



2020 FAIR HOUSING OVERVIEW TRAINING

Presented by:

Texas Department of Housing & Community Affairs



DISCLAIMER

This material is based upon work supported by the U.S. Department of Housing and Urban Development under the FHIP Grant No. FEOI1900455.

Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Housing and Urban Development.



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).



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AGENDA

TDHCA OVERVIEW

FEDERAL & TEXAS FAIR HOUSING ACTS

REASONABLE ACCOMMODATION & MODIFICATION
OVERVIEW

FAIR HOUSING ISSUES & DISCRIMINATORY
PRACTICES

COMPLAINTS & MEDIATION



LEARNING OBJECTIVES

- Understand the basics and history of the Federal and Texas Fair Housing Acts
- Recall Covered/Protected Classes
- Recognize Common Fair Housing Issues and Discriminatory Practices
- Understand Fair Housing and TDHCA Complaint processes





TDHCA OVERVIEW



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA is the state agency responsible for affordable housing, community and energy assistance programs, colonia activities, and regulation of the state's manufactured housing industry.

- FAIR HOUSING, DATA MANAGEMENT, AND REPORTING TEAM





TDHCA'S MISSION

TDHCA's mission is to administer its assigned programs efficiently, transparently, and lawfully and to invest its resources strategically and develop high quality affordable housing which allows Texas communities to thrive.



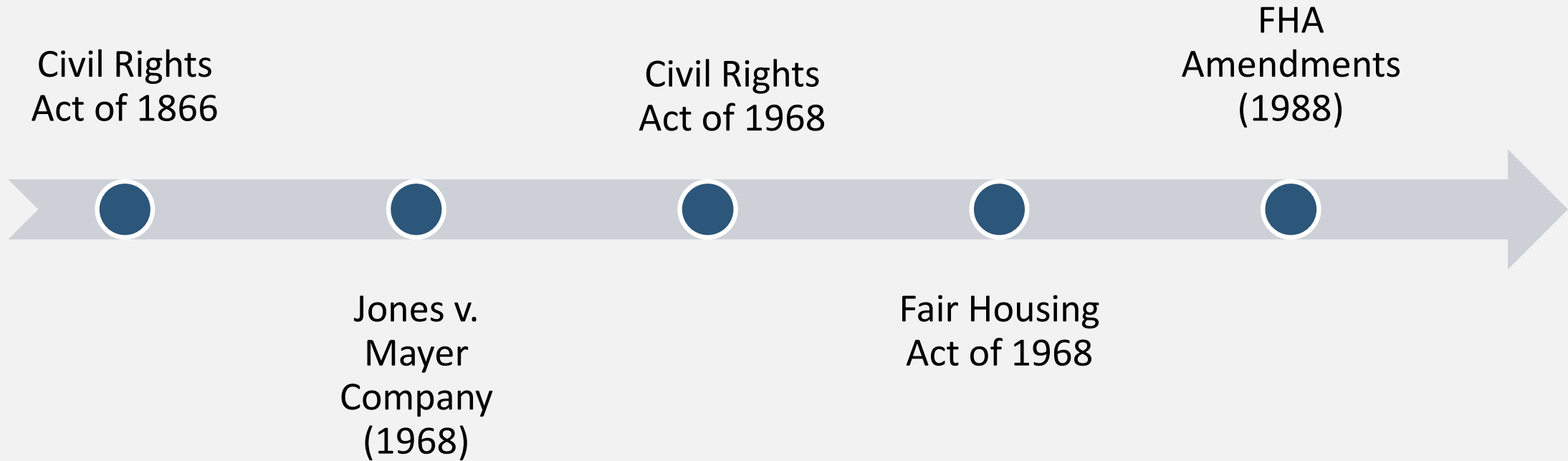
ANALYSIS OF IMPEDIMENTS

The Analysis of Impediments to Fair Housing Choice (AI) is a process that recipients of Community Planning and Development (CPD) grant funds from the U.S. Department of Housing and Urban Development (HUD), such as states, local governments, and public housing agencies, undertook as part of their obligation to affirmatively further fair housing (AFFH) under the Fair Housing Act. A new HUD Rule, called Preserving Community and Neighborhood Choice became effective September 8th, 2020. The new rule rolls back requirements to their pre-1994 state. The 2019 Texas AI is complete and currently serves as a tool for all TDHCA programs.



FEDERAL & TEXAS FAIR HOUSING ACTS

WHAT IS THE FAIR HOUSING ACT?



WHAT IS THE FAIR HOUSING 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 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: RACE

Asian

African American or
Black

Native American or
Alaska Native

Native Hawaiian or
Other Pacific Islander

White





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PROTECTED CLASS: COLOR

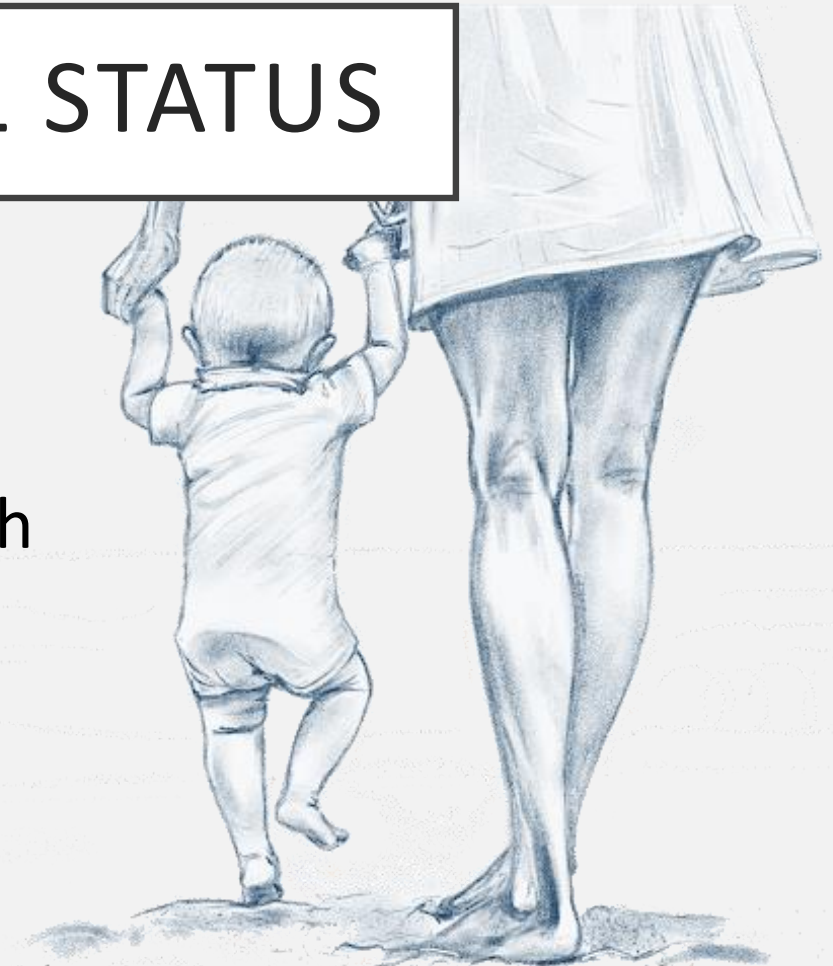
PROTECTED CLASS: NATIONAL ORIGIN

- Ancestry
- Birthplace
- Ethnic Background
- Limited English Proficiency (LEP)
- Refers to a person's limited ability to read, write, speak, or understand English...can also be race discrimination

PROTECTED CLASS: FAMILIAL STATUS

Includes persons who are:

- Pregnant
- Parent/Legal custodian of child living with them who is under 18
- Securing custody of a child



Example:

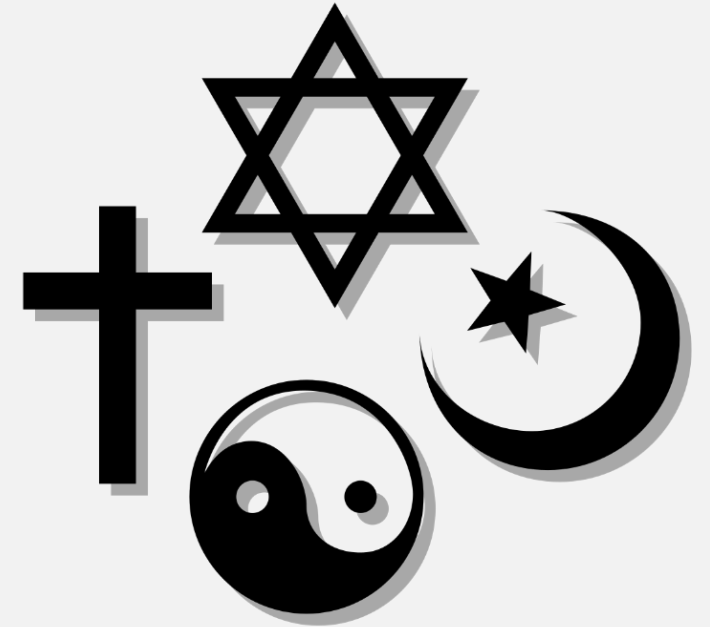
“You can’t rent that unit – families aren’t allowed in that building because older residents don’t want children there.”

EXTRA RESTRICTIONS AGAINST CHILDREN



PROTECTED CLASS: RELIGION

Overt discrimination against members of particular religion
Indirect discrimination such as zoning to limit use of private homes as places of worship



PROTECTED CLASS: SEX

Includes prohibitions on:

- Sexual Harassment
- Gender Stereotyping
- Discriminatory Pricing

Note: *Respondents' staff including maintenance personnel, may be named as a Respondent where sexual harassment is alleged.*



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



REASONABLE ACCOMMODATION OVERVIEW



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."





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.

RULES FOR REASONABLE ACCOMMODATION REQUESTS

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

Avoid asking the following:

REACTIONS AND
INQUIRIES TO AVOID

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

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 and imposes an undue financial and administrative burden



WHO PAYS?

Undue financial hardship and administrative burden claims considerations include:

Housing provider's financial resources

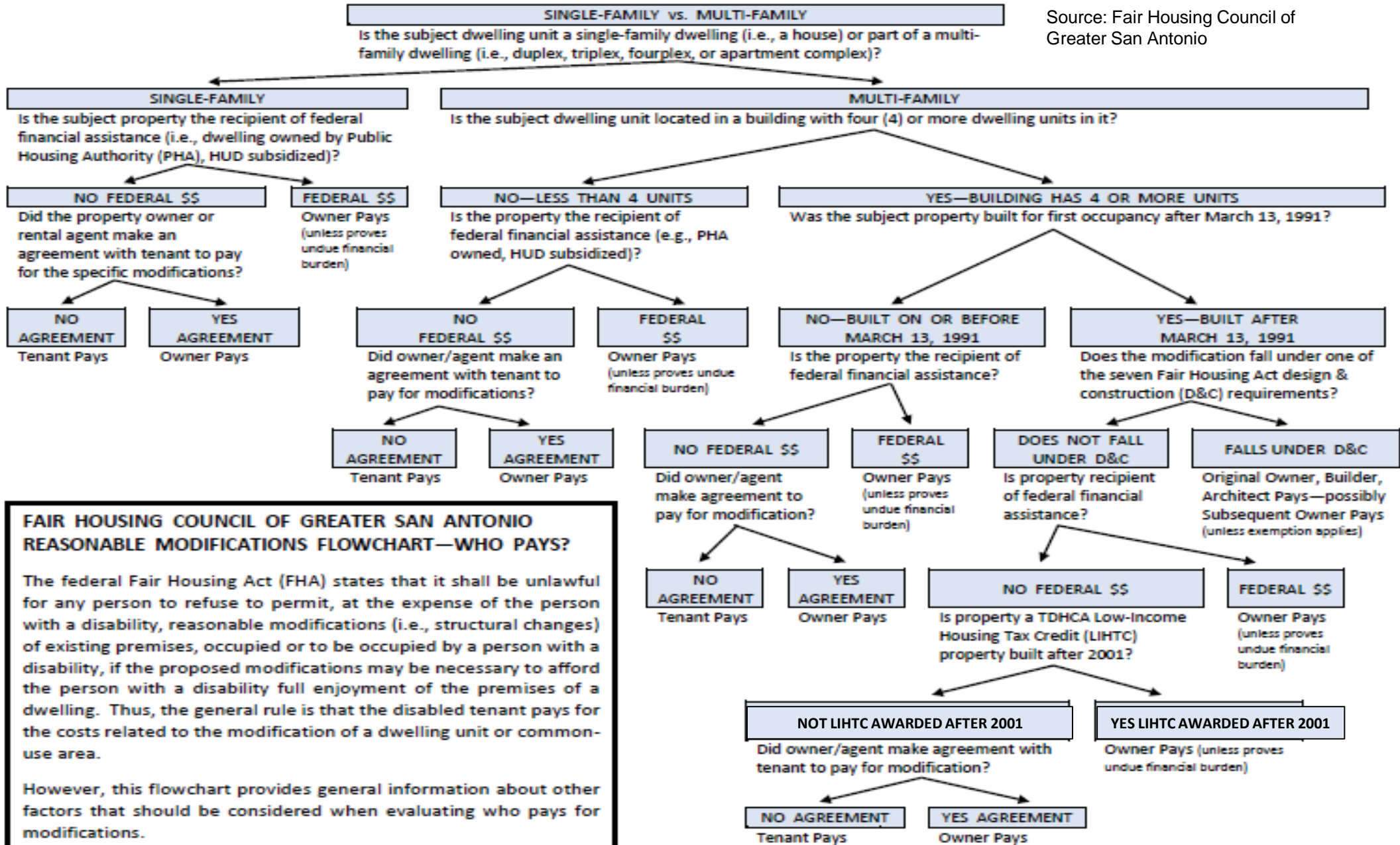
Cost of the reasonable accommodation

Requested accommodation's benefits to the requestor

Availability of other, comparable and less expensive alternatives

Reasonable Modifications Flowchart – Who Pays?

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.



FAIR HOUSING ISSUES & DISCRIMINATORY PRACTICES



RENT, SELL, TERMS & CONDITIONS

It is illegal to ...

Refuse to negotiate for housing;

Refuse to rent or sell housing;

Deny a unit; or

Set different terms, conditions or privileges for sale or rental of a unit or in providing services *because of someone's protected class status.*



PUBLICATION & INSPECTION

PUBLICATION

A person **may not**:

- Make
- Print
- Or publish

a notice, statement, or advertisement about the sale or rental of unit

INSPECTION

A person **may not** represent to another that a unit is not available:

- For inspection
- For sale
- For rental

when the unit is actually available for inspection.

“BLOCKBUSTING”

A person **may not**:

- For profit, persuade someone to sell or rent with representations regarding the entry or prospective entry into a certain neighborhood.
- Also known as “Blockbusting”

Examples: *“The racial demographics of the neighborhood are undergoing changes in race, so sell now.”*

or

“Property taxes will increase when the national origins change, sell now.”



“STEERING”

A person **may not**:

Assign a person to a particular section of a community, neighborhood, or development, or to a particular floor of a building, because of their membership to a protected class

Also known as “Steering”

Examples: *“Women shouldn’t live on the first floor of an apartment building, so I’ll only be showing you units on the 2nd and 3rd floors.”*

or

“You might be more comfortable living on 8th street, that’s where the majority of _____ families live.”

BROKERAGE SERVICES, LOANS AND OTHER FINANCIAL ASSISTANCE

Brokerage Services:

- Set different fees for access to or membership in a multiple listing service (MLS)
- Deny or limit benefits accruing to members in a real estate brokers' organization
- Impose different standards or criteria for membership in a real estate sales or rental organization
- Establish geographic boundaries for access, membership or participation in any MLS

BROKERAGE SERVICES,
LOANS AND OTHER
FINANCIAL ASSISTANCE
- LENDING



Refuse to provide a
person

Loan or financial assistance
availability

Application requirements



Provide information that is inaccurate or different



Determine the type of loan or financial assistance



Fix the amount, interest rate, duration, etc.



Use different practices in determining credit
worthiness

RETALIATION,
INTERFERENCE,
COERCION,
INTIMIDATION

Under the Fair Housing Act,
someone cannot:

Interfere with an individual
in their enjoyment of a
dwelling

Coerce a person

Threaten

Intimidate

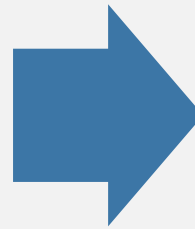
Retaliate

No exemptions apply



QUID PRO QUO

Quid Pro Quo is a Latin term meaning
“This for that”.



It is an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to the sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction

HOSTILE ENVIRONMENTAL HARASSMENT

What is hostile environment harassment?

Unwelcome conduct that is sufficiently severe or pervasive as to interfere with: the sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction.



DISPARATE IMPACT

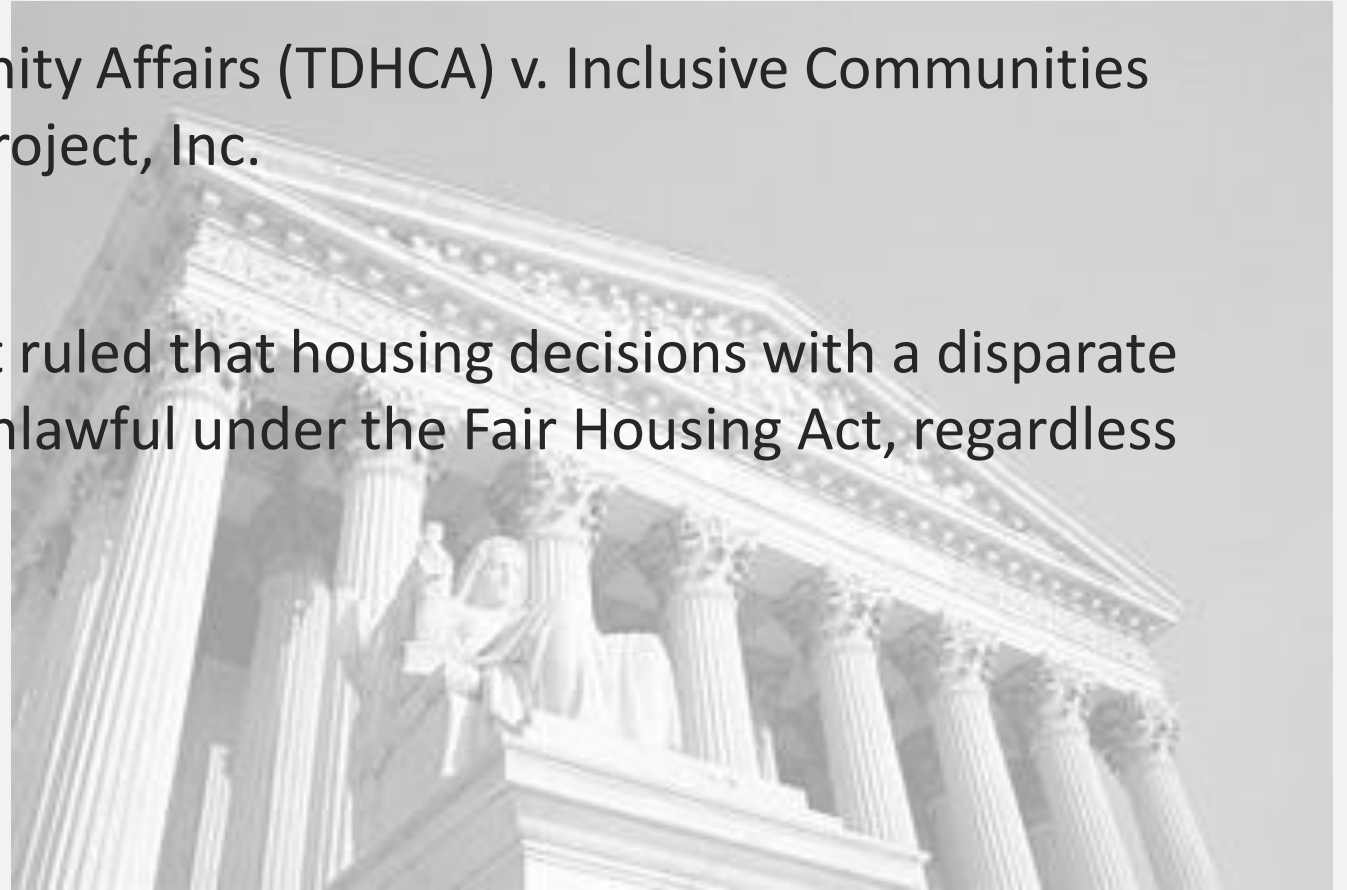
- Disparate Impact is a facially neutral practice that does not appear to be discriminatory on its face; rather it is one that is discriminatory in its application or effect

SUPREME COURT DECISION

June 25th, 2015

Texas Dept. of Housing and Community Affairs (TDHCA) v. Inclusive Communities Project, Inc.

In a 5-4 ruling, the U.S. Supreme Court ruled that housing decisions with a disparate impact, or discriminatory effect, are unlawful under the Fair Housing Act, regardless of intent.



HUD GUIDANCE: DISPARATE IMPACT

Elements of Proof:

- Charging party or plaintiff first bears the burden of proving prima facie case.
- The burden then shifts to the respondent or defendant to prove that the practice is necessary to achieving a "substantial, legitimate, nondiscriminatory" interest.
 - Standard for justifying a practice is not to be interpreted more leniently than a "business necessity" standard.
- If the respondent or defendant satisfies this burden, then the charging party or plaintiff may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.



EXAMPLES OF PRACTICES THAT COULD CREATE DISPARATE IMPACT

Use of Credit Scores/Credit Checks

Co-signers (if under a certain credit score, or if a student)

Income 4x rent requirement

Criminal Background Checks

Previous Drug Offense conviction as a reason for rejection

Prohibition against certain breeds of dogs



DISPARATE IMPACT: USE OF CRIMINAL RECORDS

- 100 million US adults, or 1/3 of the population have a criminal record of some sort.
- Nationally, racial & ethnic minorities face disproportionately high rates of arrest and incarceration.
- 650,000 individuals are annually released from federal and state prisons
- The ability to access safe, secure and affordable housing is critical to their successful reentry to society.
- Criminal records-based barriers to housing may have a disproportionate impact on minority housing seekers

EXCLUDING INDIVIDUALS WITH PRIOR ARRESTS

- A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.
- A housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property.



EXCLUDING INDIVIDUALS WITH PRIOR ARRESTS

A housing provider that imposes a blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden. Must be based on a case-by-case basis.



DISPARATE IMPACT: USE OF CRIMINAL RECORDS

- When using prior arrest instead of conviction, or using prior convictions, a housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.
- Policies should take into account the nature and severity of the conviction and amount of time that has passed.



FAIR HOUSING EXEMPTIONS

EXEMPTIONS: SALES AND RENTALS

- The sale or rental of a single family house may be exempt from application of the Fair Housing Act, if the owner **does not**:
 - Own three or more properties or single-family houses at any one time; **or**
 - Own any interest in, nor is there owned or reserved on the persons behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; **and**



EXEMPTIONS: SALES AND RENTALS (CONTINUED)

- The house is sold or rented without:
 - The use of the sales or rental facilities or services of a broker, agent, or licensed salesperson; **or**
 - The prohibited publication, posting, or mailing of a notice, statement, or advertisement; **or**
- The sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other

EXEMPTIONS: HOUSING FOR THE ELDERLY

Exempt from Familial Status if the property is specifically:

- Designed and operated to assist elderly individuals
- Intended for, and solely occupied by, persons 62 years of age or older
- 80% of the occupied units have at least one person who is 55 years of age



**MEMBERS
ONLY**



OTHER EXEMPTIONS

- Religious organizations
- A private club that is not open to the public
- A person engaged in the business of providing real property appraisals



FAIR HOUSING TESTING



FAIR HOUSING TESTING

Fair Housing testing is an investigative tool/methodology that uses individuals who, without any bona fide intent to rent or purchase a home, apartment, or other dwelling, pose as prospective buyers or renters of real estate for the purpose of gathering information to aid in determining whether a provider is complying with fair housing laws



**EQUAL HOUSING
OPPORTUNITY**



WHY IS TESTING DONE?

To gather information (evidence) regarding the manner in which housing providers do business regarding:

- Availability
- Qualification Standards
- Design and Construction Compliance
- Treatment of home seekers
- Discriminatory statements
- Patterns or behaviors to corroborate or refute the experience of Complainant



TESTING EVIDENCE MAY REVEAL

That a respondent's
defense is pretext

Discriminatory basis for
actions

That false statements have

been made

That a unit was available on
a particular date

That steering or redlining
has taken place

That people of protected
groups have been treated
differently than others

WHAT PROPERTIES CAN DO TO PREPARE FOR TESTING

Because testers don't identify themselves, presume any contact a property receives could be a potential tester.

The best strategy is to be informed and have staff well trained on fair housing laws and be sure to reflect this careful outlook on the way you interact with all prospects.

If all prospects are treated equally as if they may be testers, you'll help ensure you don't violate fair housing law, which is a risk with real prospects as well as testers.





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

HOW TO FILE A FAIR HOUSING COMPLAINT

- To file a fair housing complaint, you must include the following information in your correspondence:
 - Your name and address
 - The name and address of the person your complaint is against (the Respondent)
 - The address or other identification of the housing involved
 - A short description of the alleged violation (the event that caused you to believe your rights were violated)
 - The date(s) of the alleged violation
- Send your complaint to the Texas Workforce Commission by:
 - Email: HousingComplaint@twc.state.tx.us
 - Fax: 512-463-2643
 - Mail - Texas Workforce Commission

Civil Rights Division

1117 Trinity Street, Room 144-T

Austin, Texas 78701



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.



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!

