accessible and usable.

Covered buildings should have at least one building entrance or an accessible route unless it is impractical because of an unusual characteristic to the site.

Unusual characteristics have to be determined and documented before, not after the property is built. And public and common areas that need to be accessible include things like the laundry, fitness center, theater facilities, playgrounds, fire alarms, mailboxes, the pool, the dumpster trashcan, that's a very important one, the activity center, storage areas, things like that.

Light switches, electrical outlets, thermostats and other environmental controls in accessible locations must be accessible. 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. These are requirements with respect to an accessible unit and also in any common area in your property.

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

So as a housing provider you may not treat a tenant

with a disability different when it comes to issuing lease violation notices because of their disability. You cannot require a person with a disability to sign an extra addendum to use the pool at your property or any other public amenity.

So here are some common examples we'll go through with respect to reasonable accommodations and accessibility in properties.

A resident requires an accessible parking space that will accommodate their wheelchair-equipped van so an accommodation for this person will be including relocating and enlarging an existing parking space that will serve the van.

Another example includes a resident who uses a scooter type wheelchair which is 38 inches in width. You can request a ramp to enter her ground floor unit. The ramp that she requests must be at least 40 inches wide and must have a slope of no more than three percent and a landing at the front door which opens outward must be enlarged to provide adequate maneuvering space into the doorway. The changes must be provided even though they may exceed the usual specifications of such alterations.

We have a few that we're going to get to, examples of what it looks like to grant an accommodation or modification to a built property.

So this one a resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair and she does not wish to move into an accessible or she does not have to. The so the housing provider must provide an accessible entrance at the resident's current unit unless it would be an undue financial or administrative hardship or fundamental alteration of the program to do so.

So she is able to request a ramp entrance to her ground floor unit and she is able to request that and does not have to move to another unit.

Another example, a resident with quadriplegia requests replacement of a bathtub in his unit to a roll-in shower. Due to the location of the existing plumbing and the installation of a roll-in shower impossible. The on-site manager should meet the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

Any questions about those examples that we went through before we get into complaints and mediations in

those processes?

>> I've not seen any, but I do want to take a second to talk about one of the examples, even though nobody asked question about it.

>> Which one?

>> Yeah, about the widening of a space for a tenant with a wheelchair-equipped van.

>> Yes.

>> So one of the most -- something really important to require is that the Department of Justice and the Department of Housing and Urban Development, so DOJ and HUD, have both issued guidance indicating that when a tenant asks for a widened or a -- an assigned spot, it is considered to have what is called a de minimis cost, which means that unless, as Erin mentioned, there's an unusual site feature that is identified in the plans for the building.

The housing provider must provide the space and that includes any curb cuts, repainting or signs that may need to be -- that may be necessary.

For as clear as HUD guidance is on this, it is something we see quite a bit.

>> Great, Nathan, thank you so much.

All right, let's get into complaints and mediation and those processes. This is our last section.

So if you have a complaint filed against you, you will be notified of the allegations in writing, you will likely be invited to mediate, and if you decide not to mediate you might file an answer that is in writing, under penalty of perjury and may be amended at any time.

Virtually all parties and complaints are invited to participate in mediation before the investigation begins. The mediation program is voluntary. If both parties do not agree to mediate the complaint moves the investigation process. The mediation program of TDHCA Civil Rights Division provides the following benefit. It is a free service. It eliminates lengthy investigations and expensive litigation in a timely manner. It resolves complaints quickly. It saves time and money. It opens lines of communication between disputing parties. And it allows each party to understand the position of an opposing party. And when there is a resolution it is documented with an agreement which is binding upon the complainant and the respondent.

Per 10 TAC, 1.2, the Texas Department of Housing and Community Affairs has a process to address complaints about its properties and programs. There are three ways to file a complaint through the TDHCA complaint process. You can, one, submit a written complaint online. You can, two, mail your complaint to this address. Three, fax your complaint to the number, 512-475-0070.

Within 15 business days the complainant will receive a response from the department, either that the complaint has been resolved or that it will be resolved by a certain date.

After that the complainant will be notified about the complaint at least quarterly until final resolution.

Here is a chart that just documents -- indicates and shows all the disability-related complaints that we've seen in Texas from 2013 to 2018. With the highest number of cases, disability cases, related to discriminatory terms, conditions, privileges, services and facilities. So I think it's just a good reminder and a visual that represents kind of how often or the frequency in which Texas and TWC facilities the complaints and they also within those complaints can be filtered by issue in

themselves, discriminatory. Failure to rent.

Discriminatory retaliation. Discriminatory acts.
And discrimination pertaining to the rental.

So this is our contact information for our Fair Housing team at the Texas department of community affairs. We are able to do one on one sessions if you would like or any other of the Fair Housing webinars and trainings that we've given this month, including assistance animals, Fair Housing overview and reasonable accommodations and modifications.

But if you have any questions or need to get in contact with us that is our contact information on this slide.

And after that we are through. If there's any questions in the chatbox or not, we can get to them, Nathan, if you see any.

>> We do have a question. One of the questions is if a person has a handicapped sticker, but no visual handicap and asks for an extra handicapped parking space, do we need to accommodate this?

So this is a good question for a couple of different reasons. One is that if they have a handicapped sticker that means that you already have knowledge that they have

a disability and that that disability is a mobility -- at some point in time requires the use of a handicapped or at least a handicapped accessible parking space.

So when they ask for a handicapped spot, I am assuming, and correct me if I'm wrong, Ms. Ferrell, but I -- it sound like they are asking for an assigned spot? And the answer to that would be yes. If they're asking for an assigned spot, you would need to assign them a spot that meets the disability-related need.

If they are asking for a second spot or just asking for an additional handicapped parking space to be added, that is getting into an area where I don't necessarily know the answer, but it looks like you said that's not what they're asking for so it's good I don't have to wade into those waters.

So if they're asking for an assigned spot, you would need to find an assigned spot, usually the best way to do it is to find one closest to the entrance to their unit or something similar to that.

Another question that came through, and this is related, is how do we know the handicapped sticker belongs to them. You don't, but it doesn't matter. You know, if

your tenant comes to you, their car has a handicapped sticker on it, it may not necessarily be theirs, it may be a member of their family's who also lives in the apartment. It may be for one of their children. It doesn't matter if it's -- as long as one of the members of the household has a disability and the disability related need for an assigned or accessible parking spot is or they have documentation that they would need it, that's all that's necessary.

We -- as U.S. housing providers, your job is not to assess whether or not someone has a disability. That's the job of a medical professional. One of the things that is important to know is that if somebody receives any kind of Social Security Disability Insurance, receives any kind of government benefit and having a handicapped parking sticker would be part of this, receives any kind of government benefit that requires them to have a disability, that is enough to establish the fact that they have a disability.

And it's not -- it's not on you to determine whether or not that is a quote, unquote, legitimate disability or a tag.

So yes, if they have a handicapped sticker that's usually a pretty good indication that they have the disability.

Another follow-up is if you do not have any assigned spots, the short answer is you do now. If they have requested an assigned spot, then you need to go ahead and assign them a spot. And that means that you would need to make sure that other tenants aren't parking there so if the tenant who requested the spot comes to you and says, hey, there's somebody in my spot, you would need to treat it as a reasonable request.

So, you know, even if you don't have any assigned spots now, you will have one when someone asks. Now, as soon as that tenant moves out you can remove the sign that says it's a reserved spot and you're back to having no assigned spots.

I hope that answered that question.

Another question is there a way to access the handouts for the previous trainings, particularly the Fair Housing overview and the assistance animals training.

Yes. We will have those up very soon on the TDHCA website and that website will be

TDHCA.state.tx.us/fair-housing/presentations. And we will send a follow-up email to everybody that is on this training and was at any of the other trainings that we'll have that link available as well.

>> Yes.

>> All right. Another question came through. A resident -- oh, boy, this is one is going to be fun. A resident has three dogs as service animals. Two have a pit bull pedigree.

When verifying the physician's verification it was confirmed the resident committed fraud per the doctor. Now she has another physician's letter. Am I obligated to continue verifying this information?

Yeah, you are, unfortunately. Again, this goes back to the handicapped sticker. Your job is not to vet the qualifications of the medical provider.

That said, you can make sure that you, and make sure that you do, ask for the physician to -- because in this case I'm assuming that by service animal you probably mean an assistance animal or emotional support animal. Service animals kind of have their own thing.

But if you're talking about an assistance or emotional

support animal, the disability, and the disability-related need are almost -- are usually not obvious or readily apparent in this situation. So you can make -- when you assess the information from the medical provider you can try to make sure that it establishes that, A, the tenant has a disability and B, establishes the disability-related need for three assistance animals.

So that part, you know, you can make sure that it meets all of those -- all those criteria. And if it doesn't meet those criteria and if it only -- you know, the medical professional is only saying one, then only one of those animals is an assistance animal.

So you are obligated to continue verifying the information, but you are verifying the information and make sure that it meets the -- establishes that there's a disability, establishes the disability-related need and connects them via that nexus of why those three dogs.

Hope that helps on that question.

Also on that, you may want to go ahead and look at HUD's guidance on assistance animals. It was updated in January. It's got a ton of information. We also have our assistance animal webinar that we gave last week, the

video and transcript will be up for that one soon as well.

That will have a whole lot of more information for you as it relates to assistance animals specifically.

>> Yes.

Any other questions that you see?

>> That seems to be all of them.

>> Yeah.

Well, again, thank you guys so much for participating in our webinar series for the month of November. You've been awesome. Thank you for your questions. If you again need to reach us on the screen is our contact information. And like Nathan said, the recordings, the handouts, the slides of all of our trainings that we've done today and last week will be up on TDHCA website as soon as they're available.

Yes. And thank you guys again so much. Have a great rest of your day. Thank you for joining.

Bye, everyone.

[End of webinar].