

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

and

TEXAS WORKFORCE COMMISSION
CIVIL RIGHTS DIVISION

FAIR HOUSING OVERVIEW TRAINING

WEBINAR

Thursday,
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FACILITATOR:

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ON THE RECORD REPORTING
(512) 450-0342

P R O C E E D I N G S

1
2 MS. TRACZ: Good morning, everyone. This is
3 Cate Tracz. I'm the manager of Fair Housing, Data
4 Management and Reporting at the Texas Department of
5 Housing and Community Affairs. I am thrilled today to
6 have our partners from the Texas Workforce Commission
7 Civil Rights Division on the line as well.

8 The webinar today will be presented by Nathan
9 Darus, who is on the Fair Housing staff here at TDHCA, and
10 then also co-presenting a big chunk of this material is
11 Marilyn Diaz, from the Texas Workforce Commission.

12 When they both come on they'll each do their
13 introductions as well. And then also on the line we have
14 Elena Rodriguez from the Texas Workforce Commission as
15 well. She works with Marilyn, so just to give you an idea
16 of folks that might be jumping in through the webinar if
17 there's any questions or additional information.

18 Again, thank you everyone for joining. I hope
19 in your new teleworking atmosphere everyone was able to
20 log in okay, so on our side if you hear a barking dog in
21 the background or a kid asking for a snack, please just
22 bear with us, we're working under new circumstances, but I
23 think this is going to be a great webinar with some good
24 information on fair housing and kind of an overview of
25 fair housing in the state of Texas.

1 So with that, I'm going to hand it over to
2 Nathan and Marilyn.

3 Nathan, if there are any administrative
4 reminders that we need, that would be great and then we
5 can get started.

6 MR. DARUS: Let's do a little bit of
7 housekeeping-type things. So in the GoToWebinar software
8 there are a few things that you'll want to notice and see
9 and we'll be using throughout the webinar.

10 The first and probably the most important one
11 is the questions box. If you have questions throughout
12 the webinar, go ahead and type those questions in. One of
13 the things that we will try to do is we will try to answer
14 those as we go through the webinar or at the end of the
15 webinar.

16 If your question is very specific to a
17 situation or a specific unit or property, we may not be
18 able to answer that question during the webinar, but we
19 will get back with you after the webinar in order to get
20 the information that we need to answer your question for
21 you. So if you ask a question in the box and we don't get
22 to it, don't fret, we're going to get to it, it just may
23 not be during the webinar.

24 The other thing to note is that we do have a
25 chat box. If you are having any technical issues, that's

1 probably the easiest place to go ahead and type them out.

2 The question box isn't conducive to giving technical
3 assistance necessarily.

4 We will not be able to have closed captioning
5 available today. We were not able to secure that on short
6 notice, given some strain on resources due to COVID, and
7 do we will have, however, a transcript of this webinar and
8 all of the notes that go along with this webinar, as well
9 as a video recording of it available on the TDHCA website.

10 If you need the handouts as well, we will go
11 ahead and put those on the presentation website as well so
12 that you can access those handouts.

13 I think that covers all of our housekeeping, so
14 I can start with introductions.

15 I'm Nathan Darus. I'm a fair housing research
16 specialist here in the Fair Housing, Data Management and
17 Reporting Section, and that pretty much tells you what I
18 do. Whenever fair housing issues touch things that TDHCA
19 does, I am generally there to offer guidance and technical
20 assistance.

21 Marilyn.

22 MS. DIAZ: Hi, everybody. My name is Marilyn
23 Diaz. I am with the Texas Workforce Commission Civil
24 Rights Division. I work with the training and outreach
25 section in our little office that we have there, and the

1 bulk of my work, I kind of got thrust into doing fair
2 housing training and EEO training for the great state of
3 Texas, and it's been interesting and enjoyable at the same
4 time.

5 Prior to this I did work with a lot of
6 politicians and did a lot of, I guess you'd say, training
7 sessions with them on local and state law, so this is a
8 little different but kind of the same. So that's a little
9 bit about me.

10 MS. TRACZ: Okay. I think we can go ahead and
11 start with the webinar then.

12 MS. DIAZ: Okay, great.

13 So today we're going to be going over learning
14 objectives, the purpose of the Fair Housing and Texas Fair
15 Housing Acts, the TWCCRD mission and vision. Nathan will
16 go over the TDHCA mission. We'll also be going over the
17 analysis of impediments, covered/protected classes,
18 issues/discriminatory practices, HUD disparate impact
19 guidance, exemptions, fair housing testing, and mediation
20 and resources. We'll go over some resources at the end.

21 So our learning objectives for today are to
22 identify the purpose of the Federal Fair Housing Act and
23 the Texas Fair Housing Act. We'll recall
24 covered/protected classes, recognize issues/discriminatory
25 practices and identify exemptions for the Act, and we'll

1 also go over introduction to the fair housing testing.

2 So TWCCRD's mission is to reduce discrimination
3 in employment and housing through education and
4 enforcement of state and federal laws. TWCCRD's vision is
5 to help create an environment in which citizens of the
6 state of Texas may pursue and enjoy the benefits of
7 employment and housing that are free from discrimination
8 and harassment.

9 And I'm going to hand it over to Nathan to go
10 over TDHCA's mission.

11 MR. DARUS: So TDHCA's mission is to administer
12 its assigned programs efficiently, transparently and
13 lawfully and to invest resources strategically to develop
14 high quality affordable housing that allows Texans and
15 Texas communities to thrive.

16 These programs run the gamut between the Low
17 Income Housing Tax Credit Program, the HOME Investment
18 Partnerships Program, Neighborhood Stabilization Program,
19 among others as well. And there are some statewide
20 programs that TDHCA also administers such as the Amy Young
21 Barrier Removal Program and the Texas Bootstrap Loan
22 Program.

23 So in 2019 the State of Texas was required to
24 submit an analysis of impediments to fair housing choice.
25 Recipients of HUD CPD, or Community Planning and

1 Development funds, from HUD were required to undertake
2 this as an obligation to affirmatively further fair
3 housing under the Fair Housing Act. The affirmatively
4 further fair housing rule is out for public comment and
5 the requirements that include the analysis of impediments
6 are likely to change in the future.

7 Over in Texas TDHCA did lead this process on
8 behalf of all state agencies who receive HUD CPD funds,
9 and we did release the 2019 State of Texas Analysis of
10 Impediments to Fair Housing Choice.

11 This AI is available on the TDHCA website.
12 This AI both assesses where we are as a state when as it
13 relates to fair housing and then identifies impediments
14 and solutions that the state can take on.

15 So if you want to read or view the State of
16 Texas Analysis of Impediments, here's the website. If you
17 are unable to get to it via email, we do have the ability
18 if you go ahead and contact us by mail or by phone or by
19 email. So those are your different ways of being able to
20 access the analysis of impediments.

21 MS. DIAZ: Thank you, Nathan.

22 So the purpose of the Fair Housing Act. The
23 Fair Housing Act is not best practice, it's the law. The
24 purpose of the Federal Fair Housing Act is to, within
25 constitutional limitations, provide for fair housing

1 throughout the U.S. According to the Texas Property Code,
2 Chapter 301, the Texas Fair Housing Act provides for fair
3 housing practices within the state of Texas.

4 It creates a procedure for investigating and
5 settling complaints of discriminatory housing practices
6 and it provides rights and remedies substantially
7 equivalent to those granted under federal law. The Texas
8 Fair Housing Act essentially mirrors the Federal Fair
9 Housing Act, and both contain procedures for investigating
10 and settling complaints.

11 Here are your protected classes. The whole
12 point in the Fair Housing Act is to avoid and prevent
13 discrimination. Discrimination is defined as a difference
14 in treatment because of membership in one or more
15 protected classes; however, not every difference in
16 treatment is discrimination. Despite the fact that the
17 fair housing laws have been around for many years, housing
18 discrimination still occurs.

19 So who's protected. There are seven covered
20 and protected classes under the federal and state laws:
21 race, color, national origin, familial status, religion,
22 sex, and disability.

23 What specifically do fair housing laws prohibit
24 housing providers and landlords from doing? It prohibits
25 them from basing housing decisions on a person's protected

1 class. Also, you cannot apply different standards or
2 apply standards differently to anyone because of their
3 protected class. In addition, state and federal laws
4 prohibit harassing anyone based on a protected
5 characteristic.

6 Finally, the law says that you cannot retaliate
7 against any applicant, tenant, buyer or consumer for
8 engaging in protected activities such as complaining about
9 alleged discrimination, filing discrimination complaints
10 against the housing provider, or testifying in hearings
11 and court proceedings concerning discrimination
12 complaints.

13 Race is a classification system used to
14 categorize people in large and distinct population or
15 groups by inherent appearance, ethnicity, or social
16 status.

17 For fair housing purposes, Asian is defined as
18 a person having origins in any of the people of the Far
19 East, Southeast Asia or Indian subcontinents, including,
20 for example, Cambodia, China, Japan, Korea, Malaysia,
21 Pakistan, the Philippine Islands, Thailand and Vietnam.

22 African American or black is defined as a
23 person having origins in any of the black racial groups of
24 Africa, so terms such as Haitian or Negro can be used in
25 addition to Black or African American.

1 Native American Indian or Alaskan Native is
2 defined as a person having origins in any of the original
3 peoples of North and South America, including Central
4 America, and who maintains tribal affiliation and
5 community attachment.

6 Native Hawaiian or other Pacific Islander is a
7 person having origins in any of the original peoples of
8 Hawaii, Guam, Samoa and other Pacific islands.

9 White is a person having origins in any of the
10 original peoples of Europe, Middle East and North Africa.

11 So it's important to remember that some will
12 identify themselves as having more than one race. So as
13 you already know, it's illegal to discriminate against any
14 housing applicant or tenant based on a stereotype and
15 assumptions.

16 It's illegal to discriminate against an
17 applicant or tenant because that person is married to
18 somebody of a different race or associates with people of
19 certain racial groups. Racial slurs, derogatory comments,
20 threats, or other verbal or physical conduct based on a
21 person's race are illegal.

22 So when talking about the class is often
23 connected to or confused with race, but it refers to a
24 person's skin pigmentation or color. Color is separate
25 from race because people can discriminate solely on color.

1 For example, someone can discriminate on another person
2 whose skin is lighter or darker. Those discriminating
3 based on color may make assumptions about a person's
4 intelligence, social status, education, income and other
5 characteristics.

6 One example of discrimination would be making
7 housing decisions that favor individuals with lighter
8 complexions over those with darker complexions even if the
9 individuals are the same race or national origin.

10 As a result of increased diversity in Texas,
11 national origin discrimination has been increasingly an
12 issue. No one can be denied housing or housing
13 opportunities because of his or her birthplace, ancestry,
14 or culture or because of a housing provider's perception
15 that a person belongs to a certain ethnic group.

16 Unfair or illegal housing related services
17 directed to, let's say, limited English proficient, or
18 LEP, individuals or those who speak a particular language
19 may also constitute intentional discrimination.

20 Advertisements that contain blanket statements
21 such as all tenants must speak English, such
22 advertisements that turn away all applicants that are not
23 fluent in English or making statements disparaging tenants
24 for not speaking the English language may be
25 discrimination.

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

7 By failing to comply with the requirement of a
8 provider to provide language assistance, a housing
9 provider may be denying individuals, based on their
10 national origin, an equal opportunity to enjoy the
11 housing benefits to which the requirement entitles them.

12 Familial status means the makeup of your family
13 unit. Familial status includes persons who have children
14 under the age of 18 who are living with their parents or
15 legal custodian. It includes pregnant women and people
16 who are seeking to secure custody of children under 18.

17 So who's protected? Like I said before,
18 pregnant women or persons in an adoption process, families
19 with children; they could be stepchildren, foster children
20 or legal wards. It includes parents regardless of marital
21 status; they could be single, married, divorced,
22 separated, widowed, it really doesn't matter. At least
23 one child must be under the age of 18 when it comes to
24 families living together.

25 Housing providers cannot refuse to rent or sell

1 to a woman because she is pregnant, nor can they refuse to
2 rent or sell to a pregnant woman because they have a
3 prejudice against pregnant applicants. An example of a
4 landlord housing provider's statement that indicates
5 unlawful discrimination would be: Sorry, we only allow
6 one child per bedroom. Most of the time that is
7 unnecessary and unrealistic. The majority of people have
8 more than one child. Another example would be: We need
9 to increase your security deposit to cover all of your
10 kids.

11 It's also illegal to segregate families and/or
12 pregnant women by assigning them to specific areas of a
13 complex or a housing area. For example, it is illegal for
14 housing providers to deny or limit families or pregnant
15 women from purchasing or occupying certain properties of a
16 building.

17 So some extra restrictions against children,
18 some of these signs are examples of those type of
19 restrictions. Housing providers should avoid creating
20 rules and policies that may constitute violations of
21 federal and state fair housing laws, such as overly
22 restrictive policies that unfairly penalize families with
23 children or children themselves by placing restrictions on
24 the use of pools, spas, playgrounds or other common areas,
25 requiring adult supervision or other restrictions that are

1 not required by adult tenants.

2 In such cases if questions should arise,
3 providers should consult legal counsel, insurance experts,
4 state and federal fair housing acts, and Texas Health and
5 Human Service in those situations.

6 Religious discrimination is an important issue
7 today, and it is an issue that has long gotten providers
8 into trouble in the past. Simply put, the law says you
9 cannot discriminate against a person because of his or her
10 religion. Religion refers to all aspects of religious
11 beliefs, observances, practices, so discrimination based
12 on religion includes overt discrimination against members
13 of a particular religion, indirect discrimination such as
14 a homeowners association restricting certain symbols
15 regarding religious practices, so that would mean a
16 homeowners association saying that you can't have a cross
17 in your yard or on your door because it's not something
18 that they approve of.

19 The law also protects persons without religious
20 preferences such as atheists or agnostics. An example of
21 discrimination based on religion could exist if people
22 hear landlords or real state agents or a lender saying
23 something like we specialize in lending only to
24 Christians, or I can show you neighborhoods with only
25 synagogues or Catholic churches. Those would be examples

1 of discrimination based on religion.

2 So the state and federal laws are very clear
3 that any type of discrimination in housing based on a
4 person's gender is prohibited. State and federal laws
5 also prohibit discrimination based on stereotypes and
6 assumptions about a person's gender.

7 In other words, you cannot take gender into
8 account in rental and sale of real estate or any other
9 housing decision. This category includes sexual
10 harassment, gender stereotyping, and discriminatory
11 pricing because of a pregnancy or single parenthood.

12 Landlords or sellers could make discriminatory
13 statements such as, We don't rent to single men, or we
14 don't rent to single moms, or I can take the price down if
15 you go on a date with me. That type of statement would be
16 considered sexual harassment.

17 So according to the World Health Organization,
18 or some also know them as WHO, more than a billion people,
19 or 15 percent of the world's population, have a
20 disability. The number or rate of disability is higher in
21 the U.S. According to the 2010 census, one in five
22 Americans have a disability, and you may possibly know or
23 interact them on a daily basis, sometimes without even
24 realizing it.

25 According to the 2013-2017 American Communities

1 Survey, also known as a census, an estimated 3.1 million
2 Texans have a disability. State and federal laws prohibit
3 discrimination on the basis of disability.

4 In 2016 more than 75 percent of Texas Workforce
5 Commission Civil Rights Division cases were based on the
6 protected class of disability. State and federal laws
7 ensure that people with disabilities have freedom to
8 choose where they would live and the ability to visit
9 friends and relatives. They can proactively address the
10 needs of an evolving population, they can look at the
11 future needs and allow people to remain and safely use
12 their dwelling longer.

13 A person has a disability if he or she: first,
14 has a mental or physical impairment that substantially
15 limits one major life activity; second, they have a record
16 of their impairment; and third, they're regarded as having
17 an impairment.

18 In addition to the laws covering a buyer or
19 renter with a disability, the following persons are
20 covered: a person residing in or intending to reside in a
21 dwelling after it's sold, rented, or made available or any
22 person associated with the buyer or renter.

23 So a note, just a little tidbit, tenants and
24 applicants currently engaging in illegal use of drugs are
25 not covered. When a housing provider acts on this basis

1 of use, housing providers may hold drug users to the same
2 standard as other tenants.

3 So some major life activities are seeing,
4 hearing, breathing, walking, performing manual tasks
5 caring for oneself, learning, speaking or working a broad
6 class of jobs. This list is not all inclusive.

7 So as discussed before, protected persons are
8 those who are actively recovering from substance abuse,
9 but it doesn't protect persons who are currently engaging
10 in current illegal use of controlled substances.

11 Additionally, the laws do not protect an
12 individual with a disability whose tenancy would
13 constitute a direct threat to the health or safety of
14 other individuals or result in substantial physical damage
15 of others unless the threat can be eliminated or
16 significantly reduced by a reasonable accommodation.

17 So some examples of impairments are visual,
18 speech and hearing, autism, cancer, diabetes, drug
19 addiction, alcoholism, and like I said before, with those
20 last two, a person has to be actively recovering from that
21 substance abuse issue.

22 So the Act does not allow for the exclusion of
23 individuals based upon fear, speculation or stereotype
24 about a particular disability, or persons with a
25 disability.

1 However, as stated before, the Act does not
2 protect individuals whose tenancy would constitute a
3 direct threat to the health and safety of other
4 individuals or would result in substantial physical damage
5 to the property of others unless the threat or risk to the
6 property can be eliminated by a reasonable accommodation.

7 So what specifically do laws prohibit housing
8 providers and landlords from doing? In short, it
9 prohibits them from basing housing decisions on a person's
10 race, color, national origin, familial status, religion,
11 sex or disability. State and federal laws also prohibit
12 harassing anyone based on any of their protected
13 characteristics.

14 Some major categories of discriminatory
15 practices, housing providers cannot set different terms
16 and conditions, they can't make discriminatory statements,
17 they can't set specific standards for entry into a
18 neighborhood. Those are just some categories.

19 Reasonable modifications. If a person is
20 disabled, a landlord cannot refuse to let that person make
21 reasonable modifications to the dwelling or common use
22 areas if it is necessary for the person to use the
23 dwelling and if the modifications are done at that
24 person's own expense.

25 For example, a tenant who is a wheelchair user

1 requests a modification to build a ramp for entry into his
2 unit. It would be illegal to deny the request if the
3 tenant is going to do it at his own expense and will
4 remove it when he is done occupying the dwelling.

5 In the case of a rental the landlord may, where
6 it is reasonable to do so, conditionally permit a
7 modification if the renter agrees to restore the interior
8 of the dwelling to the condition that it was before the
9 modification. Reasonable wear and tear are exceptions and
10 something that should be taken into account.

11 The landlord may not increase required security
12 deposits for individuals with disabilities; however, where
13 it's necessary to ensure with reasonable certainty that
14 funds are available to pay for the restoration at the end
15 of the tenancy, the landlord may negotiate as part of such
16 a restoration agreement a provision requiring that the
17 tenant pay into an interest bearing escrow account.

18 As a condition for granting a renter permission
19 for a modification, a landlord may require a reasonable
20 description of the proposed modification. They may
21 require reasonable assurance that the work will be done in
22 a workman-like manner, you know, with professionals coming
23 and actually installing the product, assurances that if
24 required, a building permit will be obtained.

25 MR. DARUS: Marilyn, can I jump in real quick

1 here?

2 MS. DIAZ: Sure.

3 MR. DARUS: So one thing that we do want to add
4 is that in some cases there are laws that do require a
5 property owner to pay for reasonable modifications. Some
6 of those would be in the case of, say, a TDHCA-monitored
7 property for a tax credit property that was awarded after
8 2001. In many cases the owner would have to pay for a
9 reasonable modification in that case. That is not all
10 cases, as I said, but there are some instances.

11 MS. DIAZ: Thank you, Nathan.

12 So if a person is disabled, a landlord cannot
13 refuse to make a reasonable accommodation in the
14 landlord's rules, policies, practices or services if the
15 accommodation is necessary for the person with a
16 disability to use the dwelling.

17 Some comments that people with disabilities
18 have heard are, you know, we cannot talk to people who
19 call us over the relay service, or no, your assistance
20 animal is not allowed in the pool area. Those are just
21 some of the comments that one might hear if they have a
22 disability and they're trying to come in with a reasonable
23 accommodation.

24 So what is a reasonable accommodation? Under
25 the Texas Fair Housing Act a reasonable accommodation is

1 any communication that requests that you make an exemption
2 to the rules, policies, practices or services necessary to
3 afford a person with a disability equal opportunity to use
4 the dwelling. For example, granting permission for an
5 assistance animal or assigning an accessible parking
6 space, that would be an example of a reasonable
7 accommodation.

8 Why should you grant a reasonable
9 accommodation? Because policies, practices and services
10 may have a different effect on persons with disabilities
11 than a normal everyday person with zero disability issues.

12 And even though you believed you're treating someone
13 equally by not granting an accommodation, treating persons
14 with disabilities exactly the same as others will
15 sometimes deny them an equal opportunity to use and enjoy
16 a dwelling.

17 So what do the Acts require? The Acts require
18 housing providers to make reasonable accommodations to
19 their rules, policies, practices or services when such
20 accommodations may be necessary to afford persons with
21 disabilities an equal opportunity to use and enjoy a
22 dwelling.

23 So when we say "may be necessary," you can see
24 that it's kind of slanted there and highlighted. May be
25 necessary can mean there must be a nexus or a relationship

1 between a specific disability and what is being requested.

2 So there's a procedure for requesting a
3 reasonable accommodation. The requester must request
4 either orally or in writing, although written is usually
5 recommended just so it can be documented. The reasonable
6 accommodation must actually be requested by or on behalf
7 of the individual with a disability who reside or are
8 expected to reside in the dwelling.

9 When the request is made, it is not necessary
10 to identify the specific individual who would be expected
11 to live in the dwelling. The Act does not require that
12 the request be made in a particular manner or at a
13 particular time.

14 The individual does not need to mention the
15 Fair Housing Act, whether it be the Federal Fair Housing
16 Act or the State Fair Housing Act, or use the words
17 "reasonable accommodation" when making a reasonable
18 accommodation request, so there is no magic word.

19 Requests should explain what type of
20 accommodation is being requested and if the need for an
21 accommodation is not readily apparent or known by the
22 local government, it should explain the relationship
23 between the accommodation and the disability of the
24 individual.

25 So where a local land use or zoning code

1 contains specific procedures for seeking a departure from
2 the general rule, courts have decided that these
3 procedures should ordinarily be followed.

4 So whether or not the local land use or zoning
5 code contains a specific procedure for requesting a
6 reasonable accommodation or other exception to a zoning
7 regulation, if the local government officials have
8 previously made statements or otherwise indicated that an
9 application for a reasonable accommodation would not
10 receive fair consideration or if the procedure itself is
11 discriminatory, then persons with disabilities living in,
12 let's say, a group home or its operator have the right to
13 file a fair housing complaint in court to request an order
14 for a reasonable accommodation to the local zoning
15 guidelines and regulations.

16 So rules for disability related requests. You
17 have to accept verbal requests. A reasonable modification
18 request can be verbal or does not have to be on a housing
19 provider's form, so there's no specific form that needs to
20 be filled out and it doesn't even have to be in writing,
21 it can be a verbal request.

22 The request should be made in a manner that a
23 reasonable person would understand to be an exception,
24 change or adjustment to a rule, policy, practice or
25 service because of a disability. The requester does not

1 have to mention the Act or use the words "reasonable
2 accommodation." Like I said before, there is no magic
3 word. The request can be made by a family member or
4 someone else who is acting on the disabled person's
5 behalf.

6 When provided with a request of a reasonable
7 modification or accommodation, the housing provider should
8 begin the interactive process immediately. Housing
9 providers should carefully draft, review and revise the
10 reasonable modification or accommodation policy on a
11 regular basis.

12 If the disability is not obvious or the need is
13 not obvious, ask for the appropriate reliable disability
14 related information. So housing providers cannot ask for
15 the requester's detailed medical record. A housing
16 provider has the right to ask the requester to provide
17 documentation to determine if the requester meets the Fair
18 Housing Act's definition of disability, describe the need
19 for the accommodation and show the relationship between
20 the person's disability and the need for the requested
21 accommodation.

22 A doctor or other medical professional, peer
23 group, a non-medical service agency or a reliable third
24 party who is in a position to know about the individual's
25 disability may also provide verification of a disability.

1 So as a housing provider you must provide a
2 prompt response to a reasonable accommodation request.
3 There is no time limit, but TDHCA applies a 14-day rule.

4 Nathan, is that correct?

5 MR. DARUS: Yes. Generally speaking, according
6 to TDHCA, if it's a TDHCA-monitored property we do require
7 that respond to a request within 14 days. As of January
8 28 of this year, HUD has added additional guidance than
9 when it comes to a request for an assistance animal, 10
10 days is generally considered the reasonable amount of
11 time.

12 MS. DIAZ: Okay. Thank you.

13 And lastly, it's always advised to document
14 your actions and interactions. We like to say document,
15 document, document. Whether you receive the request
16 verbally or on paper, keep everything in a file. It will
17 protect not only you as the housing provider but it can
18 also protect the applicant as well in the long run.

19 So what should I do when I receive a request?
20 A housing provider may not ask the following: the nature
21 and severity of an individual's disability, they may not
22 ask if an applicant has a disability or if a person
23 intending to reside in a dwelling or anyone associated
24 with the applicant has a disability.

25 So there are some exceptions. If the housing

1 provider offers accessible units to persons with
2 disabilities, meeting the features of both units on a
3 priority basis or if the housing provider operates housing
4 that is legally limited to persons with a specific
5 diagnosis, such as chronic mental illness, it has to apply
6 to everybody in the housing complex.

7 So when can I deny a reasonable accommodation?

8 You can deny a reasonable accommodation under the
9 following conditions: if the housing provider has
10 reliable objective evidence that a person with a
11 disability poses a direct threat to others, that includes
12 their service animal, if there is no disability-related
13 need for the accommodation, or if providing the
14 accommodation is not reasonable, like it would impose an
15 undue financial and administrative burden on the housing
16 provider or it would fundamentally alter the nature of the
17 provider's operations.

18 You can also deny accommodation if it's not
19 reasonable or there is an alternative accommodation that
20 would effectively address the requester's disability-
21 related need.

22 So who pays? Housing provider may claim undue
23 financial and administrative burden or that the requested
24 reasonable accommodation constitutes a fundamental
25 alteration of the provider's operations, so the following

1 would be considerations when taking into consideration of
2 who pays for this: the financial resources of the
3 provider, the cost of the reasonable accommodation,
4 benefits to the requester of the reasonable accommodation,
5 the availability of others and less expensive alternative
6 accommodations that would effectively meet the applicant's
7 or the resident's disability related needs.

8 So it's important to note that for TDHCA-funded
9 developments with federal or state funds or that have any
10 awarded tax credits after 2001, the owner is responsible
11 for paying for the reasonable accommodations, and that's
12 what Nathan was saying earlier. That would be an
13 exception of when the housing provider would be the one
14 paying for the accommodation.

15 So we have a scenario here. A housing
16 provider's policy is to provide unassigned parking spaces
17 to residents. A resident with a mobility impairment who
18 is substantially limited in her ability to walk requests
19 an assigned accessible parking space close to the entrance
20 of her unit as a reasonable accommodation.

21 There are available parking spaces near the
22 entrance to her unit that are accessible, but those spaces
23 are available to all residents on a first-come, first-
24 served basis. So what should the housing provider do?

25 MR. DARUS: So we're going to go ahead and ask

1 you all what should the housing provider do. I'm going to
2 put up a poll if you want to go ahead and answer that
3 question.

4 Marilyn, we did get a question -- while people
5 are working on this poll, we did receive a question that I
6 think you might have the answer to.

7 Someone asked: Can you clarify when a doctor
8 would be writing disability-related information -- and
9 they specifically mentioned the fourth goal on slide 29 --
10 so this would be an option for the applicant or tenant,
11 not something the landlord can ask for. Is that correct?

12 MS. DIAZ: I'm sorry. Can you repeat that
13 question?

14 MR. DARUS: Yes. So I think what the question
15 is asking is can a tenant specifically ask for a doctor to
16 be writing disability-related information.

17 MS. DIAZ: So if I'm understanding correctly,
18 when asking for a doctor's note, I know that they can't
19 specifically say what the disability is, and it usually
20 has to come from any type of licensed medical health
21 professional.

22 MS. RODRIGUEZ: Would you like me to add a
23 little bit there?

24 MS. DIAZ: Yes, that would be great. Yes,
25 ma'am.

1 MS. RODRIGUEZ: Hi, everybody. My name is
2 Elena Rodriguez, and I'm the outreach compliance
3 resolution manager with the Texas Workforce Commission
4 Civil Rights Division, assisting today.

5 So in regards to a landlord or housing provider
6 requesting documentation for reasonable accommodation, as
7 a housing provider we may not request medical
8 documentation.

9 What we can request is information from a
10 health professional demonstrating the disability and the
11 limitations and how it would be applicable to, let's say,
12 installing a ramp, for example, if that were the case.

13 We have to be very careful as housing providers
14 not to request specific medical documentation, because we
15 would then get ourselves into trouble not only with
16 Chapter 301 state law discrimination, but then we would
17 also get in trouble with HIPAA, which is the health
18 information act.

19 We can ask information from a health care
20 professional from the tenant to verify a disability and
21 what specific accommodation would assist the individual
22 from that health care provider as an option. It's our
23 responsibility while engaging with the applicant or tenant
24 that that engagement, that discussion is the interactive
25 process and we want to make sure that we are continually

1 having that discussion with the tenant. It doesn't mean
2 that the recommendation from the health care provider is
3 required, it is an option.

4 It is our responsibility as housing providers
5 to continue that conversation with the tenant to identify
6 alternative and/or other means in order to meet the same
7 goal, if for some reason it's a little bit beyond your
8 means at that very moment or what-have-you.

9 I hope that clarifies that question a little
10 bit more. I'll pause now to see if there's any followup
11 questions or followup information. Thanks.

12 MS. DIAZ: Thank you, Elena.

13 MR. DARUS: So the individual who asked that
14 question did say thank you, that that did answer the
15 question, so excellent.

16 MS. RODRIGUEZ: Thank you.

17 MR. DARUS: So I've gone ahead and closed the
18 poll.

19 MS. DIAZ: Okay. Thank you.

20 So I'm going to go ahead and read the scenario
21 again just so we can kind of stay in line with everything.

22 So the housing provider's policy is to provide unassigned
23 parking spaces to residents. A resident with a mobility
24 impairment who is substantially limited in her ability to
25 walk requests an assigned accessible parking space close

1 to the entrance of her unit as a reasonable accommodation.

2 There are available parking spaces near the entrance to
3 her unit that are accessible, but those spaces are
4 available to all residents on a first-come, first-served
5 basis.

6 The question is: What should the housing
7 provider do? So the housing provider should make an
8 exception to the policy of not providing assigned parking
9 spaces to accommodate the resident.

10 MR. DARUS: So it looks like 77 percent, so a
11 good chunk of you, believe that the property should have
12 assigned the spot at no cost to the tenant, and that is
13 precisely what should have happened.

14 Marilyn, we did have a follow-up question
15 regarding the parking spot. The question is: What if a
16 resident requests that a handicapped parking spot include
17 an apartment number? So can the property assign a
18 specific handicapped spot or is the property able to add
19 an additional handicapped parking space.

20 MS. RODRIGUEZ: May I answer that question?

21 MS. DIAZ: Go ahead.

22 MS. RODRIGUEZ: One of the things that's very
23 foundational is that as we are housing providers we want
24 to make sure that our policies are universal and applied
25 across the board, and that would include assigned parking

1 spaces.

2 If you provide assigned parking spaces numbered
3 to apartment number for all your spaces, then you would
4 apply that across the board. If you are looking to assign
5 all disability parking for those specific tenants, you
6 want to make sure that you're applying it the same across
7 the board.

8 What we don't want to do is to get into where
9 we have two different types of policies being applied on
10 the same property complex -- you see what I'm saying --
11 regarding parking, because that can then lead to a
12 perception of disparate treatment, which is a
13 discriminatory practice, and that's what we definitely
14 want to avoid.

15 MS. DIAZ: Thank you, Elena.

16 MS. RODRIGUEZ: I hope I answered your
17 question, but please continue on and follow up if need be
18 and I'll mute out now. Thanks.

19 MR. DARUS: We do have one more question. This
20 is one that I see quite a bit. Many senior properties
21 have a lot of people who have a disability. What if we
22 have all of our disabled seniors requesting the closest
23 space as a reasonable accommodation?

24 MS. RODRIGUEZ: That does happen quite a bit,
25 and that is a little bit of a tricky situation. This is

1 where your backbone back to your policy is very key. As a
2 best practice you might want to do a first-come, first-
3 served type scenario, but again, whatever method you
4 decide to provide fair equitable access to disabled
5 parking, you want to make sure that you apply it across
6 the board for everyone and not just a unit or Building B
7 and Building D has a different parking policy. See what
8 I'm saying?

9 MR. DARUS: Excellent. I think that covers all
10 of the parking questions.

11 MS. DIAZ: Okay. Perfect.

12 Thank you, Elena, for jumping in there.

13 And so the next scenario, this is a real case,
14 and it was investigated by TWCCRD. So a homeowner with a
15 mobility disability alleged that his homeowners
16 association denied him permission to have the space in
17 front of his house designated as a no-parking space in
18 order to allow a ramp to be installed. So the question
19 is: What is the protected class in this complaint?

20 I don't know if you had a poll or anything.
21 Otherwise, I can go ahead.

22 MR. DARUS: I do have a poll. I'm going to go
23 ahead and put that up now.

24 MS. DIAZ: Okay. Perfect. So there's two
25 questions: What is the protected class in this complaint?

1 And what is the issue/discriminatory practice in this
2 complaint?

3 (Pause.)

4 MS. TRACZ: Nathan, this is Cate. It looks
5 like we've got the poll from the previous question, the
6 previous scenario.

7 MR. DARUS: It does look like that. This is
8 the right one.

9 MS. TRACZ: There we go.

10 MS. RODRIGUEZ: Marilyn, could you do me a
11 favor and repeat the scenario that matches with this
12 question, please.

13 MS. DIAZ: Sure. So a homeowner with a
14 mobility disability alleged that his homeowners
15 association denied him permission to have the space in
16 front of his house designated as a no-parking space in
17 order to allow a ramp to be installed.

18 So one of the questions is: What is the
19 protected class in this complaint? And what is the
20 issue/discriminatory practice in this complaint?

21 (Pause.)

22 MR. DARUS: I think we've gotten a good number
23 of people who have answered the question.

24 MS. DIAZ: Perfect. So the protected class in
25 this complaint is disability, and the issue at hand is

1 reasonable accommodation.

2 I do have another question here; I'm not sure
3 if it goes on the actual poll. Is this a discrimination
4 situation? And the answer is yes.

5 So the settlement that came out of this was the
6 complainant received \$10,000, and the respondent agreed to
7 require staff to take fair housing training and create
8 reasonable accommodations and reasonable modification
9 policies that adhere to the requirements of the Texas Fair
10 Housing Act.

11 Nathan, do we have any questions at all for
12 that one?

13 MR. DARUS: No, no questions so far on that.

14 MS. DIAZ: Okay. Perfect.

15 So this is a what would you do side. So your
16 property has a strict no pets policy. Due to a recorded
17 disability, an applicant with a hearing impairment needs
18 to keep an assistance animal in his unit as a reasonable
19 accommodation. So what actions would you take?

20 The first is to enter into the interactive
21 process with the requester before making a final
22 determination.

23 Can you charge a fee for the animal's
24 occupancy? The housing provider may not require the
25 applicant to pay a fee or a security deposit as a

1 condition of allowing the applicant to keep the
2 assistance.

3 And three, is the tenant liable for damages
4 caused by the animal? If the tenant's assistance animal
5 causes damages to the applicant's unit or common areas of
6 the dwelling, the housing provider may charge the tenant
7 for the cost of repairing the damage or deduct it from the
8 standard security deposit if it is a provider's practice
9 to assign tenants for any damage that's caused on a
10 premises. So again, this has to go all across the board;
11 it can't be just specific to that one tenant.

12 MR. DARUS: So we actually have a couple of
13 polls for this one based on the questions, so I'm going to
14 go ahead and put the first one up which was: In that
15 situation could you charge a fee for the animal? And then
16 the second question, which I'll put up in just a little
17 bit here: Is the tenant liable for damages caused by the
18 service animal?

19 Everybody seems to be in agreement here that
20 the tenant is liable for the damages, and I think it's
21 pretty much the same, more in agreement that you cannot
22 charge a fee for an assistance animal.

23 MS. RODRIGUEZ: That's correct.

24 MS. DIAZ: Perfect.

25 MS. RODRIGUEZ: May I make a plug?

1 MS. DIAZ: Go ahead.

2 MS. RODRIGUEZ: And we'll talk more about it at
3 the end, but the Civil Rights Division also released a
4 Civil Rights Reporter, and in that reporter that we
5 released yesterday it also has our review of the new HUD
6 service and emotional support animal reasonable
7 accommodation.

8 So there's a really great wealth in our
9 newsletter, and I will allow Marilyn to share that link
10 and how to access that newsletter at the end of our
11 presentation today. Thanks.

12 MS. DIAZ: Thank you, Elena.

13 Okay. So moving forward, this slide is asking
14 what do you think about this scenario. Complainant
15 alleges that the respondent's manager and assistant
16 manager asked her to give them \$300 for a pet deposit for
17 her emotional support cat, and also to pay a monthly pet
18 fee of \$10. In addition, they threatened to send a lease
19 violation notice to the housing authority.

20 The complainant alleged that the manager was
21 aware of her disability. The manager asked the
22 complainant to come to the office, and when she went to
23 the office, the manager told her to sign an animal
24 addendum for her cat.

25 So in this case the complainant alleged that

1 she was subjected to different terms and conditions of a
2 rental and denied a reasonable accommodation due to her
3 disability.

4 So two questions I'd pose are: How could this
5 situation have been avoided? And how do you think the
6 story ended?

7 Nathan, do we have any type of polling for this
8 one?

9 MR. DARUS: Those are the ones that I already
10 put up.

11 MS. DIAZ: Okay. So the answers were: How
12 could this situation have been avoided? Educate managers
13 in following the interactive process.

14 So how did the story end? The investigation
15 found that the complainant's disability was not obvious,
16 and she did not provide respondent with information from a
17 reliable third party, as requested, to show the need for
18 the cat.

19 During the investigation the respondent was
20 given reliable third-party information showing the
21 complainant was disabled and why she needed the cat, so in
22 the end the respondent did end up approving the
23 complainant's request. So in short, she got to keep her
24 cat.

25 So design construction. For all covered

1 multifamily dwellings that were built for occupancy after
2 March 13, 1991, they have to be designed and constructed
3 in a manner that is accessible and usable.

4 So the failure to design and construct a
5 covered multifamily dwelling in a manner that makes them
6 accessible or usable by people with disabilities is
7 considered discrimination. So accessible means a place
8 that can be used, entered or reached, usable means
9 available or convenient for use, and in practice, these
10 terms are used interchangeably.

11 So requirements: accessible building entrances
12 and on an accessible route in and through the dwelling;
13 accessible public and common use areas; doors that allow
14 wheelchair passage into and within all rooms; accessible
15 routes into and through each covered unit; switches,
16 outlets, thermostats and other environmental controls in
17 accessible locations; reinforcements in the bathroom walls
18 so grab bars can be added as needed; and usable kitchens
19 and bathrooms that accommodate a person using a
20 wheelchair.

21 So like I said before, buildings should have at
22 least one entrance on an accessible route unless it's
23 impractical because of unusual characteristics of the
24 site. Unusual characteristics have to be determined and
25 documented before and not after the property is built.

1 Some public and common areas that need to be
2 accessible include laundry facilities, fitness centers,
3 theater facilities, playgrounds, fire alarm accessibility,
4 mailboxes, storage areas, access to the pools, activity
5 centers, dumpsters or trash cans.

6 So rent, sell, terms and conditions. So it's
7 illegal to refuse to negotiate housing or refuse to rent
8 or sell housing or deny a unit or set different terms and
9 conditions or privileges of sale or rental of a unit and
10 providing services because of someone's protected class.

11 So when it comes to setting terms and
12 conditions, let's say that there's a single working mom
13 living in an apartment with four children and she's
14 working two jobs. She does not have time to clean the
15 unit in a manner that it's required to be kept according
16 to the lease agreement. One of the questions is: Can she
17 be evicted because of her poor housekeeping?

18 I'm not sure if we did any type of polling for
19 this, Nathan. If not, I can just go ahead and answer the
20 question.

21 MR. DARUS: No polling on this one.

22 MS. DIAZ: Okay. So the scenario is when it
23 comes to setting terms and conditions, there is a single
24 working mom living in an apartment with four children, she
25 is working two jobs, she does not have time to clean the

1 unit in a manner that it's required to be kept according
2 to the lease agreement. Can she be evicted because of her
3 poor housekeeping?

4 MR. DARUS: Did you want to take some input
5 from individuals?

6 MS. DIAZ: I can answer the question, it's
7 fine.

8 MR. DARUS: Okay.

9 MS. DIAZ: So the answer is yes, she can, as
10 long as the provider is following his housekeeping and
11 eviction policies in a consistent manner.

12 In other words, that policy applies to
13 everybody in the complex or the rental units, not just
14 her. So they can't just single her out for being a single
15 mom living in an apartment with children, not keeping her
16 house neat and tidy; it has to apply to everybody in that
17 complex or housing facility.

18 Publication and inspection. Housing providers
19 may not make, print, or publish a notice, a statement or
20 an advertisement about the sale or rental of a unit that
21 may indicate any discrimination against a protected class.

22 Landlords and other housing providers need to be careful
23 regarding advertising. It may sound very inviting to
24 attract a certain group of people to a unit; however, it
25 may discriminate against protected classes.

1 According to state and federal law, remember
2 that verbal statements may constitute discrimination as
3 well, and someone is not absolved from their liability by
4 blaming another person for a discriminatory statement
5 repeated on their behalf.

6 So a leasing agent can tell someone that no
7 unit is available to inspect or rent when in actuality
8 there is a unit available. So if another person from a
9 different protected class comes in afterwards and get the
10 opportunity to see a unit, this conduct may violate fair
11 housing laws.

12 Entry into a neighborhood. According to the
13 Texas Administrative Code, Section 819.127, a person may
14 not for profit persuade someone to sell, rent real estate
15 by predicting an influx of protected population. This is
16 known as block busting.

17 An example that we have here is: The
18 demographics of the neighborhood are undergoing changes in
19 race, so sell now. Or property taxes will increase when
20 the national origin changes, sell now.

21 So brokerage services cannot set different fees
22 for access to or membership to a multiple listing service.

23 Some people refer to it as the MLS. They cannot deny or
24 limit benefits occurring to members in a real estate
25 broker's organization. They cannot impose different

1 standards or criteria for membership in a real estate sale
2 or rental organization. They cannot establish geographic
3 boundaries for access to membership or participation in
4 any MLS based on their protected class.

5 When talking about lending and other financial
6 assistance, they cannot refuse to provide a person a loan
7 or financial assistance availability requirements. They
8 cannot provide information that is inaccurate or
9 different. They cannot determine the type of loan or
10 financial assistance an individual receives. They cannot
11 fix the amount, interest rate or duration. They cannot
12 use different practices determining credit worthiness
13 based on an individual's protected class.

14 So an example would be a loan official is
15 prohibited from requiring a higher down payment from an
16 applicant because a loan officer believes the applicants
17 of that particular race are less likely to repay the loan.
18 This is considered discrimination.

19 However, though, the loan officer may turn down
20 an applicant because the applicant does have a steady
21 income if all applicants are required to have a steady
22 income. Again, this has to be equal all across the board
23 whenever implementing these policies.

24 Retaliation, interference, coercion and
25 intimidation. Under the Texas Fair Housing rules it is

1 unlawful to interfere, coerce, intimidate, or retaliate
2 against any person because of that person's protected
3 class, or because that person has filed a complaint or
4 encouraged another individual to file a complaint.

5 So prohibited conduct includes but is not
6 limited to: threatening, intimidating, interfering with
7 individuals in their enjoyment of a dwelling based on a
8 person's protected class, threatening or taking an adverse
9 employment action based on the protected class of the
10 housing consumer, so that essentially means calling that
11 individual's employer and basically making threats to them
12 or just telling them false information.

13 The next one is retaliating against any person
14 because that person has made a complaint, whether they've
15 testified, participated or assisted in any manner in a
16 proceeding under the Texas Fair Housing Act.

17 So an example of that would be evicting someone
18 for filing a complaint against you, or evicting somebody
19 for testifying on somebody's behalf that filed a
20 complaint.

21 So there are no exemptions for any of these
22 issues. They apply to everybody all across the board.

23 HUD quid pro quo and hostile environment
24 harassment rules. There's a link up here and it links
25 directly to that document.

1 So what is quid pro quo harassment? Quid pro
2 quo is Latin for this for that. It is an unwelcome
3 request or demand to engage in conduct for submission to
4 the request or demand either explicitly or implicitly is
5 made a condition related to the sale, rental or
6 availability of a dwelling, the terms, conditions or
7 privileges of a sale or rental or the provision of
8 services or facilities in connection, or the availability,
9 terms and conditions of a residential real estate related
10 transaction.

11 What is hostile environment? Unwelcome conduct
12 that is sufficiently severe or pervasive after the
13 interference with the sale, rental, or availability of a
14 dwelling, and the terms, conditions and privileges of a
15 sale or rental, or the provisions of services or
16 facilities in connection, or the availability, terms and
17 conditions of a residential real estate related
18 transaction.

19 HUD quid pro quo and hostile environment
20 harassment rule. The direct liability is its own conduct,
21 failing to take action on an employee or agent, failing to
22 take action on a third party. Vicarious liability, a
23 person is vicariously liable for a discriminatory housing
24 practice by the person's agent or employee regardless of
25 whether the person knew or should have known of the

1 conduct that resulted in a discriminatory housing practice
2 consistent with the agency law.

3 The discriminatory effect, disparate impact, is
4 a facially neutral practice, actually or predictably
5 result in a discriminatory effect on a group of persons
6 protected by the at, or on the community as a whole on the
7 basis of a protected characteristic. So this rule was
8 revised and taken out for public comment early in 2020.

9 Elements of proof. Charging party or plaintiff
10 first bears the burden of proving prima facie cases. The
11 burden then shifts to the respondent or defendant to prove
12 that the practice is necessary to achieving a substantial,
13 legitimate, nondiscriminatory interest.

14 The standard for justifying a practice is not
15 to be interpreted more leniently than a business necessity
16 standard. If the respondent or defendant satisfied this
17 burden, then the charging party or plaintiff may still
18 establish liability by providing that the substantial,
19 legitimate, nondiscriminatory interest could be served by
20 a practice that has a less discriminatory effect.

21 So HUD's Fair Housing Act's discriminatory
22 effects or disparate impact standards. Policies and
23 practices that may have discriminatory effect: enacting
24 or implementing land use rules, ordinances, policies or
25 procedures that restrict or deny housing opportunities or

1 otherwise make unavailable or deny dwellings; provision of
2 loans and other financial assistance; the community's
3 occupancy limit of X persons per dwelling; criminal
4 history; limited English proficiency; and disturbance
5 policies.

6 The Fair Housing Act use of criminal records.
7 On April 4, 2016, HUD released guidance on the application
8 of Fair Housing Act standards to the use of criminal
9 records in providing of housing and real estate related
10 transactions. So we're going to discuss the guidance and
11 the fair housing concerns. The bottom of the slide has a
12 link to the guidance.

13 A hundred million U.S. adults or nearly one-
14 third of the population have a criminal record of some
15 sort. In the U.S. African Americans and Hispanics are
16 arrested, convicted, and incarcerated at rates
17 disproportionate to their share of the general population.

18 Since 2004 an average of 650,000 individuals
19 have been released annually from federal and state
20 prisons, and over 90 percent of the current inmates will
21 be released at some point. When individuals are released
22 from prisons and jails, their ability to access safe,
23 secure, and affordable housing is critical to their
24 successful reentry into society.

25 While having a criminal record is not a

1 protected characteristic under the Fair Housing Act,
2 criminal history based restrictions on housing
3 opportunities violate the Act if without justification
4 their burden falls more often on the renters and other
5 housing market participants of one race or national origin
6 over the other.

7 Additionally, intentional discrimination in
8 violation of the Act occurs if housing providers treat
9 individual with comparable criminal history differently
10 because of their race, national origin or other protected
11 characteristics.

12 So an example of that would be if somebody who
13 is white comes in with the same track record or criminal
14 history as the Hispanic individual but yet the white
15 individual is treated more fairly than the Hispanic
16 individual. This would be considered disparate treatment,
17 and it's discrimination.

18 Fair Housing Act, excluding individuals with
19 prior arrests. As the Supreme Court recognized, the mere
20 fact that a man has been arrested or woman has been
21 arrested has very little, if any, probative value in
22 showing that he has engaged in any misconduct. An arrest
23 shows nothing more than someone probably suspected that
24 person apprehended of an offense.

25 So a housing provider with a policy or practice

1 of excluding individuals because of one or more prior
2 arrests without any conviction cannot satisfy its burden
3 of showing that such policy or practice is necessary to
4 achieve a substantial, legitimate, nondiscriminatory
5 interest.

6 A housing provider who denies housing to
7 persons on the basis of arrests not resulting in
8 conviction cannot prove that the exclusion actually
9 assists in protecting resident safety or the property.

10 A housing provider must show that its policy
11 accurately distinguishes between criminal conduct and
12 demonstrates risk to resident safety or property and
13 criminal conduct that does not. They may want to consider
14 the nature, severity of the criminal conduct and make a
15 case-by-case decision. They'll likely want to review
16 criminal records and make the decision for rental
17 applicants on a case-by-case basis and the guidance of the
18 Federal Government.

19 So fair housing guidance on the use of criminal
20 records. Evaluating whether the challenged policy or
21 process is necessary to achieve a substantial, legitimate,
22 nondiscriminatory interest.

23 So like I said before, when using prior arrests
24 instead of a conviction or using prior convictions, a
25 housing provider must show that its policy accurately

1 distinguishes between criminal conduct and that indicates
2 a demonstrable risk to resident safety or the property and
3 criminal conduct that does not. Again, policies should
4 take into account the nature and severity of the
5 conviction and the amount of time that has passed since
6 the individual was convicted.

7 Other factors to consider: the facts or
8 circumstances surrounding the criminal conduct, the age of
9 the individual at the time of the conduct. Sometimes an
10 individual might be an 18-year-old kid who just did
11 something stupid. That should be taken into
12 consideration. Evidence that the individual has
13 maintained a good tenant history before and/or after the
14 conviction, and evidence of rehabilitation efforts.

15 So fair housing use of criminal records just
16 continued. In December 2017 the Equal Housing Rights
17 Center filed a complaint in the U.S. District Court for
18 the District of Columbia against Mid-America Apartments,
19 or MAA, Communities, and Mid-America Apartments, LP, the
20 nation's largest corporate landlord.

21 The complainant alleged that the landlord's
22 policy of banning prospective tenants that have a felony
23 conviction or pending felony charge, as well as certain
24 misdemeanor or pending misdemeanor charges violated the
25 Fair Housing Act of 1968 because it has a disproportionate

1 adverse impact on African Americans and Latinos. So
2 nationwide, landlords closely watched this lawsuit to
3 determine the impact on the policies that screen for
4 criminal background checks.

5 So the case resolution. On October 5, 2018,
6 the ERC announced the resolution of claims against MAA
7 that its exclusion of housing applicants with any criminal
8 records, including any felony convictions, discriminated
9 against such individuals on the basis of race and national
10 origin.

11 The parties entered into a court-enforced
12 agreement that required MAA to immediately adopt a
13 criminal background screening policy that individually
14 assesses applicants with criminal convictions.

15 So we have another scenario. I'm going to go
16 ahead and read it for you guys. An applicant applied to
17 live in a property and was denied based on her criminal
18 history. She was convicted of a crime committed more than
19 30 years prior.

20 The applicant contended that the property
21 cannot show a substantial, legitimate, nondiscriminatory
22 interest in denying the application based on criminal
23 history. The applicant believed that they improperly
24 discriminated against her because of her race when her
25 rental application was denied.

1 So I have a few questions. What is the
2 protected class in this complaint? And what is the issue
3 in this complaint?

4 MR. DARUS: And we do not have a poll for this.

5 MS. DIAZ: Okay. So the answer for the first
6 question is what is the protected class. The protected
7 class in this issue is race. What is the issue?
8 Disparate impact in the use of criminal records in a
9 housing transaction.

10 So the solution in this last scenario. The
11 property agreed to lease the apartment to the applicant as
12 long as the following conditions were met: the applicant
13 would sign a statement that explained her criminal
14 history, mitigating circumstances, rehabilitation, and
15 lack of any further criminal history, and the applicant
16 would need to meet all of the rental criteria.

17 Sales and rental. The sale or rental of a
18 single-family house may be exempt from an application from
19 the Fair Housing Act if the owner does not own three or
20 more properties, single-family houses, at one time, or
21 they own any interest in, nor is there owned or reserved
22 on the person's behalf, under any expressed or voluntary
23 agreement, they don't have a title to or any right to any
24 part of the proceeds of the sale or rental of more than
25 three single family houses at any one time.

1 If a house is sold or rented without the use of
2 sales or rental facilities or services of a broker/agent,
3 or a salesperson licensed under Chapter 1101 of the
4 Occupation Code or any employee or agent of a licensed
5 broker, any agent or any salesperson or the facilities or
6 owner of a dwelling, is designed or intended for occupancy
7 by five or more families, or if the publication, posting
8 or mailing of a notice, statement or advertisement
9 prohibited by Section 301.022, or the sale or rental of
10 the rooms or units in a dwelling containing living
11 quarters occupied by or intended to be occupied by no more
12 than four families living independently of each other, or
13 if an owner maintains and occupies one of the living
14 quarters as the owner's residence.

15 These exemptions are not available if an owner
16 makes a discriminatory statement, notice or advertisement
17 or engages in intimidation, interference, coercion,
18 retaliation or harassment.

19 So the use of the sales or rental facilities or
20 services. So that if the house is sold or rented without
21 the use of sales or rental facilities or services of a
22 broker, it's kind of like what I just said before, or a
23 salesperson licensed under Chapter 1101, or if the
24 publication, posting or mailing of a notice, a statement,
25 advertisement prohibited by Section 301.022, or if the

1 sale or rental of the rooms or units in a dwelling
2 containing living quarters occupied or intended to be
3 occupied by more than four families living independently
4 of each other, or if the owner maintains and occupies one
5 of the living quarters as the owner's residence. Just
6 kind of going over what we just went over.

7 So housing for the elderly. Housing for the
8 elderly is exempt from the covered or protected class of
9 familial status if the Commission determines the property
10 is specifically designed and operated to assist elderly
11 individuals under a federal or state program, housing is
12 intended and solely occupied by persons 62 years of age or
13 older, and housing in which 80 percent of the occupied
14 units have at least one person who is 55 years of age or
15 older for each unit. Housing under these provisions must
16 meet all requirements for the exemption and comply with
17 applicable HUD regulations.

18 Additionally, state and local governments that
19 create zones prohibiting families with children under the
20 age of 18 must continually ensure compliance with all
21 requirements for the exemption or they will violate the
22 Act.

23 So other exemptions. If it is noncommercial
24 housing operated by a religious organization, they may
25 reserve it for persons of that same religion unless the

1 religion itself is restricted because of race, color or
2 national origin. A private club that is not open to the
3 public that incidentally provides lodging other than for a
4 commercial purpose may limit the rental or occupancy of
5 the lodging to its members and give them preference.

6 An appraiser is not prohibited from considering
7 factors other than protected classes in his or her
8 appraisal. Both religious organizations and private clubs
9 have many different variants in their properties, so they
10 have to be looked at individually.

11 Fair Housing testing. So in short, testing
12 refers to the investigative tool of using individuals who,
13 without any intent to rent or purchase a home, apartment,
14 or other dwelling, pose as prospective buyers or renters
15 of real estate for the purpose of gathering information.
16 This information may indicate whether a housing provider
17 is providing with the fair housing laws.

18 So why is testing done? Testing is done to
19 gather information or evidence regarding the manner in
20 which housing providers do business regarding
21 availability, qualification standards, design and
22 construction compliance, treatment of home seekers,
23 discriminatory statements, patterns of behaviors to
24 corroborate or refute the experience of a complainant.
25 The testing investigations often provide evidence that is

1 needed by victims of housing discrimination to
2 meaningfully pursue a complaint, a suit or administrative
3 hearing. Testing can uncover and/or support systematic
4 forms of housing discrimination that persist in harming
5 individuals and communities.

6 So knowing there's discrimination in housing,
7 lending, and insurance exist and obtaining evidence with
8 respect to discrimination in a specific case are two
9 completely different things. In order for a complainant
10 to prevail in a court case or administrative agency
11 proceeding, competent evidence must be presented that
12 shows a violation of the law.

13 So some of those things that may be revealed
14 during testing are that respondent's defense is pretext,
15 discriminatory basis for actions, that false statements
16 have been made, that a unit was available on a particular
17 date, that steering or redlining has taken place, that
18 people of protected groups have been treated differently
19 than others, or that a requested accommodation or
20 modification has been denied although reasonable, or that
21 a property does not comply with the accessibility
22 requirements of the Fair Housing Act or Texas Fair Housing
23 Act or local laws, or that loans, insurance are available
24 to people of protected groups on different and unfavorable
25 terms than are made available to people in other groups.

1 Settings and how does it work. Testing can be
2 applied in settings other than rental activities,
3 including real estate services, home insurance, mortgage
4 lending offices and appraisal of housing. A specific test
5 is designed based upon specific basis for protected
6 classes: race or color, national origin, religion, sex,
7 familial status, and disability.

8 Some methods are telephone, email, website,
9 in-person, or a combination. Testing is often done by
10 pairing together two individuals who are as similar as
11 possible in all characteristics, including similar
12 financial profiles but differ when it comes to protected
13 class involvement.

14 For example, one member of a pair might use a
15 wheelchair, while the other person has no noticeable
16 mobility impairments. Another example would be one member
17 of a pair might have a light skin tone while the other
18 person has a darker skin tone.

19 They each separately visit or call or email the
20 site of the housing provider within an appointed time
21 period and inquire about the availability of a unit.
22 Afterwards, the testers objectively record in detail
23 everything that happened during the test, what was said,
24 what was offered, what price was quoted for the available
25 apartment or what accommodations might be able to be made,

1 and then a test coordinator compares each of the testers'
2 objective reports to determine whether a difference in
3 treatment based on the protected class may have occurred.

4 So the most straightforward differences in the
5 treatment of two testers in a rental scenario is the
6 property saying a unit is just not available to the person
7 with that protected class.

8 Many other manifestations are showing units in
9 less desirable parts of the property, or the property
10 management staff being unavailable to assist, when the
11 unit might be available, and then what is required to
12 apply such as terms and conditions, the number and type of
13 units shown, the move-in specials offered or not offered,
14 and the amount of rent.

15 So the most common testing models are
16 disability status, families with children and color, and
17 these are just some of the most common testing models that
18 are usually put out there. They're usually the easiest to
19 get information from individuals as far as housing
20 providers.

21 So HUD funds fair housing organizations and
22 other nonprofits through the Fair Housing Initiative
23 Program, or FHIP, who assist people who believe they have
24 been victims of housing discrimination. A FHIP
25 organization partners with HUD to help people identify

1 government agencies that handle complaints of housing
2 discrimination. They also conduct preliminary
3 investigation of claims, including sending testers to the
4 properties suspected of practicing housing discrimination.

5 So what can properties do to prepare for
6 testing? Because testers don't identify themselves,
7 presume anybody who contacts a property can be a potential
8 tester, so anybody who calls in. Just like retail has
9 secret shoppers and they're told to presume anybody who
10 comes in, any customer who comes in could be potentially a
11 secret shopper, it's the same with housing providers, to
12 just be under the assumption that anybody who calls you
13 could be a tester.

14 The best strategy is to be informed and to have
15 staff well trained on fair housing laws and to be sure to
16 reflect this careful outlook on the way you interact with
17 all prospects. And if all prospects are treated equally
18 as if they may be testers, you will help ensure you don't
19 violate fair housing laws, which is a risk with real
20 prospects as well as testers.

21 So that's where the Civil Rights Division
22 training and outreach can come into play. We provide
23 training not just to individuals who are required to take
24 training but we provide it to individuals, especially
25 housing providers who want to get their staff trained up,

1 to know about the housing laws so they can avoid any type
2 of issues with their customers.

3 Fair housing complaints. If you have a
4 complaint filed against you, you'll likely be notified of
5 the allegation in writing. You'll likely be invited to
6 mediate. If you decide not to mediate, you may file an
7 answer that is in writing, under penalty of perjury, and
8 may be amended at any time.

9 So if you need to file a complaint you can
10 always visit us at www.texasworkforce.org/civilrights.
11 There you can fill out a form and submit by email, fax or
12 mail. You can also call in to our office and request that
13 a form be sent to you.

14 So virtually all parties of a complaint are
15 invited to participate in mediation before the
16 investigation begins. The mediation program is voluntary,
17 and if both parties do not agree to mediate, the
18 complainant moves to the investigation process, a
19 complaint will then move forward into an investigation
20 process.

21 Our mediation program at TWC Civil Rights
22 Division provides the following benefits: it is a free
23 service, it eliminates the lengthy investigation and
24 expensive litigation in a timely manner, it resolves
25 complaints quickly, it saves time and money, it opens up

1 the lines of communication between disputing parties, and
2 it allows each party to understand the position of an
3 opposing party. When there is a resolution, it is
4 documented with an agreement which is binding upon the
5 complainant and the respondent.

6 So like I said before, training is offered at
7 the Civil Rights Division. As well as fair housing
8 training, we offer EEO training. There is our information
9 there, the phone number. I guess the best method I would
10 say is email the CRD training box. That is monitored
11 every day all day by myself. I get back to you fairly
12 quickly.

13 We also have a training schedule that I keep,
14 and I'm fairly flexible as far as we have specific dates
15 where we have fair housing training set, but if you're
16 needing something, like I recently had a teacher who is
17 working during the day but she needed to take the training
18 so I accommodated her and I was able to get her in at a
19 later time during spring break when she was free. So we
20 are flexible and we're there to educate and help where and
21 when we can.

22 So I'm going to go ahead and open it up for
23 questions.

24 Nathan, I don't know if you wanted to take over
25 at this point.

1 MR. DARUS: Yes. So actually in the interest
2 of time, we did run a little bit longer than we expected,
3 if you do have questions, please, we're going to have you
4 reach out to us individually for those questions. Many of
5 you already asked questions and we will be following up
6 with you anyway.

7 So what we really want to let you know about is
8 our next two webinars this month, we do have two more. On
9 April 8 at 10:00 a.m. we will have another webinar that is
10 specifically geared toward reasonable accommodations and
11 reasonable modifications, and then on April 14 we will be
12 going over the new HUD guidance regarding assistance
13 animals -- and we did get a couple of questions that I was
14 able to answer during the webinar about assistance
15 animals -- but I think you would be able to call this
16 webinar everything you ever wanted to know about
17 assistance animals but were too embarrassed to ask. That
18 one will be on April 14, and it will follow the new HUD
19 guidance, and it should be really informational.

20 I'm going to go ahead and close this second
21 poll out, and Marilyn, will you put up the contact
22 information? It should be the last slide.

23 MS. DIAZ: It's up at the beginning.

24 MR. DARUS: Yep, here it is at the beginning,
25 slide 2.

1 So if you have questions from this webinar, go
2 ahead and contact either myself or Marilyn, and we will be
3 able to get answers for you. So we're going to leave that
4 slide up for just a few seconds so you can get the contact
5 information written down if you need to.

6 MS. TRACZ: Nathan, this is Cate. I'm just
7 going to jump in real quick. I know we had a couple of
8 questions come up about do we have any materials
9 available.

10 All of the materials and the presentation will
11 be posted on our website, and we can email out a link to
12 where that's going to be to all of the attendees today and
13 that email will include any other links that we referenced
14 and contact information for both you and Marilyn.

15 So if you can't grab a pen and scribble this
16 down, we will email directly contact information and all
17 materials provided today. And also, we'll post a
18 recording and a transcript of this webinar as well.

19 So I just wanted to add that in so I'll hand it
20 back to you, Nathan. Thank you.

21 MR. DARUS: You actually got exactly what I was
22 about to say, which is as soon as possible we are going to
23 have both the slides, this video, and a transcript of the
24 webinar available on TDHCA's website, and we'll have a
25 link to that as well, but you can also just keep an eye

1 out for it yourself, and you'll find that website is
2 tdhca.state.tx.us/fair-housing/presentations. That link
3 will also have previous years' webinars as well, so
4 there's a lot of useful information up there.

5 MS. DIAZ: Thank you, Nathan. I did want to
6 add one thing. Like Elena was saying earlier, we do have
7 a newsletter that comes out from the Civil Rights
8 Division.

9 It's called the *Civil Rights Reporter*, it comes
10 out quarterly, and we just sent one out yesterday, I
11 believe, so it's our April Fair Housing Month edition.
12 You can access that on our TWC CRD website, and if you
13 need that link, I can send it to you directly and it is at
14 the last slide on this presentation.

15 MR. DARUS: Okay. I think that's everything,
16 so thank you all for joining us, and I hope we see you at
17 our next two webinars, and I hope you all have a great
18 day.

19 MS. DIAZ: Thank you so much, everybody.

20 MS. RODRIGUEZ: Thank you so much. Have a
21 great day.

22 (Whereupon, the webinar was concluded.)

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C E R T I F I C A T E

IN RE: Fair Housing Overview
LOCATION: Austin, Texas
DATE: April 2, 2020

I do hereby certify that the foregoing pages, numbers 1 through 65, inclusive, are the true, accurate, and complete transcript prepared from the electronic recording made by the Texas Department of Housing and Community Affairs.

DATE: April 10, 2020

/s/ Nancy H. King
(Transcriber)

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