

Fair Housing Overview Webinar

April 9, 2019, 2:00pm-3:30pm

Presented by Presented by the
Texas Workforce Commission's Civil Rights
Division and the Texas Department of
Housing & Community Affairs

>> **Cate Tracz:** Good afternoon, everyone. This is Cate Tracz from the Texas Department of Housing & Community Affairs. We are just waiting on a few more folks to join. It looks like half of the registrants that have signed up for the webinar have logged in to the GoToWebinar portal so we'll give it a moment or so. There should be some downloads available. The PowerPoint handout and then a few extra materials, if you want to go ahead and download that and we will get started in just a moment. Thank you.

Good afternoon, everyone. You are joining the fair housing overview presented by the Texas Department of Housing & Community Affairs and the Texas Workforce Commission Civil Rights Division. Give me one moment so we can enable my screen. Let's see. Okay.

Thank you all for joining us today. My name is Cate Tracz, fair housing manager at the Texas Department of Housing & Community Affairs, or TDHCA. April is Fair Housing Month, and TDHCA is hosting today's Fair Housing Overview webinar in partnership with the Texas Workforce Commission Civil Rights Division and we're excited so many folks have joined us today.

I'd like to thank the Texas Realtors and Austin Board of Realtors for promoting this event as well. So with that we'll go ahead and get started.

So the presenters for today's webinar, myself, Cate Tracz, and then I'm also joined by Ed Hill. He is the training specialist and outreach coordinator at the Texas Workforce Commission Civil Rights Division. I've got a couple of administrative reminders before we get started. All attendees are muted. Slides are available for download if you wanted to follow along for review, and they'll also be posted and distributed after the webinar.

Again, the webinar will be recorded. The recording will be posted and available, and we'll put it online within the next few days. And all attendees that had registered with us will be emailed a link to that information.

Okay. So today we will have questions, time for some questions at the end. We're going to go through the agenda that we've got here. So if you think of questions as we go, please enter them into the questions box of the GoToWebinar portal and we'll try to get to as many as we can at the end of the session today.

So I'll start with a brief overview of the purpose of the Fair Housing Act, federal and Texas Fair Housing Act, brief overview of the TWC Civil Rights Division and TDHCA. Then I'll hand it over to Ed to dive into some of the protected classes, exemptions for housing testing and some other topics that are pretty pertinent to an overview of fair housing.

So hopefully by the end of today's webinar we'll be able to help you identify the purpose of both of the federal Fair Housing Act and Texas Fair Housing Act, recall the covered and protected classes covered by these acts, recognize any discriminatory practices that you may encounter as a housing provider or as a resident, identify any exemptions, and we'll do a brief overview of fair housing testing at the end.

So the Texas Workforce Commission Civil Rights Division, they're charged with enforcing the Fair Housing Act in Texas. So their mission really solidifies this. Their mission is to reduce discrimination in employment and housing through education and enforcement of state and federal laws. And their 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.

So here at TDHCA, some of the attendees might be familiar with us as recipients, developers, or participants in our programs. Our mission is to administer assigned programs efficiently, transparently and lawfully and invest our resources strategically to develop high quality affordable housing which allows Texas communities to thrive.

So before we get started I just wanted to take a few brief moments and introduce the analysis of impediments. So this is a process that every five years or so HUD requires that recipients of HUD community planning and development grant funds undertake an assessment to affirmatively further fair housing under the Fair Housing Act and identify impediments that may limit fair housing choice.

So over the past year and a half TDHCA has led this effort on behalf of all state agency that's receive these HUD community planning and development funds. We've developed a document that we're taking out for public comment in draft form -- our public comment period is open through May 6, and the draft assesses where Texas is as a state as it relates to fair housing and identifies impediments and possible solutions where applicable. We've got about 13 public hearings that will take place over the next three to four weeks. So if you wanted to take a look at this document, it is on the TDHCA's website and any questions that you have please submit them to me. My email information is there. But if you wanted to submit public comment, we do -- we are accepting written public comment in these forms. So more information is available on our website. I just wanted to give a brief overview of this large effort that TDHCA has undertaken before we get started.

So with that, I'm going to turn it over to Ed Hill and he's going to start with the Fair Housing Act. Ed?

>> **Ed Hill:** Good afternoon, everyone. We're going to start talking about the purpose of the Fair Housing Act both federal and state. The statement on the board states that the purpose of the federal Fair Housing Act is within constitutional limitations provide for fair housing throughout the United States.

The Texas Fair Housing Act or Texas property code chapter 301 mirrors the federal Fair Housing Act, and it's designed just like the federal, to provide for fair housing practices, create procedures for investigating a federal complaint and to provide rights and remedies for fair housing.

The whole point of the Fair Housing Act is provide and prevent discrimination. Discrimination

is defined as difference in treatment because of a membership in one or more protected classes. However, not every difference in treatment is discrimination.

Despite the fact that the federal Fair Housing Act and the state Fair Housing Act have been around for many years, housing discrimination still occurs. There are seven covered or protected classes under the federal and state laws, which include race, color, national origin, familial status, religion, sex and disability. Fair housing laws prohibit housing providers and landlords from basing housing decisions on a person's protected class, applying different standards or applying standards inconsistently to anyone because of their protected class, harassing anyone based on a protected class, or retaliating against any applicant, tenant or buyer or consumer for engaging in protected activities such as complaining about alleged discrimination, filing discrimination complaints against a housing provider, or testifying in hearings or court proceedings concerning discrimination complaints.

So as we dive into our protected classes, the first one is race. Race is a classification system used by the federal law system, management and budget or M&B and U.S. consensus bureau to categorize people into large distinct populations or groups by inherited appearance, ethnicity and social status. According to these entities, we have Asian, African-American or black, Native American, Indian, or Alaska native, native Hawaiian or other Pacific Islanders or white. Asian is people have any [Indiscernible] Indian subcontinent including, for example, Cambodia, China, Vietnam, Thailand, just to name a few.

African-American or black includes persons having origins in any of the black racial groups of Africa. Terms such as Haitian or negro can be used in addition to black or African-American.

Native American, Indian or Alaska native includes persons having origins in any of the original people's North and South America, including Central America, and who maintain tribal affiliation or community attachment.

Native Hawaiian or Pacific Islander includes origins in Hawaii, Guam, Samoa.

White includes persons having origins in any of the original peoples of Europe, Middle East or North Africa. Some identify as having more than one race. It is illegal to discriminate against any housing applicant or tenant based on stereotypes and assumptions. It's also illegal to discriminate against an applicant or tenant because that person is married to someone of a different race or associates with people of certain racial groups.

Harassment, racial slurs, derogatory comments, threats and other verbal or physical conduct based on a person's race are illegal.

The next class is color. This class is often connected to or confused with race but refers to a person's skin pigmentation or color. Color is separate from race because people can discriminate solely on color. Though discriminating based on color may make assumptions about a person's intelligence, social status, education, income, and/or other characteristics. An

example of color discrimination would be making housing decisions that favor individuals with lighter complexions over those with dark complexions even if of the same race and/or national origin.

Next protected class is national origin. As a result of increased diversity in Texas, national origin discrimination is an issue. No one can be denied housing or housing opportunities because of his or her birth place, ancestry or culture or because of a housing provider's perception that the person belongs to an ethnic group. Unfair or illegal housing services directed to limited English proficient individuals or LEP or those who speak a particular language may also constitute intentional discrimination. Advertisements containing blanket statements such as all tenants must speak English, turning away applicants not fluent in English or making statements disparaging tenants from speaking non-English languages may be discrimination.

If a housing provider is required to provide housing-related language assistance services to LEP, persons under federal, state, local law or by contract and the housing provider fails to comply with that requirement, this, too, may constitute intentional discrimination.

By failing to comply with the requirement to provide language assistance, the housing provider may be denying individuals based on their national origin an equal opportunity to enjoy the housing benefits to which that requirement entitles them.

And I also want to point out, terms such as Hispanic and Latino refer to a person's national origin. Not race.

Our next protected class is familial status. Familial means the makeup of your family unit. Familial status includes persons who have children under the age of children, who are living with their parents or legal custodians, pregnant women, and people seeking to secure custody of children under 18.

Who is protected? Pregnant women or persons in the adoption process, families with children, stepchildren, foster children or legal wards. Keep in mind at least one child must be under the age of 18 years old.

It also protects parents regardless of marital status, single, married, single, divorced, widowed. Housing providers cannot refuse to rent or sell to a woman because she is pregnant or because of prejudices against pregnant applicants. Examples that indicate unlawful discrimination include we need to increase your security deposit to cover all your kids or, sorry, we only allow one child per bedroom. It is also illegal to segregate families and/or pregnant woman by assigning them to specified geographic areas.

Remember, housing providers should avoid creating rules and policies that may constitute violations of federal and state fair housing laws such as overall restrictive policies that unfairly penalize families with children or children by placing restrictions on their use of pools, spas, playgrounds and other common areas requiring adult supervision and other restrictions that are

not required by adult residents.

If such cases or questions should arise providers should consult legal counsel, insurance experts, state and federal Fair Housing Act and in Texas the Texas Health and Human Services regulations.

Next protected class is religion. Religious discrimination is an important issue today, and it is an issue that has long gotten housing providers into trouble in the past. Simply put, the laws state you cannot discriminate a person because of he or she religion. Religion refers to all aspects of religious beliefs, observations or practices. Discrimination based on religion includes overt discrimination against members of a particular religion or indirect discrimination such as a homeowner association restrictions of symbols or decor regarding religious practices. Also note the laws protect persons without religious preferences, such as atheist, agnostic, et cetera. Examples of discrimination based on religion could exist if people hear a landlord or real estate agent or lender say "I will show you neighborhoods with a synagogue" or "we specialize in lending to Christians."

The next class is sex discrimination. Discrimination based on sex or sexual stereotype perceptions, fair housing laws are very clear that any type of discrimination in housing based on the person's gender is prohibited. State and federal laws also prohibit discrimination based on stereotypes and assumptions about a person's gender. In other words, you cannot take gender into account in rental and sale of real estate or any other housing decisions.

This category includes sex harassment, gender stereotyping and discriminatory pricing because of pregnancy or single parenthood. Some examples, we don't rent to single men or I can take the price down if you go out on a date with me, which would be sex harassment.

Our next protected class is disability. According to the -- I'm sorry, excuse me you. According to the World Health Organization, more than a billion people or 15% of the world's population have a disability. The number or rate of disability is higher in the United States. According to the 2010 census, one in five Americans has a disability, and you probably know or interact with one on a daily basis.

According to the 2013-2017 American communities surveyed, also known as a census, an estimated 3.1 million Texans or 11% -- 11.6% of the Texas population had a disability in 2017.

Fair housing laws prohibit discrimination on the basis of disability. In 2015, more than 75% of TWC cases were based on the protected class of disability.

Fair housing laws ensure that people with disabilities have freedom to choose where they will live and the ability to visit friends and relatives. They proactively address the needs of an evolving population. They look ahead at future needs and allow people to remain in and safely use their dwellings longer. A person is regarded as having a disability if he or she first has a mental or a physical impairment that substantially limits at least one major life activity.

Second, they have a record of an impairment. Or, third, person is regarded as having an impairment. In addition to the laws covering a buyer or renter with a disability, fair housing laws cover persons residing in or intending to reside in a dwelling after it is sold, rented, or made available, and any person associated with the buyer or renter.

This slide lists several major life activities, but it's not all-inclusive.

Fair housing laws protect persons who are recovering from substance abuse also, but they do not protect persons who are currently engaging in current illegal use of controlled substances.

The acts do not allow for extrusion of individuals based -- or individuals with disabilities based upon fear, speculation or stereotype about a particular disability or persons with disabilities in general. However, the acts do not protect an individual whose tendency would constitute a direct threat to the health or safety of other individuals or whose dependency would result in substantial physical damage to the property or others unless the threat or risk to property can be eliminated or significantly reduced by a reasonable accommodation. If the question arises regarding a direct threat, a determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence, also known as current conduct or recent history of overt acts. The assessment must consider the nature, duration and severity of the risk of injury and the probability that the injury will actually occur and whether there are any reasonable accommodations that will eliminate the direct threat.

Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat. In such a situation, the provider may request that the individual document how the circumstances have changed so that he or she no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during their tenancy.

The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him or her from housing on that basis.

At this point I'll turn it back over to Cate to discuss several types of issues and discriminatory practices.

>> **Cate Tracz:** Thank you, Ed.

So what specifically did the laws prohibit housing providers and landlords from doing? Based on all of the information that we've just absorbed, let's dive into some of the issues and the practices.

So the laws prohibit fair housing providers and landlords from basing their housing decisions on a person's race, color, national origin, familial status, religion, sex, or disability. So all of those topics that Ed just went through.

So in addition, the state and federal laws prohibit harassing anyone based on a protected class or characteristic. So harassment is also related to this as well.

So let me go into our first issue, reasonable modification. This is different from another term that we'll get into, reasonable accommodation. But right now we're going to start with reasonable modification.

And just a quick overview statement, this is just general guidance for housing providers or real estate agents. This is not really specific to any particular program or funding source. I'll get into a little bit more of the specifics about that later.

So if a person is disabled, a landlord cannot refuse to let that person make a reasonable modification to the person's dwelling or common-use areas if it's necessary for that person to use the housing and if the modifications are done in the -- at that person's own expense. We'll get into the costs a little bit later as well.

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

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 premise to the condition that existed before the modification, reasonable wear and tear excepted.

So the landlord may not increase a customarily required security deposit for individuals with disabilities. That's not allowed. However, where it is necessary to ensure with reasonable certainty that funds are available to pay for the restoration at the end of the tenancy, the landlord may negotiate as part of such restoration agreement a provision that requires that the tenant pay into a interest-bearing escrow account, and this actually comes directly from the Texas Administrative Code for the Texas Workforce Commission Civil Rights Division.

So as a condition for granting a renter permission for this modification, the landlord may require that a reasonable description of the proposed modifications are provided and reasonable assurances that the work is going to be done in a professional manner and assurances that the proper building permits will be obtained as well.

So moving on to reasonable accommodations. So different from a modification, which is actually a physical change of a structure, an accommodation could be a change to a policy or a practice. So if a person is disabled and a landlord -- a landlord cannot refuse to make a reasonable accommodation in the landlord's rules, policies, practices or services if the accommodation is necessary for the person with a disability to use and access the housing. So here are some examples of comments that persons with disabilities have heard that would not be allowable.

So number 1, we have to charge you \$200 for your service dog, or we can't talk to people who call us over the telephone relay service. The only accommodation we offer is disabled parking. We can't waive the breed of animal, even if it is a service animal. No, your assistance animal is not allowed in the pool area. Then my final example, we have to charge you a transfer fee and a deposit for you to move to the first floor.

So what is a reasonable accommodation? Under the Fair Housing Act, both practical and state, it is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy the dwelling.

There is an attachment provided. It's from HUD and Department of Justice, a joint memorandum on reasonable accommodations and modifications. These documents provide a pretty deep dive into the specifics of these two topics, reasonable accommodations and modifications, and they're really good resources to go to if you have questions.

So why would you grant a reasonable accommodation? Well, the policies, practices and services may have a different effect on persons with disabilities than on other persons. So that's something that you would have to take into consideration. And treating persons with disabilities exactly the same as others sometimes might deny them an equal opportunity to use and enjoy a dwelling.

So what do these acts require? It may -- let's see. It may be necessary to document the specific relationship between the disability and what is actually being requested. So as the housing provider it might be your responsibility to make sure that those two things match up, the specific disability and the request.

So the procedures for submitting a reasonable accommodation, the submitter would request either orally or in writing, someone can just ask in person, although it's recommended to have in writing, they could submit their request. The reasonable accommodation must actually be requested on or on behalf of the individual with the disability who reside or are expected to reside in the housing unit. The federal and state Fair Housing Acts do not request that a request be made in a particular manner or at a particular time. There's really no set form or guidance for this. The rules are pretty flexible on how a request can be made. The request should however explain what type of accommodation is being requested.

So the rules for disability-specific related requests. You -- the housing provider may accept verbal requests. So reasonable modification or accommodation request can be verbal discussion not have to be on housing provider-specific form and doesn't have to be made in writing. The request should be made in a manner that a reasonable person would understand to be an exception, a change or an adjustment to a policy, practice or service for a person with a disability.

The person submitting the request does not have to mention the federal or state Fair Housing Act, don't have to use the specific words reasonable accommodation or modification. There's no specific trigger words that would request -- they can just, you know, say this in writing or verbally submit their requests. The request can also be made by a family member or someone else acting on behalf of the disabled person. So when a request is provided to the housing provider for a reasonable modification or accommodation, the request should happen immediately, and the housing provider should revise their policy on a regular basis.

So if the disability is not obvious or the need is -- the immediate for the accommodation is not obvious, it's okay to ask for a reliable disability-related information, such as housing provider cannot ask -- oh, if it's not obvious. Okay. The housing provider cannot ask for detailed medical records but do have the right to ask the requester to provide documentation to determine that the requester meets the Fair Housing Act definition of a disability. They can ask that they describe the need for accommodation and show the relationship between the person's need for the disability and the requested accommodation.

I know this is a lot of information.

So you can also -- the housing provider can also request that a doctor or other medical professional or peer group or non-medical service agency or reliable third party who is in a position to know about the individual's disability may also provide some proof of verification of the disability. Again, this is all spelled out in that HUD DOJ memorandum that's attached on reasonable accommodation.

So it's important to provide prompt responses to a reasonable accommodation request. There's no general time limit, but TDHCA specifically applies a 14-day time rule to responses. And an undue delay in responding to some of the accommodation requests might be determined as a failure to provide that accommodation request. So remember act quickly and have open communication. Definitely document your actions and interactions if it's something that you receive verbally. Definitely document when and the details of that request?

So some reactions and inquiries to avoid. A housing provider may not ordinarily ask the following things. The nature and severity of an individual's disability. And they may not ask if an applicant has a disability or a person intending to reside in a dwelling or anyone associated with that application has a disability. There's some exceptions, however. If the housing provider provides [Indiscernible] meeting specific features of these units on a priority basis or if the housing provider operates housing that is legally limited to persons with a specific diagnosis such as chronic mental illness.

So when can a reasonable accommodation be denied. So under the following condition, if the housing provider has reliable, objective evidence that a person with a disability poses a direct threat to others or a service animal poses a direct threat, it can also be denied if there's no disability-related need for the accommodation. If providing the accommodation is not reasonable, for example, if it would impose an undue burden on the housing provider or

fundamentally alter the nature of the provider's operation. So if it's not reasonable, consider whether there's an alternative accommodation that would effectively address the requester's disability-related need. Like we said in a previous slide, when you receive this request, start an open dialogue immediately. If it comes to this point, you might be able to find an alternative accommodation that would certainly meet the requester's needs.

So who pays for the accommodation? This was -- we get a lot of questions about this. And I've actually attached a really handy flow chart that was created by the fair housing council of greater San Antonio. It's a pretty detailed pdf flow chart of if it's a single family dwelling or multi-family dwelling. How many units are in it? When it was built? You know, who owns the property? What funding has gone into the property to help determine who actually has to pay for this reasonable modification?

So in general housing providers may claim undue financial and administrative burden or they may claim that the requested reasonable accommodation constitutes a financial -- a fundamental alteration of the provider's operations.

So the following would be a consideration. The financial resources of the provider, the cost of the reasonable accommodation, benefits of the requested accommodation, the availability of other less expensive alternative accommodation that would effectively meet the applicant or resident's disability needs. So like I said, this is just general guidance. It's important to note that for TDHCA-funded developments with federal or state funds that were awarded tax credits after 2001, the owner is responsible for paying the reasonable accommodations and modifications. Unless it is a fundamental change to the owner's operation or if it is an undo financial and administrative burden. With all of that information I'm going to turn it back over to Ed and we're going to present a couple of scenarios and questions, and I think we've got some polls queued up as well.

>> **Ed Hill:** Thank you, Cate.

Our first scenario, if you will read along with me as I read it aloud. A housing's provider's policy is to provide unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation.

There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first serviced basis. What should the service -- the housing provider do?

>> **Cate Tracz:** We're going to bring up a poll. Do you want to -- we'll take a few minutes to enter your selection.

[poll] looks like we've got a lot of responses coming in and we're tracking in on one answer over another so we're going to close this one. And can you bring up the results of that poll? Thank

you.

What should the housing provider do? I actually can't read that. It looks like the majority of folks say that -- 84% is to offer the assigned spot at no cost to the tenant.

So, Ed, what do we think about our poll results?

>> **Ed Hill:** I think that 84% is correct. The housing provider should make an exception to his policy of not providing assigned parking spaces to accommodate this resident.

>> **Cate Tracz:** Okay.

>> **Ed Hill:** Our second scenario, if you'll read along with me, a homeowner with a mobility disability alleged that his homeowner's association denied him permission to have the space in front of his house designated as a no parking space, in order to allow a ramp to be installed.

Now, I'm going to add, this scenario is a real case investigated by Texas Workforce Commission Civil Rights Division in 2017. So did the association discriminate against this homeowner in this case?

>> **Cate Tracz:** We're going to bring up another poll just a quick yes or no or unsure.

[poll]

It looks like we're tracking in on some answers here. We'll close the poll and put up our answers. So 60% of our respondents said yes, 13 no, and 27% were unsure what to do in this case.

So, Ed, what do we think about this?

>> **Ed Hill:** Well, I'm going to have to say that the majority is ruling again so far. In the settlement, the complainant received \$10,000 and the respondents agreed to require staff to take fair housing take and take reasonable accommodation and modification policies that adhere to the requirements of the Texas Fair Housing Act.

I have another question. And this is one of those what would you do questions. I will answer the first one, and then we'll poll the second two questions.

Your property has a strict no-pets rule. Due to a recorded disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation.

What action should you take? Can you charge a pet fee for the animal's occupancy, and is the tenant liable for damages caused by the animal?

I'm going to answer the first one. The first step is to enter the interactive process with the requester before making a final determination. Keep in mind by entering -- when you enter the interactive process, you're making an informed decision. That gives you time to go talk with your legal support, look up any city ordinances that may state that that animal is not allowed in the city limits for some of the live stalk animals in cases, especially where we start talking about emotional support animals. So we don't want to just say no because that can constitute disability discrimination. So make sure you do your due diligence in as you're in the interactive process.

The next question, can you charge a fee for the animal's occupancy?

>> **Cate Tracz:** I think we may have had this one open. We'll open this one again. We can't open it again. Okay. Moving on.

>> **Ed Hill:** Okay.

>> **Cate Tracz:** So can you charge a fee? 92% say no.

>> **Ed Hill:** And that is correct.

>> **Cate Tracz:** That's correct.

Okay. We have one more poll on the next question. Ed, if you want to take that.

>> **Ed Hill:** Is the tenant liable for damages caused by the animal?

>> **Cate Tracz:** Okay. Let's open this poll through your responses.

Yeah, looks like pretty overwhelming results here. 96% say yes.

>> **Ed Hill:** That is correct. The owner is responsible for any damages caused by the animal above normal wear and tear. Thank you.

So that's going to take us to our next issue, design and construction. And this is our third specific prohibition if a person is disabled. For all the [Indiscernible] design and reluctant a multi-family dwelling in a manner that makes it accessible and/or usable by people with disabilities is also discrimination. Keep in mind accessible means a place that can be used, entered or reached and usable means available or convenient for use. And in practice, these terms are used interchangeably.

As posted on the slide, this applies to dwellings that were built after -- multi-family dwellings built for occupancy after March 13, 1991. And -- these requirements on the board is a list of requirements. I'm going to read some other requirements.

Public areas and common areas that need to be accessible include laundry, fitness centers, theater facilities, playgrounds, fire alarms, mailboxes, storage areas, access to a pool, the activity center, and dumpsters and trash cans. Keep in mind this is common for -- a common finding for TDHCA's compliance staff, inaccessible dumpsters and trash cans. Covered buildings should have at least one building entrance on an accessible route unless it is impractical because of unusual characteristics to the site.

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

Next issue, terms -- rent, sell, terms and conditions. It is illegal to refuse to negotiate with the person for housing. Because of their protected class. It is also illegal to refuse to rent or sell housing or set different terms, conditions or privileges for sale or rental of the unit. These are all discriminatory statements that a person in a protected class might hear when negotiating to rent a unit. "Sir, we're sorry but we're not able to rent to people with mental illnesses, or this cannot be rented to you because you're of the Wiccan religion. When it comes to setting terms and conditions let's say there's a single working mom in an apartment with four children and she's working two jobs. She does not have time to clean the unit in a manner that is required to be kept according to the lease agreement. Can she be evicted because of her poor housekeeping?

The answer is yes. As long as the housing provider is following his housekeeping and eviction policies in a consistent manner.

Also, publication and inspection. A person may not make, print or publish a notice or statement or advertisement about the sale or rental of a unit that may indicate any discrimination against a protected class. Landlords and other housing providers need to be careful regarding advertising. It may sound very invite to go attract a certain group of people, however it may discriminate against protected classes.

According to fair housing laws verbal staples may constitute discrimination as well and someone not absolved from liability by blaming another person for a statement repeated on their behalf. Here is a scenario, a leasing agent tells someone no unit is available to and inspect or rent when the unit is actually available. Another person from a difference protected class comes in afterward and gets the opportunity to see the unit or to see a unit. This may -- this conduct may violate fair housing laws.

The next issue, entry into neighborhoods. According to 40 Texas Administrative Code section 819.127, a person may not for profit persuade someone to sell or rent real estate by predicting an influx of protected populations. This practice is known as blockbusting. And this was common -- or apparently it still is common because there's a law about it, but this is where we're saying that there's a group of assorted race coming in that's going to lower the property

values, move out, or a group home for example, moving in that's going to lower your property value, sell now, move out, that is considered blockbusting.

I'm going to read some examples to go along with this slide. I'm not going to read everything on the slide, but a loan officer is prohibited from requiring a higher down payment from an applicant because the loan officer believes applicants of that particular race are less likely to pay or repay the loan. However loan officers may turn down an applicant because the applicant does not have steady income if all the applicants are required to have steady income. Examples of discriminatory statements include, we cannot approve your home loan while you're on maternity leave. You need to go back to work before we can proceed with the paperwork. Or we cannot count your disability income unless we get a letter from your doctor confirming that you will continue to receive these payments for the next five years.

The Texas Workforce Commission Civil Rights Division has found such cases to be discriminatory.

And this provision does not prevent consideration due to the normal transactions as long as there's no reliance on factors that relate to the seven protected classes. Next issue, retaliation, interference, coercion and intimidation. Under Texas fair housing laws and rules it's unlawful to interfere, coerce, intimidate and retaliate against any person because of that person's protected class or because that person filed a complaint or encouraged another person to file a complaint. Prohibited conduct includes but is not limited to threatening, intimidating, or interfering with individuals in their enjoyment of a dwelling based on a person's protected class. Or threatening or taking an adverse employment action based on the protected class of the housing consumer. Or retaliating against any person because that person made a complaint, testified, assisted or participated in any manner in a proceeding under the Texas Fair Housing Act. Note, there are no exemptions for any of these issues. These issues apply to everyone.

Prohibited interference, coerce, intimidation equals prohibited conduct made unlawful under this section includes but is not limited to coercing a person either orally or in writing or by other means deny or limit the benefits provided to that person in connection with the sale or rental of a dwelling in connection with a residential real estate-related transaction based on a protected class.

Now, HUD's quid pro quo environment rule, harassment rule, what is quid pro quo? Quid pro quo is a Latin term meaning this for that. It is an unwelcome request or demand to engage in conduct where submission to the request or demand either explicitly or implicitly is made a condition related to the sale, rental or availability of a dwelling. The terms, conditions or privileges of the sale or rental or the provisions of services or facilitates in connection there with or availability, terms or conditions of a residential real estate-related transaction.

So what is hostile environment? Harassment? Once again, it's unwelcome conduct that is sufficiently severe or pervasive as to interfere with the sale, rental, or availability of a dwelling, the terms, conditions, or privileges of the sale or rental or the provision of services or facilitates in connection there with. Or the availability, terms, or conditions of a residential real

estate-related transaction.

Under HUD's quid pro quo and hostile environment rule, we have direct liability and that's where your own conduct or failing to take action of an employee or agent or failing to take action of a -- on a third party, as listed on the slide. Vicarious liability, a person is vicariously liable for a discriminatory housing practice by a person's agent or employee regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice consistent with agency law.

Cate is going to return and discuss disparate impact.

>> **Cate Tracz:** Thank you, Ed. I'm going to give a brief overview of the term called disparate impact. There's a link here to HUD's Fair Housing Act discriminatory effects standard, very lengthy and detailed if my overview goes a little quickly this is a good resource.

So a discriminatory effect or disparate impact is a policy or practice that seems neutral at its face but it may actually result in a discriminatory effect on a group of persons protected by the Fair Housing Act. Or on the community as a whole on the basis of a protected characteristic, and that would be an example of perpetual segregation.

So how do you prove disparate impact is happening? It's kind of a vague term, it can be. So the party that is alleging a disparate impact claim is responsible for initialing providing the proof of what may be happening. Then the burden shifts to the respondent or the defendant to prove that the practice is necessary to achieve a substantial, legitimate nondiscriminatory interest. If the respondent or the defendant satisfies this burden then the charging party or plaintiff may still establish liability by providing that the substantial legitimate nondiscriminatory interest could be served by a practice that has a less discriminatory effect.

So the Fair Housing Act discriminatory effects standard attached goes into that in a lot more detail as well. Some policies that procedures that may have discriminatory effects or a disparate impact include enacting or implementing land use rules or ordinances or policies that restrict or deny housing opportunities or otherwise make unavailable or deny dwelling. The provision of loans or other financial assistance, a community's occupancy limit to a certain number of individuals in a dwelling, criminal history, limited English proficiency and disturbance policies. So that brings up a topic that I'm going to hand back to Ed about criminal record.

>> **Ed Hill:** On the board you'll see some statistics and some information about criminal records. I will add while having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the act if without justification. The burden falls more on renters or other housing market participants of one race or national origin over another.

Additionally, intentional discrimination and violation of the act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or

another protects characteristic, which would cause a disparate treatment liability.

Now, the use of criminal records -- in December of 2017, the Equal Rights Commission filed a complaint in the U.S. District Court or District of Columbia against Mid-America apartment communities incorporated. And Mid-America Apartments LLP. This is a -- the nation's largest corporate landlord. The complaint alleged that the landlord's policy of banning tenants to have a felony conviction or felony pending charge as well as certain misdemeanors or pending misdemeanor charges violated the Fair Housing Act of 1968 because it has disproportionate adverse impact African-Americans and Latinos. Nationwide landlords watched this lawsuit to determine the impact on policies to screen background records.

Now, on October 5, 2018, the Equal Rights Commission announced the resolution of the claims against Mid-America, that is exclusion of applicants including any felony conviction discriminated against such individuals on the basis of race and national origin. The parties entered into a court enforced agreement that requires Mid-America to immediately adopt a criminal background screening policy that individually assesses applicants with criminal convictions.

This is a hot topic right now because there have been cases where people have committed crimes, did their time, and, you know, the crime is 30 years old and they're still having trouble getting fair housing.

So as we move into exemptions, these are exemptions for sales and rentals, and the sale and rental of a single-family house may be exempt from application of the Fair Housing Act if the owner does not own three or more single-family houses at one time or own any interest in, nor is there owned or reserved on the person's behalf under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at one time.

Now, this applies if the owner has only one sale or rental in a 24 month period and the owner was not the most recent resident of the house at the time of the sale or rental. And the house is sold or rented without the use of sales or rental facilities or services of a broker, agent or salesperson licensed under chapter 1101 of the occupations code or of an employee or agent of a licensed broker, agent or salesperson or the facilities or services of the owner designed or intended for occupancy by five or more families.

The publication of -- the publication, posting or mailing of a notice, statement or advertisement prohibited by section 301.022 or the sale or rental of the room or unit in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independent of each other if the owner maintains and occupies one of the living quarters as the owner's residence.

Now, keep in mind these exemptions are not available if an owner makes a discriminatory statement, notice or advertisement or engages in intimidation, interference, coercion, retaliation or harassment.

The next exemption, this is an exemption from familial status requirements. Housing for the elderly is exempt from the protected class of familial status if the commission determines that the property is specifically designed and operated to assist elderly individuals under a federal or state program and/or the housing is intended for and solely occupied by persons 62 years of age or older. And housing in which 80% of the occupied units have at least one person who is 55 years of age or older for each unit.

So house under these provisions must comply with applicable HUD regulations. Additionally, state and local governments that create zones prohibiting families with children under 18 must continually ensure compliance with all requirements for the exemption or they will violate the Fair Housing Act.

Other exemptions include religious organizations, private club that is not open to the public, or a person engaged in the business of providing real property appraisal. If it is not commercial housing operated by a religious organization, they may reserve it for persons of that same religion unless the religion itself is restricted because of race, color, or national origin.

A private club that is not open to the public and that incidentally provides lodging other than for commercial purpose may limit the rental or occupancy of the lodging to its members or give them preference.

An appraiser is not prohibited from considering factors other than protected classes in his or her appraisal. But both religious organizations and private clubs have many different variants in their properties. So they have to be looked at individually.

Fair housing testing, in short testing refers to the investigative tool of using individuals who without any bona fide intent to rent or purchase a home or apartment or other dwelling as prospective buyers of real estate for the purpose of gathering information. This information may indicate whether a housing provider is complying with fair housing laws.

And why is testing done? Well, we test to gather information or evidence regarding the manner in which a housing provider does business regarding availability, qualification standards, design and construction compliance, treatment of home seekers, discriminatory statements, patterns, behaviors, to corroborate or refute the experience of the complainant.

Testing investigations often provide the evidence that is needed by victims of housing discrimination to meaningfully pursue a complaint, suit or administrative hearing. Testing can uncover and/or support systemic forms of housing discrimination that exist in harassing individuals and a community.

Testing evidence may reveal information, you know, that a respondent that either requested modification or accommodation has been denied, although it is reasonable, it might present that a property does not comply with the accessibility requirements of the Fair Housing Act or the

Texas -- federal Fair Housing Act or the Texas Fair Housing Act or local law or it may show that loans and insurance are available to people of protected groups on different and unfavorable terms it made to people in other groups.

Knowing that discrimination in housing lending and insurance exist and obtaining evidence with respect to discrimination in different cases are two completely different things. In order for a complainant to succeed competent evidence must be presented that shows violation of the law.

So if you feel that you're the victim of a housing -- of a discriminatory housing practice, you can actually file a complaint with, in our case, Texas Workforce Commission Civil Rights Division.

If you're in Austin you can file with the city of Austin, Corpus Christi has a commission, or Fort Worth. They also have a commission. If you have a complaint filed against you, you will be notified of the allegations in writing. You will likely be invited to mediate. 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. If you need to file a complaint please go to the link below [www.Texasworkforce.org/civil rights](http://www.Texasworkforce.org/civil%20rights) and fill out the complaint form and email it or fax or mail it in.

This complaint is also filed under penalty of perjury and may be amended at any time.

Mediation, when we mediate, there's a free service provided by the Texas Workforce Commission and it basically in a nutshell helps save you time, money, [Indiscernible] quickly, keeps it out of the court and keeps it out of the press.

And for technical -- training and technical assistance, this is our website -- or our email address crdtraining@twc.state.tx.us. Before we start the questions I'd like to thank you for attending today and participating in the Fair Housing Month webinar. This concludes our presentation but I'd also like to thank TDHCA state that made this possible, Nathan, Julie, and Cate from the fair housing data management and reporting team at TDHCA, and Ernesto from Texas Workforce Commission Civil Rights Division. Thank you for attending, and I'm going to pass you on to Cate for questions.

>> **Cate Tracz:** Yes. Thank you, Ed.

So we've got just a couple of really great questions that have come in, and I see we're nearing the end of our time here, so if the questions are still coming in and we don't get to yours, we will follow up about you directly.

So have you guys had a chance to take a look at the questions up here? I'm going to go ahead and read out one that is topical to complaints because we just went over that. So what happens to a complaint -- to complaints that are never resolved?

Well, in the case of TDHCA, we try to always have some type of resolution and some type of documentation. It may be that the resolution is -- this complaint we received is really just out of our jurisdiction. So we would provide referrals to local organizations that might be able to help or other legal assistance that might be more geared towards answering that complainant's question. Did you have anything else to add about that, if something is unresolved?

>> Ed Hill: With TWC CRD, the mediation is available all the way through from the filing of the complaint through completion of resolution. If we're not able to resolve the complaints during the -- through mediation or investigation, that's when we have the complainant petition the state for right to sue, and that's where we would have to move it into litigation and resolve it that way. But we do try to resolve everything at our level and through education, mediation, and investigation.

>> **Cate Tracz:** Great question. Do one more about -- I see a couple on here. Ed, do you see -- what about the one about bike racks? We went back to accessible -- reasonable accommodations and modifications. When Ed had listed that big long list of other things that would also be an amenity, are bike racks considered an amenity? That's a good question that I haven't come across.

>> **Ed Hill:** Nor have I?

>> **Cate Tracz:** Yeah. We will definitely look into that and get back to the question there. That's really good that you stumped Ed, our fair housing expert here.

>> **Ed Hill:** Now, one -- to go along with that, when we're talking about bike racks being accessible, most bike racks are normally at a level where a person with a disability can place the bike or get off the bike, so I'm not really clear on the question.

>> **Cate Tracz:** Right. It might be the area that the bike rack is placed if it limits a pathway or if it's a specific bike rack. But really great question. Let's do one more. Can a landlord request that before they waive the pet fee the animal be registered and vaccinated. So this is the big question for service animals.

>> **Ed Hill:** Okay. For service animals, it should be -- your animal should be vaccinated and they should be able to show that the animal has vaccination. Now, registration, there is no such thing as a national registry for service animals or any local registries. The requirement for a service animal under -- under the Fair Housing Act is identical to the Americans with Disabilities Act.

Now, for emotional support animals, that's a different beast that's under the Fair Housing Act. Now, the only requirement is that if a dog or service animal or some rare cases a miniature horse, the animal must be able to perform a task to help the person with a disability, has to have a nexus to that person's disability and be individually trained to perform a specific task to accommodate

that person.

So there's no requirement for registration or any kind of documentation saying this dog is legal.

>> **Nathan Darus:** We'll follow up on that. My name is Nathan. I'm with TDHCA. To more directly answer the question about whether you can waive the pet fees for the service animal if they are registered and vaccinated the answer to that would be, no, you can't be charging a pet fee for the service animal in the first place.

The only way you would actually be able to say that was if you waived a pet fee for all pets if they -- on the property if they were vaccinated and registered. But unless that's the case, there's no reason why you should be talking about waiving a pet fee that you couldn't be charging.

>> **Ed Hill:** Right, thanks, Nathan. I did miss the part about waive.

>> **Cate Tracz:** That was a great clarification. So I think we're coming up towards the end of our presentation. Like I said, if you've got questions that have come into our portal, I see some that are pretty specific and granular, we will follow up directly with you in the next few days to get your questions answered. I do appreciate everyone attending and we are going to go ahead and end this and all of the materials will be posted online. So thank you so much, and have a great afternoon.

[end of webinar]