



Reasonable Accommodations and Accessibility

Presented by: Texas Department
of Housing and Community
Affairs

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Before We Start

- All 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 – after every segment, we will answer the questions in the chat box.
- This training is informational only and does not satisfy the requirements in 10 TAC 10.402(e)(1)-(2) for post bond closing documentation (for Multifamily Bond transactions) and documentation submitted for the 10 Percent Test (for Housing Tax Credits).



Presenters

Jeffrey Riddle

Training Specialist

Civil Rights Division

Texas Workforce Commission

Jeffrey.Riddle@twc.state.tx.us

512-756-3949

Nathan Darus

Fair Housing Research Specialist

Fair Housing, Data Management & Reporting Team

Texas Department of Housing and Community Affairs

Nathan.Darus@tdhca.state.tx.us

(512) 475-0306



Agenda

Fair Housing Act, Texas Fair
Housing Act, ADA, and Section 504

Reasonable Accommodations and
Modifications

Accessibility Issues

Complaints and Mediation



Objectives

1. Understand State and Federal Legislation and Regulations on Reasonable Accommodations and Modifications
2. Know the difference between a Reasonable Accommodation and a Reasonable Modification
3. Understand how to recognize and fulfill a Reasonable Accommodation Request
4. Learn the appropriate responses to a Reasonable Accommodation Request
5. Understand the complaint process





Federal and State Laws & Regulations

Fair Housing Act, Texas Fair Housing Act, Americans
with Disabilities Act, Section 504 of the Rehabilitation
Act

- It 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, in the provision of brokerage services or in the availability of real estate-related transactions. (24 CFR 200.5(a))

THE FAIR HOUSING ACT



THE TEXAS FAIR HOUSING ACT

The Texas Fair Housing Act mirrors the text of the Federal Fair Housing Act

- Passed by the Texas Legislature on May 25, 1989
- The Texas Commission on Human Rights, established June 26, 1983 by the state legislature, originally enforced the Texas Fair Housing Act
- Since September 1st, 2015, the duties of the Texas Commission on Human Rights were transferred to the Civil Rights Division of the Texas Workforce Commission.

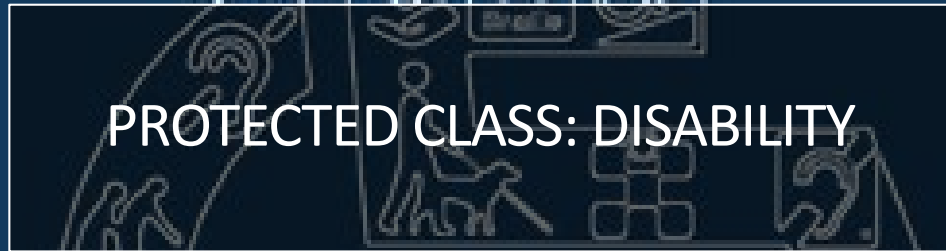




Protected Classes/Bases

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





PROTECTED CLASS: DISABILITY

- A Disability is:
 - A mental or physical impairment that substantially limits at least one major life activity
 - A record of an impairment
 - Being regarded as having an impairment

Major Life Activities

Caring for
one's self

Performing
manual tasks

Walking

Seeing

Hearing

Speaking

Breathing

Learning

Working



Common Impairments

- Visual, speech, and hearing impairments
- Cerebral palsy
- Autism
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- Human Immunodeficiency Virus (HIV) infection
- Drug addiction
- Alcoholism

Fair Housing Amendments Act (FHAA)

- Signed into law on September 13, 1988, as an amendment to Title VIII of the Civil Rights Act of 1968, aka the Fair Housing Act.
- Became effective March 12, 1989, and extended housing protection to persons with disabilities and families with minor children
- Enforced by HUD's Office of Fair Housing and Equal Opportunity



Section 504 of the Rehabilitation Act

- Drafted in 1973, took effect May 1977
- Enforced by HUD's Office of Fair Housing and Equal Opportunity
- First Federal civil rights protection for individuals with disabilities, codified in 29 U.S.C. Section 794 and addressed in 24 CFR Part 8
 - States "No otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development (24 CFR 8.1)"

Section 504 Requirements

1. Housing providers must make and pay for reasonable structural modifications to units and/or common areas
2. Housing must not be segregated based on disability unless authorized by Federal Statute (HOPWA or Section 811) or Executive Order
3. Housing providers must provide auxiliary aids and services necessary for effective communication
4. A self-evaluation of the housing provider's program and policies must be performed to ensure that they do not discriminate based on disability
5. Develop a transition plan to ensure that structural changes are properly implemented
6. Operate programs in the most integrated setting appropriate to the needs of the qualified persons with disabilities
7. Newly constructed or rehabilitated housing must include a minimum of 5% of units (one unit minimum) that are accessible for persons with mobility impairments, and a minimum of 2% of units (one unit minimum) are accessible for persons with hearing or vision impairments.
8. If you employ 15 or more people, you must designate at least one person to coordinate Section 504 compliance and adopt grievance procedures that incorporate due process standards



Section 504 Prohibitions

- You may not deny the opportunity to participate in a program, service, or activity due to anyone's disability
- Housing providers may not deny or refuse to rent housing to a person with a disability, because of their disability
- Housing providers may not impose tenant selection criteria, fees, or conditions that are different from those required of or provided to persons who do not have disabilities
- You cannot require persons with disabilities to live on certain floors or in certain areas of the community
- Housing providers cannot refuse to make repairs or limit access to public or common areas, parking privileges, or services available to other residents
- Housing providers cannot deny opportunity to persons with disabilities to participate on advisory or planning boards



Americans with Disabilities Act (ADA)

- Signed into law on July 26, 1990, and is enforced by the Department of Justice
- Five Titles
 - Title II – Nondiscrimination on the Basis of Disability by Public Entities
 - Title III – Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities



HUD/DOJ Memorandum on Reasonable Accommodations and Modifications

- The Department of Housing and Urban Development and the Department of Justice released a Memorandum on Reasonable Accommodations in 2004, and a Memorandum on Reasonable Modifications in 2008, both under the Fair Housing Act
- Both memorandums clarify questions regarding the implementation of the law, including clarifications on the verification of need for a reasonable accommodation or modification for an individual with a disability.





Reasonable Accommodations & Modifications

What are Reasonable Accommodations and Modifications?

REASONABLE ACCOMMODATIONS

- A change, exception, or adjustment to a rule, policy, practice, and/or service
 - i.e. Pet policy, trash policy/practices

REASONABLE MODIFICATIONS

- A structural change to a dwelling unit or common area
 - i.e. Accessible ramps, accessible lifts, changing parking layout to add accessible parking



Reasonable Accommodation

If a person has a disability, a landlord cannot refuse to make a reasonable accommodation in the rules, the policies, the practices, or the services if the accommodation is necessary for the person with a disability to use the housing.

Example of a FH Violation:

“You must pay all pet fees and rent, even though you have a service animal.”



Reasonable Modification

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, at that person's own expense, if necessary for that person to use the housing.

Example of FH Violation:

"A wheelchair ramp can't be installed there, so you can't live in this complex."



ESERN



What do the Acts Require?

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



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

Why grant a reasonable accommodation?



Rules for Reasonable Accommodation Requests

- Accept verbal requests
- Immediately begin the interactive process
- Carefully draft, review, and revise the policy on a regular basis
- Ask for appropriate, reliable, disability-related information
- Provide prompt responses
- Document all actions and interactions

10 TAC Rule § 1.204, Reasonable Accommodations

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

TDHCA Reasonable Accommodations



RA Request Example #1

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

A tenant has a disability that gives her anxiety about leaving her unit.

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

Answer #1

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



Reactions And Inquiries To Avoid

- Avoid asking the following:
 - Questions concerning the nature and severity of an individual's disability
 - If an applicant has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant has a disability



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

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



RA Request Example #2

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

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

Answer #2

The manager denied the reasonable accommodation.

Settlement terms:

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

When Can I Deny a Reasonable Accommodation?

- The person poses a “direct threat” (including service animal)
- There is no disability-related need for the accommodation
- The accommodation is not reasonable



Who Pays?

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



Questions to Determine Who Pays for Modifications

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

Does the property receive federal financial assistance?

When was the property built for first occupancy?

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

What type of accessibility feature is being requested?

Does an agreement exist between the parties?



Source: Fair Housing Council of Greater San Antonio

Implications for Properties Subject to Section 504

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

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



Source: Fair Housing Council of Greater San Antonio

TDHCA Accessibility

10 TAC Rule § 1.204, Reasonable Accommodations

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

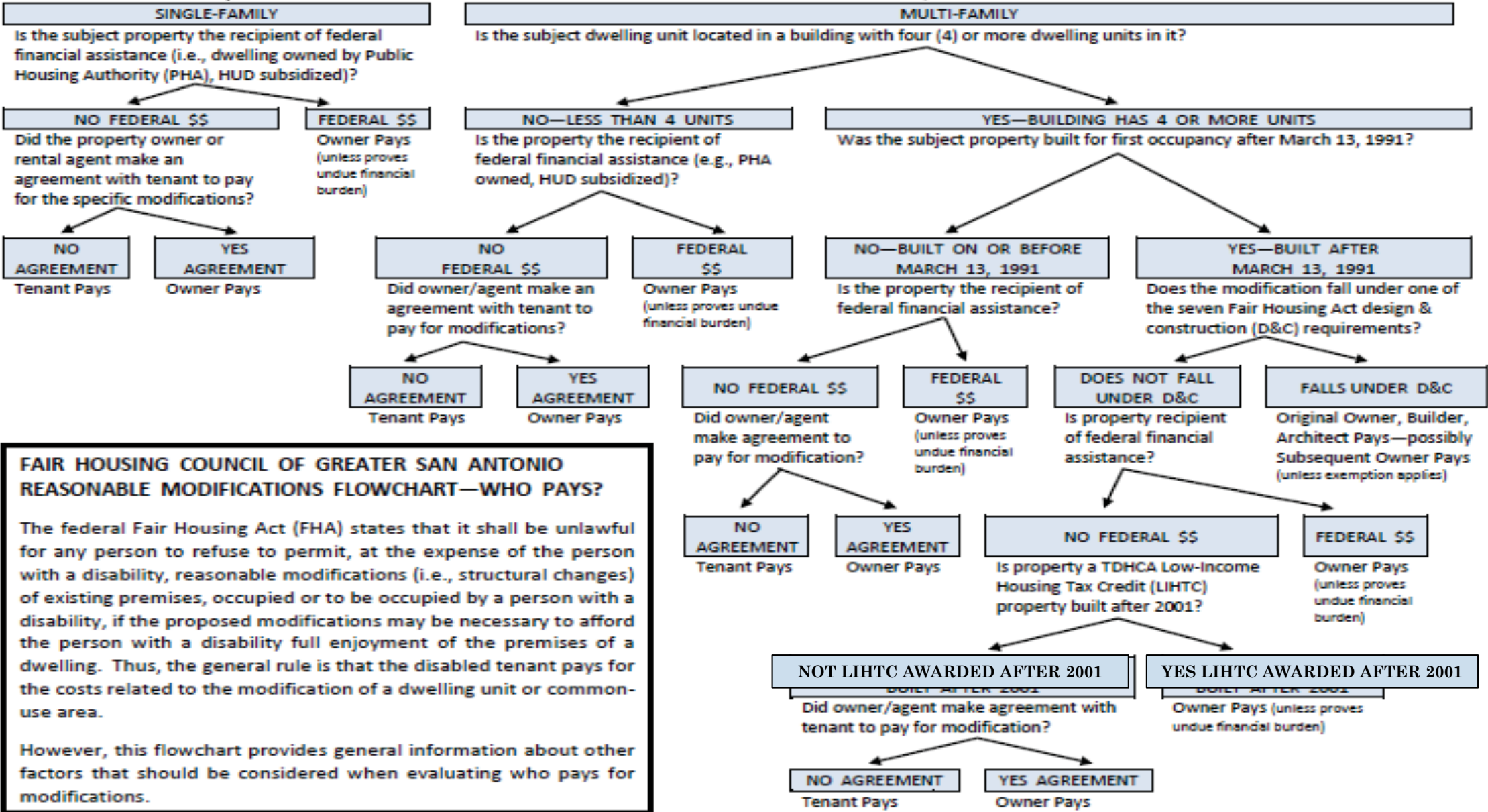
In general, denial of reasonable accommodations often occurs due to misunderstandings of what reasonable accommodations are and how they work.



SINGLE-FAMILY vs. MULTI-FAMILY

Is the subject dwelling unit a single-family dwelling (i.e., a house) or part of a multi-family dwelling (i.e., duplex, triplex, fourplex, or apartment complex)?

Source: Fair Housing Council of Greater San Antonio



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

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

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



Accessibility Issues



FAIR HOUSING ACT DESIGN MANUAL

A MANUAL TO ASSIST
DESIGNERS AND BUILDERS
IN MEETING THE
ACCESSIBILITY REQUIREMENTS
OF THE FAIR HOUSING ACT



U. S. Department
of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
Office of Housing

Design & Construction Requirements

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

- Accessible
- Usable

Design & Construction Requirements

- Accessible building entrance on an accessible route into and through the dwelling
- Accessible public and common use areas
- Doors that allow (wheelchair) passage into and within all rooms
- Accessible route into and through each covered unit
- Switches, outlets, thermostats & other environmental controls in accessible locations
- Reinforcements in bathroom walls so grab bars can be added as needed
- Usable kitchens and bathrooms that accommodate a person using a wheelchair



Terms and Conditions

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

Examples:

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





TDHCA Accessibility - Example

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

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



TDHCA Accessibility - Example

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





TDHCA Accessibility - Example

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



TDHCA Accessibility - Example

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





Complaints & Mediation

FAIR HOUSING COMPLAINTS

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

Mediation

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



TEXAS WORKFORCE COMMISSION
Civil Rights Division
(TWCCRD)

Fair
Housing
Mediation

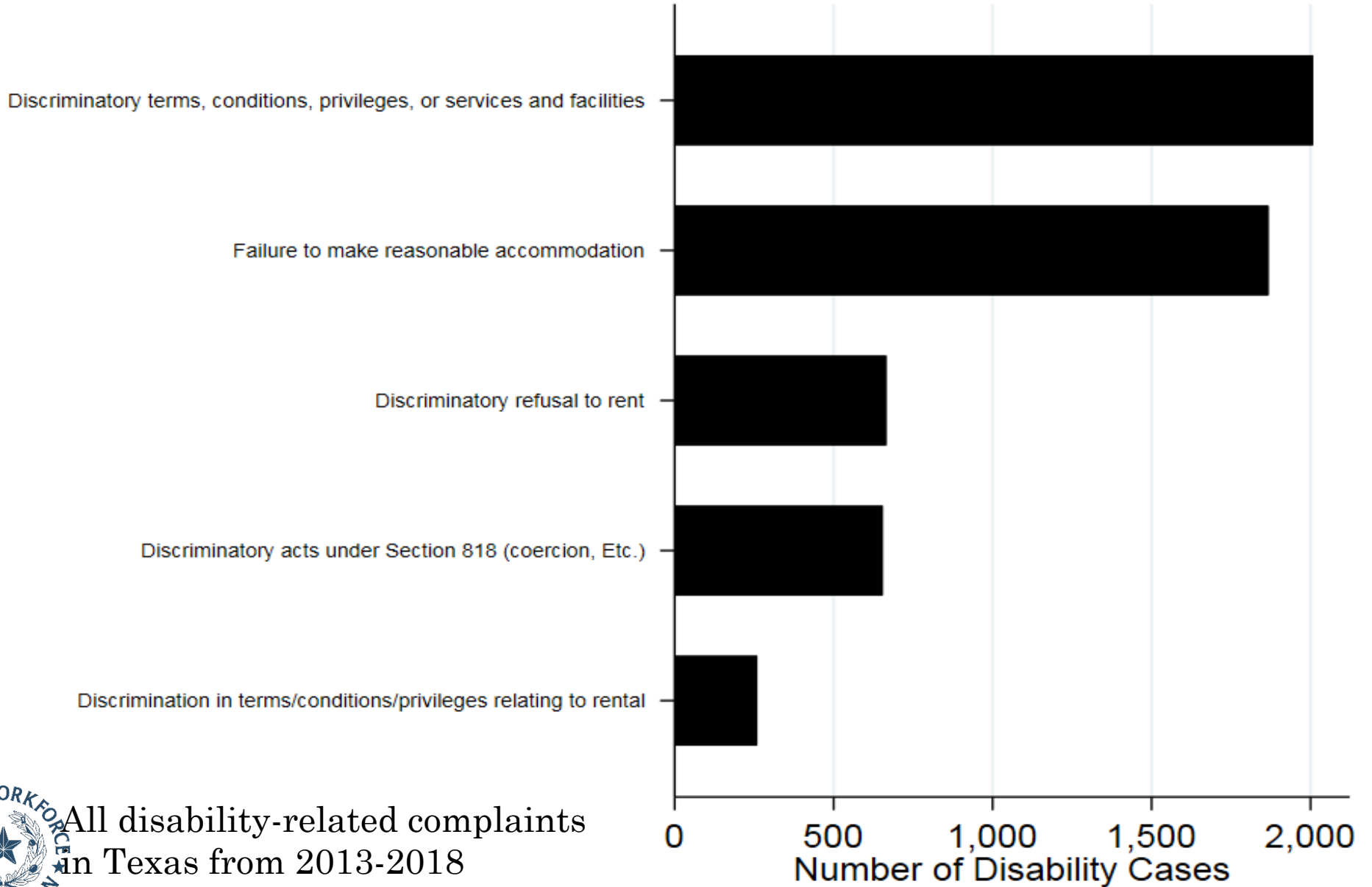


TDHCA Complaint Process

- There are 3 ways to file a complaint within the TDHCA complaint process:
 - 1. Submit a written complaint online on this website:
https://public.tdhca.state.tx.us/pub/t_complaint.complaint_add1
 - 2. Mail your complaint to this address: **PO Box 13941, Austin, TX 78711-3941**
 - 3. Fax your complaint to this number: **512-475-0070**
- The Complaint Submission System is to be used only for complaints dealing with TDHCA programs and funded properties
- Once a complaint is filed, you will receive a notice from TDHCA with 15 business days indicating the complaint has been resolved, or that it will be resolved by a certain date.



State of Texas Fair Housing Disability Complaints by Issue



All disability-related complaints
in Texas from 2013-2018



TRAINING & TECHNICAL ASSISTANCE

Contact the Texas Department of Housing
and Community Affairs

at

(512) 475-0306

Fair.Housing@tdhca.state.tx.us

FHEOI@tdhca.state.tx.us



Questions?



THANKS FOR YOUR PARTICIPATION!