

Fair Housing Webinar Series
April 11, 2017 from 1:30-3:00 pm

**Fair Housing Webinar Series II:
Reasonable Accommodations
and Accessibility**

Presented by
TDHCA and TWC

1 **SUZANNE HEMPHILL:** Hello, you're joining the Texas Department of Housing and
2 Community Affairs Webinar. We'll get started in approximately five minutes. Good afternoon.
3 You're joining the Reasonable Accommodations and Accessibility Webinar. My name is Suzanne
4 Hemphill with Texas Department of Housing and Community Affairs. We'll get started closer to
5 1:30. Included as a handout are the presentation slides. Look for the handouts box, click to expand
6 the box and download the material. For the handouts we've included presentation slides, a joint
7 statement from HUD, a statement on reasonable modifications and HUD notice on service animals
8 and assistance animals. If you want to download those and follow along, that might help. We'll take
9 questions on those documents. We'll get started closer 1:30. Thanks for joining us.

10 **SUZANNE HEMPHILL:** Good afternoon, this is Suzanne Hemphill with Texas Department of
11 Housing and Community Affairs. Today's presentation is on reasonable accommodations and
12 accessibility. It's co-presented with the Texas Workforce Commission, Civil Rights Division. We'll
13 give it a couple minutes. We have a bunch of folks joining us. If you want to check out the handouts
14 and get comfortable, we'll start in a couple minutes. You can access the handouts through the
15 control panel of the go-to-webinar software. Go to the handouts box. Included are the presentation
16 slide, a joint statement on reasonable accommodations, a joint statement on reasonable
17 modifications and a HUD notice on service animals and assistance animals, as well as a nice flow
18 chart on reasonable modifications and who pays for those. So, we'll get started in just a couple
19 minutes. Thanks.

20 **SUZANNE HEMPHILL:** Good afternoon, thank you for joining our webinar series today. My
21 name is Suzanne Hemphill, Fair Housing Manager at Texas Department of Housing and
22 Community Affairs. Today's presentation is a second in a series during the month of April. We're so

23 excited many of you have joined us to cover the complex subject of reasonable accommodations
24 and accessibility. These materials are co-presented by Texas Workforce Commission, Civil Rights
25 Division. Last week we gave a fair housing overview. My contact information is also on that slide, if
26 you have questions (slide #2). Today's webinar is recorded and will be available on TDHCA's
27 website under the Fair Housing section. When the presentation is posted on our website, we'll send
28 out link out to all of the participants. You'll need to give us a little time, we'll make it accessible and
29 add a transcript and that takes some time. We'll take a limited amount of questions throughout the
30 webinar. So you can submit those throughout the chat box. Feel free to ask questions and we'll try
31 to answer them as we go. Attendees will be on mute throughout the presentation. We set aside time
32 at the end to dig into your questions. If we don't get to them today, my contact information and
33 Vickie's with the Texas Workforce Commission, is on the next slide. Included in the handout are the
34 presentation slides. You can access that through the go to webinar software. If you go to the box,
35 click on handouts, there's five different handouts. If you're having trouble with those, you can
36 search through the Internet. Through Google, search for the joint statemenets from HUD and
37 Department of Justice on reasonable accommodations, a joint statement on reasonable
38 modifications, the HUD notice on service animals and assistance animals, those are all available
39 online.

40 So, today's April 11th. It is also the 49th anniversary of the Fair Housing Act. So April 11th 1968,
41 President Lyndon Johnson signed the Civil Rights Act of 1968. It was meant as a follow-up to the
42 Civil Rights Act of 1964. The act expanded on previous acts and prohibited discrimination
43 concerning the sale, rental, and financing of housing based on race, religion, sex, national origin,
44 handicap and familial status. Title VIII is also known as the Fair Housing Act. So, happy anniversary
45 Fair Housing Act.

46 This session will be co-presented by Vickie Covington, Senior Investigator and Outreach
47 Coordinator for the Texas Workforce Commission, Civil Rights Division. Vickie is responsible for
48 investigating fair housing cases and coordinating and conducting fair housing training and outreach.
49 In January 2016, Vickie earned the certified fair housing investigator professional designation, a
50 professional credential for investigators who successfully complete a five week fair housing core
51 curriculum, meet specific professional requirements and pass a comprehensive examination. Vickie
52 served for more than 16 years on the commission for human rights, at the Texas Workforce
53 Commission as a policy reviewer, employment investigation manager of special projects, acting
54 director of enforcement for housing and employment investigations and executive director, interim
55 division director and fair housing manager, and with that, we'll get started.

56 **VICKIE COVINGTON:** So, hello, everyone. As Suzanne stated, my name is Vickie Covington.
57 I'm with the Texas Workforce Commission, Civil Rights Division and I am so pleased you have
58 joined us on the 49th anniversary of the Fair Housing Act. Our mission at the Texas Workforce
59 Commission, Civil Rights Division is to reduce discrimination and employment and housing
60 through education, and enforcement of state and federal laws. Our vision is to help create an
61 environment in which the citizens of the State of Texas may pursue and enjoy the benefits of
62 employment and housing that are free from discrimination. Here's our agenda for today. I'm going
63 to take a look at our objectives, the purpose of the fair housing act and the Texas fair housing act,
64 reasonable accommodations, we'll dig into some case scenario, we're going to discuss some other
65 accessibility issues and let you know about our mediation program at the Civil Rights Division. The
66 objectives are what we expect you to take away from today's training. We want you to be able to
67 identify the purpose of the Texas fair housing act as well as the Federal fair housing act when it
68 comes to reasonable accommodations, we want you to be able to define disability, to recognize a
69 request for reasonable accommodations, to recognize appropriate responses to a request for
70 reasonable accommodations, and to identify other resources at your disposal. We will also identify

71 other accessibility issues. The purpose of the fair housing act is to, within constitutional limitation,
72 provide for fair housing throughout the United States.

73 The purpose of the Texas fair housing act is to provide for fair housing practices in the State
74 of Texas to create a procedure for investigation and settlement of complaints and to provide rights
75 and remedies that are substantially equivalent to Federal law. So, what this means is that the Texas
76 fair housing act mirrors the Federal fair housing act, and for the purposes of this training, will be
77 referred to as "the act". There are seven protected classes under the Texas Fair Housing Act as well
78 as the Federal Fair Housing Act; they are race, color, national origin, familial status, religion, sex and
79 disability. For today's training, we are going to focus on the protected class of disability. Because the
80 Texas Fair Housing Act is substantially equivalent to the Federal Fair Housing Act it gives people
81 with disabilities greater freedom to choose where they would live and greater freedom to visit
82 friends and relatives. It also has the same broad implications in that it proactively addresses the
83 needs of an evolving population, looking ahead at future needs. With the aging of the population
84 and the increase in incidents of disability that accompanies aging, significant numbers of people will
85 be able to remain in and safely use their dwellings longer. For example, housing that is designed in
86 accordance with the acts will have accessible entrances, wider doors and provisions to allow for easy
87 installation of grab bars around toilets and bathtubs. It will make housing safer and more responsive
88 to all users.

89 **SUZANNE HEMPHILL:** And I also want to note according to the American Community
90 Survey, 12 percent of Texans have a disability.

91 **VICKIE COVINGTON:** Just how is disability defined? Under the Acts, any person who has a
92 physical or mental impairment that substantially limits one or more major life activities, or has a
93 record of such an impairment, or is regarded as having an impairment, is disabled. Please note that
94 Section 504 and the Americans with Disabilities Act have slightly different definitions and we'll look
95 at the differences between 504 and ADA later on in the presentation. What are some of the major

96 life activities (slide #11)? Major life activities include seeing, hearing, breathing, walking, performing
97 manual tasks, caring for one's self, learning, speaking, and working a broad class of jobs. Please note
98 these are only some of the major life activities. There are other major life activities out there not
99 included on this slide. When it comes to disability, what are some examples of impairments which
100 may result in a disability? Visual speech and hearing impairment, cerebral palsy, autism, epilepsy,
101 muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency
102 Virus (HIV) infection, drug addiction, other than addiction caused by current illegal use of a
103 controlled substance, and alcoholism (slide #12). It's important to remember while the act does
104 protect persons recovering from substance abuse; it does not protect persons currently engaging in
105 current illegal use of controlled substances. Additionally, the acts do not protect an individual with a
106 disability whose tendency would constitute a direct threat to the health or safety of other individuals
107 or result in substantial physical damage to the property of others unless the threat can be eliminated
108 or significantly reduced by reasonable accommodation. If a question arises regarding a determination
109 that a person poses a direct threat, the housing provider must rely on an individualized assessment
110 that is based on reliable objective evidence. The assessment must consider, first of all, the nature,
111 duration and the severity of the risk of injury; secondly, the probability that injury will actually occur,
112 and thirdly; whether there are any reasonable accommodations that will eliminate the direct threat.
113 In evaluating a recent history of adverse acts, a provider must take into account whether the
114 individual has received intervening treatment or medication that has eliminated the direct threat. In
115 such a situation, the provider may request that the individual document how the circumstances have
116 changed so that he no longer poses a direct threat. A provider may also obtain satisfactory
117 assurances that the individual will not pose a direct threat during tenancy. The housing provider
118 must have reliable objective evidence that the person with a disability poses a direct threat before
119 excluding him from housing on that basis.

120 What exactly is a reasonable accommodation (slide #13)? Under the acts, a reasonable

121 accommodation is a change, exception, or adjustment in the rules, policies, practices, or services
122 necessary to afford a person with a disability, equal opportunity to use and enjoy a dwelling. Under
123 the act it's unlawful for any person to refuse to make reasonable accommodations in rules, policies,
124 practices or services, when such accommodations may be necessary to afford a person with a
125 disability equal opportunity to use and enjoy the dwelling. Now, we've included for you some
126 handouts. One of those handouts is the HUD and DOJ memorandum on reasonable
127 accommodations and you can find more information regarding what a reasonable accommodation is
128 in item No. 6 of that memorandum.

129 Why should housing providers grant a reasonable accommodation (slide #14)? Housing
130 providers should grant a reasonable accommodation because policies, practices, and services may
131 have a different effect on persons with disabilities than on other persons. Also, treating persons with
132 disabilities exactly the same as others, will sometimes deny them an equal opportunity to use and
133 enjoy a dwelling.

134 What do state and federal laws require (slide #15)? It's very simple. State and federal laws
135 require housing providers to make reasonable accommodations to rules, policies, practices, or
136 services when such accommodations may be necessary to afford persons with disabilities an equal
137 opportunity to use and enjoy a dwelling.

138 **SUZANNE HEMPHILL:** Okay, so we're going to get into a couple examples. The first slide is a
139 reasonable accommodation example (slide #16). The housing provider has a policy of providing
140 unassigned parking spaces to residents. A resident with a mobility impairment who is substantially
141 limited in her ability to walk requests an assigned accessible parking space close to the entrance to
142 her unit as a reasonable accommodation. There are available parking spaces near the entrance to her
143 unit that are accessible, but those spaces are available to all residents on a first come first serve basis.

144 **VICKIE COVINGTON:** So, here are some reasonable accommodation request guidelines (slide
145 #17). The requester must make the request in such a way that a reasonable person would understand

146 it to be a request for an exception, a change, or an adjustment to a rule, policy, practice or service
147 because of a disability. The request does not have to be made in writing. The request does not have
148 to be on a certain form, an individual making a request for reasonable accommodation does not
149 need to mention the Texas fair housing act or the Federal fair housing act or use the words
150 "reasonable accommodation" or use any magic words. The request can be made by a family member
151 or someone who is acting on behalf of the person -- who is acting on the person's behalf. And for
152 more information, you can refer to the HUD/DOJ memorandum on reasonable accommodations,
153 item No. 12.

154 **SUZANNE HEMPHILL:** So, I want to highlight what Vickie said there. The request does not
155 have to be made in writing or on a certain form or use any magical terms. We just received a
156 question about slide 13 which is, what is a reasonable accommodation. Is this definition in the Fair
157 Housing Act? I'm not sure what you're getting at but if you go to the HUD/Department of Justice
158 joint statement on the reasonable accommodation under the Fair Housing Act, page six goes
159 through what is a reasonable accommodation for the purposes of the act and it includes three
160 examples so that might be helpful to you.

161 **VICKIE COVINGTON:** So, if you're a housing provider, you may be asking what inquiries can I
162 make if the resident asks for reasonable accommodations (slide #18)? A housing provider may ask
163 for information relevant to determining if a requested reasonable accommodation is necessary
164 because of a disability. For a disability that is not obvious, or the need is not obvious, a housing
165 provider may request reliable disability-related information that, first of all, is necessary to verify that
166 the person meets the act's definition of disability. Second, describes the needed accommodation,
167 and, third, shows the relationship or the nexus, or the connection between the person's disability
168 and the need for the requested accommodation. A doctor or other medical professional, a peer
169 support group, a non-medical service agency or a reliable third party who is in a position to know
170 about the individuals disability, may also provide verification of a disability. And there you can find

171 more information on a HUD/DOJ memorandum under reasonable accommodations, items 17 and
172 18.

173 **SUZANNE HEMPHILL:** This is slide is really important (slide #18). I'm sure we'll get a bunch
174 of questions because reasonable accommodation and accessibility is a very nuanced area, and there's
175 a lot of specific facts at hand when you examine something. You need the case specifics to be able
176 to answer it. We'll keep referring back to slide 18. We received a question about concerns about
177 potential fraud, so, Vickie, do you have thoughts on this? The person asks, how do we present
178 people from misrepresenting pets as service animals?

179 **VICKIE COVINGTON:** As Suzanne stated earlier in the presentation, I'm also an investigator,
180 and when someone brings allegations to us, that they've been discriminated against and they allege
181 they requested a reasonable accommodation, and housing provider did not provide that information
182 to them. We do not get into fraud. We investigate the allegations that are brought to us and we
183 always encourage housing providers to refer back to the memorandums that were issued by HUD
184 and the Department of Justice to make sure that the housing provider knows what the housing
185 provider's responsibilities are, when it comes to making an assessment of whether or not the person
186 is, first of all, disabled within the meaning of the act, and if they are requesting a reasonable
187 accommodation, can that person show them a connection between what they are asking for and the
188 reasonable accommodation request, for their disability. So, when it comes to trying to make a
189 determination whether or not a person is committing fraud, that's really not, as an investigative
190 agency, we are not chartered to look for fraud. We are only chartered to look for fair housing
191 violations, and I hope that answers that question.

192 **SUZANNE HEMPHILL:** So, if a housing provider, looking at slide 18, what inquiries can I make
193 if I wasn't asked for reasonable accommodations, as a housing provider, you're going way above and
194 beyond the questions on this page. You may run into some issues in fulfilling your responsibilities
195 under the fair housing act.

196 Vickie, there's also a question here, the questions are coming in. We love it. We're not going
197 to be able to get to all of them, but I'm really excited seeing you guys ask some hard questions, and
198 we'll do our best. Again our contact information is in this presentation, so you can e-mail this
199 specific question. This isn't your only chance to ask them. Vickie, if there are two residents that have
200 a disability, are we required to provide an assigned parking space for both individuals.

201 **VICKIE COVINGTON:** There, again, it would have to be an individualized assessment and we'll
202 talk about later on whether or not the disability is obvious or not obvious and what information the
203 housing provider can ask a resident to provide regarding the request for reasonable accommodation.
204 Just remember that each request has to be assessed on its own merit, so you can't use a blanket
205 assessment for each request that comes before you, and what we encourage housing providers to do
206 again is to refer back to the HUD and DOJ joint memorandums on reasonable accommodation, and
207 there's another handout that's attached called service animals and assistance animals for people with
208 disabilities in housing in HUD-funded programs. So, if you use these two documents to determine
209 what your exact housing responsibilities are, then you'll be fine. And you can also use the Texas
210 Workforce Commission, Civil Rights Division as a resource if there are questions that arise and
211 you're not sure how to handle them. So the Civil Rights Division is also available for technical
212 assistance, for not just housing providers but housing consumers as well.

213 **SUZANNE HEMPHILL:** Great. Okay. We have a second example for reasonable
214 accommodations (slide #19). There's a rental applicant who uses a wheelchair and advises the
215 housing provider that she wishes to keep an assistance dog in her unit even though the housing
216 provider has a no-pets policy. The applicant's disability is readily apparent, but the need for
217 assistance animal is not obvious to the provider. The housing provider may ask the applicant for
218 relevant information about the disability need for the dog.

219 **VICKIE COVINGTON:** Let's now cover what can't I ask if you're a housing provider. A housing
220 provider should not be asking the following, the nature and severity of an individual's disability, or if

221 an applicant has a disability, or if the person intending to reside in a dwelling or anyone associated
222 with the applicant has a disability. However, there are some exceptions. If the housing provider
223 offers accessible units to persons with disabilities, needing the features of these units on a priority
224 basis, then the question can be asked, or if the housing provider operates housing that is legally
225 limited to persons with specific diagnosis, such as chronic mental illness, and more information can
226 be found in the joint HUD/DOJ memorandum on reasonable accommodations, item No. 16.
227 Housing providers may be asking, what should I do when I receive a request (slide #21). Well, first
228 of all, you need to review and ensure your reasonable accommodations policy is consistent with the
229 act, and the joint HUD/DOJ memorandum on reasonable accommodations. You need to accept
230 verbal requests, you need to engage in the interactive process with the requester, and if the disability
231 is not obvious or the need is not obvious, housing providers can ask for appropriate reliable
232 disability-related information. Housing providers should provide prompt responses to reasonable
233 accommodation requests, even if it's to ask the requester for more information, and, very important,
234 document your actions regarding the request for reasonable accommodation. I need to let the
235 people in the training know that an undue delay in responding to a reasonable accommodation
236 request, may be deemed as a failure to provide reasonable accommodation.

237 **SUZANNE HEMPHILL:** Vickie, there's a question that came in about documentation. If a
238 request is not made in writing, so I'm guessing it's made verbally, what proof do you have the
239 request was discussed with the housing provider?

240 **VICKIE COVINGTON:** Well, I can answer that question as an investigator. We would ask the
241 requester what exactly they asked for, and how did they ask for it? Did they ask for it in writing? Did
242 they send the housing provider an e-mail? Did they write the housing provider a letter, or did they
243 go into the office and they ask for a reasonable accommodation? We would ask the person who
244 made the request, or unless they made the request, if there were other people in the office when they
245 asked the housing provider for the reasonable accommodation and we would ask the housing

246 provider similar questions. Did the person come into your office on April 1st, 2016, and, if yes, did
247 they have a conversation or discussion with you, and if the answer is yes, what exactly did you
248 discuss. What I find as an investigator, sometimes the housing provider may not recognize what the
249 person is asking for is the request for reasonable accommodation, and so they may not respond to
250 the person who is making the request, or they may send a request to their higher office, and there
251 may be like a month or two month delay in getting back with the requester. Sometimes what we find
252 is that the person who believed they were making a request for reasonable accommodations, when
253 they state the words to us, we will determine that based on what they said, they really didn't make a
254 request for reasonable accommodation.

255 **SUZANNE HEMPHILL:** This is Suzanne, for TDHCA, sometimes I see a complaint where a
256 household made a request. It's certainly much easier for us to follow up if we have everything
257 documented in the file so we do recommend that people document their request in writing, date
258 things. Though it's not required. It can help move things along and make it more clear for everyone
259 involved. Of course, a verbal request is a request.

260 Okay. So, back to example No. 1 with reasonable accommodations, and we got a bunch of
261 questions that came in around parking spaces. I think that's a hot topic. Housing provider has a
262 policy of providing unassigned parking spaces to residents. A resident with a mobility impairment
263 who is substantially limited in her ability to walk, requests an assigned accessible parking space close
264 to the entrance of her unit under reasonable accommodation. There are available parking spaces
265 near the entrance to her unit that are accessible but those spaces are available to residents on a first
266 come, first serve basis. What should the housing provider do?

267 **VICKIE COVINGTON:** The housing provider should make an exception to its policy of not
268 providing assigned parking spaces to accommodate this resident. There's a good discussion
269 regarding parking in the HUD/DOJ joint statement on reasonable accommodation you can refer to
270 items No. 6, reasonable modification memo also talks about parking being the only modification

271 that is also a reasonable accommodation, and that can be found in a joint statement of HUD/DOJ
272 memorandum on reasonable modifications, item No. 11. All right. Now we're going to move on to
273 other accessibility issues (slide #23). We're going to look at reasonable modification, design and
274 construction, terms, conditions or privileges for sale or rental of a dwelling and provision of housing
275 services or facilities. When it comes to reasonable modification, (slide #24) a refusal to permit at the
276 expense of the person having a disability, a reasonable modification of existent premises occupied,
277 or to be occupied by the person if the modification may be necessary to afford the person full
278 enjoyment of the premises is discriminatory. Let's say a tenant has a mother who comes to visit and
279 she uses a wheelchair. The tenant asked for a modification to build a ramp for the entry step to the
280 unit. It would be illegal to deny the request if the tenant will do it at his own expense and will
281 remove it when he moves. A comment made to people with disabilities is, we can't install a ramp
282 there, so you can't live in this complex. In the case of a rental, the landlord may, where it is
283 reasonable to do so, condition permission for modification, on the renter, agreeing to restore the
284 interior of the premises to the condition that existed before the modification, absent wear and tear.
285 For all covered multi dwellers that were built for first occupancy after the March 13, 1991, they have
286 to be designed and constructed in a way that makes them accessible and usable and these are the
287 design and construction requirements for properties under the Texas fair housing act and Federal
288 fair housing act. Covered buildings should have at least one building entrance on an accessible route,
289 unless it is impractical because of unusual characteristics to the site (slide #25). Unusual
290 characteristics have to be determined and documented before and not after the property is built. So
291 what that means, buildings have to be on an accessible route, at least one accessible route into the
292 building, and public and common use areas have to be accessible. What are some public and
293 common use areas? Those are laundry rooms, fitness centers, facilities, playgrounds, fire alarms,
294 mailboxes, storage areas, the pool, the activity center, and dumpsters and/or trash cans. Doors have
295 to be wide enough to allow wheelchair passage into and within all of the rooms and accessible routes

296 have to be into and through each covered unit. Other requirements include light switches, electrical
297 outlets, thermostats and other environmental controls in locations where a person in a wheelchair
298 will be able to operate them, that the walls have to be reinforced so that grab bars can be added later
299 on, if needed (slide#26). Kitchens and bathrooms have to be wide enough so that a person in a
300 wheelchair can maneuver about the space. Housing providers and housing consumers all want to
301 know who pays (slide #27). All right. So, housing providers may claim undue financial and
302 administrative burden when it comes to reasonable accommodations, if the reasonable
303 accommodation would constitute a fundamental alteration of the provider's operations, and here are
304 some of the areas that we would consider. The financial resources of the provider, the cost of the
305 reasonable accommodation, the benefits to the requester, the availability of other less expensive
306 alternative accommodations that would effectively meet the applicant or the resident's
307 disability-related needs. The fair housing act provides that while the housing provider must permit a
308 reasonable modification, the tenant is responsible for paying the cost of the modification.

309 However --

310 **SUZANNE HEMPHILL:** All right. So we're getting into details. So there's a series of questions
311 you can use to determine who pays for modifications (slide #28). Is it a single family or multi family
312 dwelling? Does the property receive federal financial assistance? When was the property built for
313 first occupancy? Does the property participate in a low-income housing tax credit program? What
314 type of accessibility feature is being requested? And does an agreement exist between the parties? Is
315 there something in the land use restriction agreement? Is there something that you sold someone a
316 single family home and had previously agreed to have an accessible feature, something with an
317 existing agreement between the two parties.

318 So, there are specific implications for properties that are subject to Section 504. Under the
319 regulations implementing Section 504 of the Rehabilitation Act of 1973, structural changes needed
320 by an applicant/resident with disability in housing receiving federal financial assistance are

321 considered reasonable accommodations and must be paid for by the housing provider in most cases.
322 So, all participants in TDHCA's Low Income Housing Tax Credit Program awarded after 2001 are
323 required to pay for reasonable accommodations including structural modifications to dwelling units
324 or public and common-use areas if they do not amount to an undue financial and administrative
325 burden. This is a really tricky area. Here is a flow chart from the Fair Housing Council of Greater
326 San Antonio (slide #30). So, thanks to them for creating this and letting us use it. This is a really
327 complex issue. This is also attached to the hand-out so you can print it out. I'm going to go through
328 a couple of these. So, if you have a scenario, and you are a single family home, there's a
329 questionnaire, is the subject dwelling unit in a single family home like a house or part of a multi
330 family dwelling? Say we have a house and I need a reasonable accommodation from a home owner's
331 association to be able to park my vehicle with a wheelchair attachment in the driveway because I'm
332 taking care of someone or I have a person with disabilities in my household. Okay? So, single family
333 homes, we're going down the chart. There are no federal funds in this. Is there an agreement? Do
334 you have an agreement with the property to have made that accommodation, something like that.
335 So, no agreement, the tenant is going to pay for that. So, on the other side of the chart, multi family.
336 So, the first big question, is the subject unit located in the building with four or more dwelling units?
337 Are you subject to the fair housing act? Yes, you have four units. Was the property built for first
338 occupancy after March 13, 1991? Yes. Does the modification fall under one of the seven fair
339 housing act design and construction requirements? Did you build this structure so it was not
340 complying with the law to begin with? So, it does not fall under design and construction and let's say
341 there is federal funds in this. Somebody needs a reasonable accommodation to have grab bars
342 installed and receive home funds from Texas Department of Housing and Community Affairs. Do
343 they also have tax credit money in there and were they awarded after 2001? So, let's say no, there
344 was not tax credit money in there. But did you make an agreement with the owner to pay for the
345 modifications? Do you have some agreement so that you wanted them to rent the apartment and

346 you say you pay it up front? Does it have tax credit? Yes, the owner would pay. Hopefully you can
347 go through this flow chart with your own scenarios. It's really specific on all of your funding sources
348 on your land use restriction agreement, on federal funds, all of this. It's important to know and go
349 through in detail.

350 Okay. Third example of reasonable accommodation (slide #31). Because of his disability an
351 applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable
352 accommodation. The housing provider may not require the applicant to pay a fee or a security
353 deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's
354 assistance animal causes damages to the applicant's unit or common areas of the dwelling, the
355 housing provider may charge the tenant for the cost of repairing the damage, if it is the provider's
356 practice to assess tenants for any damage they cause to the premises. So, Vickie, I want to go back
357 and find a question we had in here towards the beginning. We have your questions but may not have
358 a chance to answer all of them today. It is a specific question, and it gets to rules, when to treat
359 people the same or differently.

360 If a client is has a mental behavioral problem and not willing to get treatment and will not
361 follow the rules, what should we do if we are supposed to house homelessness first, the housing first
362 model, and then give the client services? Are we wrong if we kick someone out and we can't follow
363 the rules and this person has a disability?

364 **VICKIE COVINGTON:** I would say you have to go back and make an individualized assessment.
365 In the HUD/DOJ joint memorandum talks about circumstances if the housing provider has
366 objective evidence that the person is a threat to other residents living there, then there are certain
367 actions that the housing provider may take. What we do, we encourage housing providers to
368 document their actions, and there are a lot of housing providers who have an attorney that they can
369 consult with certain -- when certain issues arise, or apartment associations that would be able to help
370 guide them through next step as well.

371 **SUZANNE HEMPHILL:** Okay. We received another question. Do reasonable accommodations
372 apply to a resident that was able-bodied when they moved in but became disabled at a later point.

373 **VICKIE COVINGTON:** So, the way the laws read, the person is disabled if they have a physical
374 or mental impairment, a record of, or have been regarded as, and so once the person becomes
375 disabled, that's when the request for a reasonable accommodation kicks in. You do not have to, first
376 of all voluntarily, provide a reasonable accommodation, you have to wait until someone actually
377 requests a reasonable accommodation, and then you would go through the individualized
378 assessment to determine whether or not what they are asking for is connected to their disability.

379 Great. Moving on with the presentation. All right. So, when can a housing provider deny a request
380 for reasonable accommodation? (slide #32) Earlier, we talked about direct threats and the
381 circumstances surrounding a direct threat. If the housing provider has reliable objective evidence
382 that a person with the disability poses a direct threat to others, then the housing provider may deny
383 the request for reasonable accommodation. Also, if the request was not made by or on behalf of a
384 person with a disability, or if there's no disability related need for the accommodation, then the
385 request can be denied. The housing provider can also make a determination that the accommodation
386 is not reasonable; i.e., it would impose an undue financial and administrative burden on the housing
387 provider or it would fundamentally alter the nature of the provider's operations. If the request is not
388 reasonable, the housing provider should consider whether there is an alternative accommodation
389 that would effectively address the requester's disability-related needs.

390 The note at the bottom of your slide states that a fundamental alteration, it's a modification
391 that alters the essential nature of a provider's operation.

392 **SUZANNE HEMPHILL:** So, we asked -- we received a question, can you provide an example of
393 the third bullet on the slide. If providing the accommodation is not reasonable. I think we're going
394 to get to that later and I think it's an example of maybe moving plumbing structures around, things
395 like that, might not be financially reasonable, it could be too much of a burden, so we'll get back to

396 that.

397 Reasonable accommodations, the fourth example. A tenant has a severe mobility impairment
398 that substantially limits his ability to walk. He asks his housing provider to transport him to the
399 grocery store and assist him with his grocery shopping as a reasonable accommodation to his
400 disability.

401 The provider does not provide any transportation or shopping services to its tenants so
402 granting this request would require a fundamental alteration in the nature of the provider's
403 operations. The request can be denied but the provider should discuss with the requester whether
404 there is any alternative accommodation that would effectively meet the requester's disability related
405 needs without fundamentally altering the nature of its operation such as reducing the tenant need to
406 walk long distances by altering its parking policy to allow a volunteer from the local community
407 service organization to park her car close to the tenant's unit so she can transport the tenant to the
408 grocery store and assist with him with his shopping.

409 **VICKIE COVINGTON:** That covers that the fundamental alteration example. We got that
410 quicker.

411 **SUZANNE HEMPHILL:** Case scenario A, Complainant Organization, Inc. tested the ABC
412 apartments.

413 The tester identified herself as a person with disabilities who needed a service animal so she
414 would be afforded an equal opportunity to use and enjoy a dwelling. The tester stated that she had a
415 prescription from the doctor showing the need for the service animal. The respondents would not
416 accept the prescription and stated that the animal exceeded their weight limits. Respondents
417 requested the tester to present documentation that her 60 pound pit bull service animal was
418 registered. The tester requested that the requirements be waived for her service animal and the
419 respondents stated that the requirements could not be waived. Complainant Organization, Inc.
420 alleged that the provider was denied the reasonable accommodation request to waive this

421 discriminatory process. So, if true, would this violate fair housing laws? So, what do you think? Feel
422 free to show us your answers. I'm seeing yes. Do you think this would violate fair housing laws?
423 They are not allowing a person with disabilities to have a 60-pound pit bull service animal. Yes, it
424 violates fair housing laws. Yes. A couple no's in there. Can we deny aggressive service animals?
425 Possibly. So, Vickie, do you want to answer this for us?

426 **VICKIE COVINGTON:** Yes. So, this was the real case that was filed with the Texas Workforce
427 Commission, Civil Rights Division and prior to the conclusion of the investigation, the complainant
428 and respondent entered into a conciliation agreement where the respondent agreed to change its
429 requirement and force its staff to attend fair housing training so they would know what the
430 requirements are when it comes to a request for a reasonable accommodation. In this particular
431 scenario, the respondents would not accept the prescription. The animal exceeded their weight
432 standards, and, the housing provider required the service animal to be registered. And so if you refer
433 back to the HUD/DOJ memorandum on reasonable accommodation, those memorandums talk
434 about the reliable information that you can request for a disability, and it also talks about waiving the
435 weight limits, as well as -- it doesn't say that the service animal has to be registered. I would refer
436 folks back to the service animal and assistant animal for people with disabilities. That's an excellent
437 discussion in it regarding the documentation that housing providers can ask for. It also talks about
438 the requirement to waive the weight limit, if it is a service animal, and it also talks about whether or
439 not -- it doesn't have any requirement in there that the service animal has to be registered, or the
440 service animal has to be trained as well. Are there other questions --

441 **SUZANNE HEMPHILL:** There's a bunch on service animals. I'll just say reading this HUD
442 guidance, if you're concerned about an aggressive breed, on page 3 of this HUD guidance, it says
443 that a determination that an assistance animal poses a direct threat of harm to others or would cause
444 substantial physical damage to the property of others must be based on an individualized assessment
445 that realized an objective evidence about a specific animal's actual conduct not on mere speculation

446 or the fear about the type of harm or damage that an animal may cause and not on evidence that
447 about harm or damage that other animals have caused.

448 **VICKIE COVINGTON:** Okay. I think that clarifies it.

449 **SUZANNE HEMPHILL:** Case scenario B, complainant alleged that respondent's manager and
450 assistant manager asked her to give them \$300 for a pet deposit for her emotional support cat and
451 also to pay a monthly pet fee of \$10. They also threatened to send a lease violation notice to the
452 Housing Authority. Complainant alleged the manager was aware of her disability. The manager
453 asked complainant to come to the office and when she went to the office the manager told her to
454 sign an animal addendum for her cat. Complainant alleged that she was subjected to different terms
455 and conditions of rental and denied a reasonable accommodation due to her disability. Would these
456 violate reasonable housing laws, if true? So I'm going to read aloud some of your answers.
457 Yes, I'm seeing some yeses. Yes, folks believe this would violate fair housing laws. I think there's a
458 question about the animal addendum, if she should have to sign that.

459 All right. Vickie, what do you say?

460 **VICKIE COVINGTON:** All right. So, here's the case that we investigated and what we found was
461 the complainant's disability was not obvious and the housing provider asked her to provide
462 information from a reliable third party to show that she needed the cat. During the investigation, the
463 housing provider was given reliable third party information showing the complainant was disabled
464 and why she needed the cat. At that time, the housing provider approved the complainant's request.
465 We closed this out as no reasonable cause because at the time of the complainant's complaint she
466 had not given the housing provider the information from the reliable third party.

467 So, as you can see, these cases are -- really rely upon an individualized assessment when the
468 requester is asking for a change in the rules or policies, and the need is not apparent, then the
469 housing provider can ask for a reliable third party information to show why the person needs the
470 service animal that they are asking for.

471 **SUZANNE HEMPHILL:** And we had great feedback on that question. There's great smarty
472 pants saying, did she provide the documentation, and things like that. All right. Next case scenario.
473 Complainant is a person with disabilities which present him from walking and talking and
474 complainant uses a wheelchair. The complainant lived with his brother who had a general power of
475 attorney which allowed the brother to act on the complainant's behalf. His brother purchased a
476 wheelchair carrier in order to safely transport complainant and his wheelchair and the brother
477 parked the wheelchair carrier in the driveway in front of his home. However, the home owners
478 association demanded he remove the carrier citing a deed restriction. The complainant alleged the
479 HOA failed to make reasonable accommodation of allowing an exception to the deed restriction
480 when the home owner's association disapproved his request to keep the wheelchair carrier in the
481 driveway. If true, would this issue violate fair housing laws? Okay. Yes. I'm seeing lots of yeses. A
482 couple folks are not sure. There's a home owners association. So single family housing. There's some
483 adamant yeses on here. Okay, Vickie. What do you say?

484 **VICKIE COVINGTON:** So, a lot of property management companies have agreements with
485 home owners association to manage their properties. And this particular instance, the respondents
486 were charged with violating the Texas fair housing act and the case settled before trial began. Also,
487 in this particular case, the property management company settled before the charge was actually
488 issued. And in both case, the housing providers agreed to monetary relief to the complainant, and
489 they agreed to take fair housing training as well.

490 **SUZANNE HEMPHILL:** Case scenario D, complainant alleged she was subjected to different
491 terms, conditions, privileges, or services and facilities, and denied a reasonable accommodation
492 because of her disabilities. She stated the respondent manager's representative and the staff at the
493 apartments discriminated against her by denying her reasonable accommodation request to be
494 allowed to pay her rent according to the day she received her Social Security Disability income
495 check. So, her check arrives the third Wednesday of every month. The complainant alleges that

496 instead she received numerous late fees which put her in a financial bind. So, take a moment and
497 think it over. If true, would this violate fair housing laws? No, yes. No. She should pre-pay her rent.
498 No, she can pay her rent early. No, no, no. Lots of nos. A lot of yeses as well. Yes, it would.
499 Depends on if the apartment is flexible with other people. When she moved in was there an
500 agreement made? Asking a lot of good questions on here. No, the owner should treat all of the
501 people the same. Okay, Vickie.

502 **VICKIE COVINGTON:** Okay. So, what you have to remember, that when it comes to a
503 disability, this is the only time that you can treat people differently. There are three areas in the
504 Texas fair housing act, and Federal fair housing act that allows housing providers to treat people
505 with disabilities differently. That's reasonable accommodation, reasonable modification, and design
506 and construction. The other thing that you have to remember is that when someone files a
507 complaint with the Texas Workforce Commission, Civil Rights Division, those are allegations only
508 and we'll talk more in depth about the investigative process later on. In this particular case, before
509 the investigation was completed, the respondents and complainant entered into a conciliation
510 agreement, the respondents in this particular case, agreed to allow the complainant's rental payment
511 to be due on the third Wednesday of each month in conjunction with the receipt of her Social
512 Security Disability income check, and they also gave her a three-day grace period. The respondents
513 also agreed to reimburse the complainant all of the late fees that had accrued because they initially
514 denied her request. So, in this particular case, because we did not finish the investigation, we did not
515 issue a finding of no reasonable cause, neither did we charge it, because the parties entered into a
516 conciliation agreement.

517 When we have a complaint filed with the civil rights division, and the housing consumer is
518 alleging that they were treated differently, or they were not allowed a reasonable accommodation,
519 their investigative elements that we look at. So, here are the elements of proof questions (slide #38).
520 First of all, does the resident or the applicant have a disability according to state and federal law?

521 Did the housing provider know or reasonably should have known that the resident or applicant is
522 the person with a disability? For example, when the person turned in their application, did they
523 indicate on the application that their income was coming from, for example, maybe a Veteran's
524 Affairs because of a disability? Did the resident or applicant request a reasonable accommodation
525 and the rules, policies, practices or services of the housing provider never for example, if the rent
526 has to be paid on the first of the month, and the person asks if they could pay the rent at a later date
527 than the first of the month, was the requested accommodation necessary to afford the resident or
528 applicant with an equal opportunity to use and enjoy the dwelling? So, if we go back to the rent
529 situation or the payment of rent late, was the person limited in working? Did the person have an
530 opportunity to work so that they could get income coming in, by the first of the month? We would
531 certainly take that into consideration. Did the housing provider refuse the resident or applicant's
532 request to make an accommodation, or did they fail to respond, or did they delay responding to the
533 request in such a way that it amounted to a denial. So, please take a look at did they fail to respond,
534 as an investigator sometimes during the investigation, we find that the housing provider simply just
535 didn't respond to the request at all.

536 When it comes to terms and conditions (slide #39), you cannot treat people who are
537 disabled differently when it comes to, for example, issuing lease violation notices. You also cannot
538 require disabled persons to sign an extra addendum, for example, to use the pool, because the
539 housing provider is fearful that a person who is disabled and using the pool could harm themselves
540 and hold the property liable.

541 So, we're going to talk about the differences between the Americans with Disabilities Act
542 and Section 504 (slide #40). Title 3 of the Americans with disabilities act or ADA, covers public and
543 common use areas, and housing developments when these public areas are, by their very nature
544 open to the general public, or when they are made available to the general public. For example,
545 covers rental offices, since by their nature, the rental offices are open to the general public. In

546 addition, if a day care center or community room is made available to the general public, it would be
547 covered by Title 3. Title 3 applies irrespective of whether the public and common use areas are
548 operated by a federally assisted provided or by a private entity. If the community center is only open
549 to residents of the building Title 3 would not apply. HUD's regulations for Section 504 of the
550 Rehabilitation Act of 1973, as amended, as apply to federally assisted programs can be found at 24
551 CFR part 8. Recipients must first take steps to ensure that their programs and services are ready
552 accessible to and usable by person with disabilities to the maximum extent feasible and I think
553 Suzanne is going to talk about those later on in the presentation. When an applicant or tenant
554 requires an accessible feature of policy modification to accommodate a disability, and federally
555 assisted housing providers also have special requirements. Now let's take a quick look at ADA
556 requirements versus Section 504 requirements (slide #40). Under the ADA, it limits the definition of
557 service animal to dogs and it does not include emotional support animals. Also, under ADA, the dog
558 has to be individually trained. ADA applies to state and local governments as well. The inquiry is
559 limited to two questions. Is the service animal required because of a disability and what work or task
560 has the animal been trained to perform? And entities cannot request documentation. We talked
561 earlier about the housing provider who asks for registration. So, even under ADA, you cannot ask
562 for documentation. Let's talk a little about 504. 504 does include emotional support and assistance
563 animals and they are not considered as pets. These animals are not required to be trained and they
564 are not required to be certified. Note that these animals may accompany the person in all areas of
565 the premises. So, you can't say you can't take your service animal to the pool, or you can't take your
566 service animal to the activity center. The breed, the size, and the weight limits may not be applied.
567 And owners responsible for the cost of the reasonable -- or reasonable accommodation and
568 modification in most cases. Suzanne has covered some of the information already, and she's going to
569 talk about it later on as well.

570 **SUZANNE HEMPHILL:** (slide #41) Okay, so we wanted to get into some of TDHCA's specific

571 rules so these are for those participating in TDHCA programs, under 10 TAC 1.204 reasonable
572 accommodations a recipient that owns a low income housing tax credit or multi-family bond
573 development with no federal or state funds awarded before September 1, 2001 must allow but may
574 not need to pay for reasonable accommodation, except if the accommodation requested should have
575 been made as part of the original design and construction requirements under the fair housing act or
576 is a reasonable accommodation identified by the U.S. Department of Justice with a de minimus cost
577 that can be something like an assigned parking spot, no deposit for service or assistance animals. In
578 general, denials of reasonable accommodations often occur due to misunderstandings of what
579 reasonable accommodations are and how they work. So, please, please, please. Do not just deny. We
580 want you to go through and engage in an interactive process and consider what the household needs
581 and try to communicate and figure it out. So, most of the complaints I see related to denial from
582 reasonable accommodations, it's just a misunderstanding of what reasonable accommodations are
583 and how they work.

584 So, responses to -- this is a new rule that went into effect January 2nd, 2017. Responses to
585 reasonable accommodation request must be provided within a reasonable amount of time not to
586 exceed 14 calendar days. The response must be either to grant the request, deny the request, offer
587 alternatives to the request, or request additional information to clarify the reasonable
588 accommodation request. Should additional information be required and an interactive process is
589 necessary, this process must also be completed within a reasonable amount of time and undue delay
590 in responding to reasonable accommodation request may be a failure to provide a reasonable
591 accommodation. So, again, within 14 calendar days if you're participating in TDHCA program you
592 must do one of four things, grant the request, deny the request, offer alternatives or clarify the
593 request. So we had a question about that issue with the rent checks. So, for TDHCA, in our rule, we
594 have examples of reasonable accommodation, so I'm going to run through those quickly.
595 A resident requests to move the rent due date to coincide with their Social Security Disability check.

596 It would not be reasonable to wait 14 calendar days to respond to this request. A resident requests a
597 designated accessible parking space. The individual's disability status and connection to the
598 reasonable accommodations request are not clear. So documentation must be requested within 14
599 calendar days to clarify the resident's request engaging in an interaction process to determine the
600 nature of the request and needs of the resident. An applicant with a disability requires a service
601 animal to alert of impending seizures. The shelter has a no pets policy. It would not be reasonable to
602 wait 14 days to respond to this request.

603 A person with a disability requests modifying door knobs to levers. The property must respond to
604 request within 14 calendar days although it is reasonable to take additional time to install the
605 modified door knobs.

606 A housing provider requires the tenant sign a 12 month lease.

607 A household signs the lease, but after a few months has to move out in order to live in a
608 nursing home. The household requests a reasonable accommodation to be let out of this lease
609 without a fee, the property may request additional information about the disability and the
610 relationship between the request is not clear but must ask for this information within 14 calendar
611 days.

612 An applicant requests a reasonable accommodation to have assistance in filing out a program
613 application for the housing trust fund program. It would not be reasonable to wait 14 calendar days
614 to respond to this request. I also want to take a moment to emphasize we have received numerous
615 complaints recently. You cannot charge a fee for granting reasonable accommodation requests.

616 We've seen reasonable accommodations being charged fees. They might want to move to a different
617 room but you charge a fee to do it or you need to charge a second deposit that should not be
618 happening. Here's accessibility examples. A resident requires an accessible parking space that will
619 accommodate her wheelchair equipped van. A reasonable accommodation would include relocating
620 and enlarging an existing parking space that will serve the van. These are in the rules, 10 TAC 1.204,

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

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

630 So, this is the example we mentioned earlier if something is too expensive or a financial
631 burden (slide #48). A resident with quadriplegia requests replacement of the bathtub in his unit with
632 a roll-in shower. Due to the location of existing plumbing in the building and size of existing
633 bathroom a plumber confirms installation of a roll-in shower in that unit is impossible. The on sight
634 manager should meet with the resident to explain why the roll-in shower cannot be installed and
635 explore alternative accommodations with the resident. We're still engaging in interactive process
636 even if the exact request cannot be accommodated.

637 **VICKIE COVINGTON:** So, when a complaint is filed with the Texas Workforce Commission,
638 Civil Rights Division, part of the investigation includes checking to see if the property is receiving
639 any type of federal state or local funding and we work closely with the Texas Department of
640 Housing and Community Affairs, we look at their rules for that property, and we try to follow the
641 policies and procedures that TDHCA requires when it comes to a reasonable accommodation, a
642 reasonable modification, and so if you -- if we determine that your property falls into that category,
643 we will certainly look at those rules in order to reach a determination of whether or not the property
644 is complying with those requirements.

645 All right. So, when it comes to complaints, if a complaint is filed against a housing provider,

646 then the provider can expect that the provider will be notified of the allegations in writing. The
647 provider will most likely be invited to mediate the allegations in the complaint and if the housing
648 provider decides not to mediate, the provider may file an answer that has to be in writing, under
649 penalty of perjury, and the answer can be amended at any time. Because everyone in America lives
650 somewhere, you may find a circumstance where you believe that you then discriminated against in a
651 housing transaction, and if that's the case, you can go to [TexasWorkforce.org/CivilRights](https://www.texasworkforce.org/CivilRights) and fill
652 out an electronic form to file your complaint. The civil rights division has a free mediation program
653 that is offered from the time the complaint is filed (slide #50). Those who participate in our
654 mediation program and is successful finds that it eliminates lengthy investigations, thereby also
655 eliminating expensive litigation. Those complaints are usually resolved pretty speedy. And it saves
656 time and money, because the complaints are resolved so quickly. Suzanne talked earlier about the
657 reasonable accommodation process and when people contact her, there's usually -- it's just a
658 misunderstanding about the process, and we find that, too, at the civil rights division, and so,
659 mediation oftentimes will open the lines of communication between the parties. Mediation also
660 allows each party to understand the position of the other party, and if an agreement is reached, it is
661 binding on both the complainant and respondent. All right, so, in 2016, when it comes to the basis
662 of the protected class of complaints that were filed with the civil rights division, 77 percent, that is a
663 huge number, were filed on the basis of disability (slide #51). And if you'll notice, only 741
664 complaints were filed. The reason that numbers do not add to 100 percent or to 741, it's because
665 most of our complaints are filed with multiple bases, for example, a person may allege that they were
666 treated differently, or refused reasonable accommodation because of disability, but they will also
667 allege that they were treated differently because of their race. So, that is why they do not total to 741
668 or 100 percent. And I would also like to let you know that last year, last fiscal year, there were
669 several organizations that filed complaints based on tests that were conducted, and one of the
670 attendees had asked earlier about how do we determine whether or not someone asks for a

671 reasonable accommodation. With an organization, the organization will take the test, and so we
672 gather the recording as part of our evidence, and so those issues have proved to be -- or that
673 methodology, has proved to be very helpful when it comes to conducting the investigation of a test.

674 All right. And so the issues that we looked at during fiscal year 2016, the highest percentage
675 dealt with terms and conditions (slide #52). So, that that means treating someone differently because
676 of a protected class. And just remember, when it comes to people who are disabled, you should not
677 treat them differently unless they make a request for a reasonable accommodation, a reasonable
678 modification, that will help them enjoy their dwelling. Or help them in such a manner that they
679 would be able to stay in the unit of their choice.

680 **SUZANNE HEMPHILL:** So, Vickie, we got -- we received a question. How do you handle lease
681 violations for a resident with a disability who has had trash sitting outside their door for several days
682 at a time and it sounds like you might have just answered that. If there's a resident that has a
683 disability and they have not made a reasonable accommodation request, but their lease violation
684 could be related to their disability?

685 **VICKIE COVINGTON:** So, oftentimes what will happen, the person will receive a lease violation
686 notice and it is at that time that they will request a reasonable accommodation. For example, a lot of
687 the our cases involve the maintenance person entering a unit and opening a door and being greeted
688 by a dog or some other animal, and so the housing provider will go ahead and issue a lease violation
689 notice, but then the person will come in, and say, no, no, no. This is my service animal and here's my
690 documentation, so, it's at that time then the housing provider need to address the request for
691 reasonable accommodation, and it would be similar to trash, as well. If the person, for example,
692 cannot open the dumpster in which to place the trash, or they have an issue with getting the trash to
693 the dumpster, they may ask for a reasonable accommodation, and once the housing provider gets
694 that request, the housing provider has to determine whether or not that request is going to change
695 their operation if they are not taking the trash out for all residents, then taking the trash to the

696 dumpster for a disabled person, may or may not be a request for a reasonable accommodation, and I
697 think Suzanne and I talked about the trash issue specifically, when it comes to properties that are
698 receiving TDHCA funds.

699 So reasonable accommodations were also a high percentage of our complaints, and those as well
700 were from testing organizations. We still get testing organizations complaints that we investigate as
701 well.

702 **SUZANNE HEMPHILL:** So, what can housing providers do? (slide #53)

703 **VICKIE COVINGTON:** Well, first of all, housing providers can get educated. That's why we set
704 aside time in the month of April, which is Fair Housing Month. We try to reach out to as many
705 housing providers and housing consumers as we can, so that housing providers will know what their
706 responsibilities are. We also encourage housing providers to don't just establish policies and
707 procedures that are non-discriminatory, because no matter how beautiful your policy is, it's going to
708 be ineffective, if you don't implement them and if you don't follow them, so, we encourage housing
709 providers to implement non-discriminatory policies and procedures and to apply them consistently,
710 absent a request for reasonable accommodation or reasonable modification. Remember, when it
711 comes to people who are disabled, if they ask for reasonable accommodation or reasonable
712 modification, the housing provider is obligated to enter into the interactive process and to respond
713 appropriately. Housing providers -- it's very important that the housing provider recognize when
714 someone is asking for a reasonable accommodation, or asking for a reasonable modification, just
715 remember that there are no magic words. They do not have to mention the Texas Fair Housing Act
716 or the Federal Fair Housing Act, although I will let folks know that housing consumers are
717 becoming more and more educated, and in a lot of cases, they are very specific when they turn in, in
718 writing after a request for reasonable accommodation or modification. We also encourage housing
719 providers to document all of their interactions with a resident or applicant when it comes to a
720 request for a reasonable accommodation. Similarly, housing providers should also get educated.

721 Housing consumers should know what the law is and know their rights (slide #54). Housing
722 consumers should also read and become familiar with the lease, any addendums are associated with
723 the lease and any other housing provider information that concerns their tenancy or residency.
724 Housing consumers should also comply with the terms of the lease agreement. As an investigator,
725 most of the lease agreements that I have reviewed, have a clause in them regarding the housing
726 providers' responsibilities when it comes to a request for reasonable accommodation or reasonable
727 modification. We also encourage housing consumers to document their interactions with the
728 housing providers, and if housing -- if a complainant -- not complainant, if a consumer believes he
729 or she has been discriminated against, or he or she has asked for a reasonable accommodation, or
730 reasonable modification, and it was truly reasonable, and the housing provider denied it, the housing
731 provider did not respond, or the housing provider delayed in such a way that it amounted to a
732 denial, then the housing consumer has a right to file a Fair Housing Complaint with HUD or they
733 can file it with the Texas Workforce Commission, Civil Rights Division. All right. So, now we get to
734 the questions part of our presentation that we haven't been able to get to previously. But I would
735 also like to encourage folks to sign up for the Texas Workforce Commission, Civil Rights Division
736 Civil Rights Reporter which is the newsletter that can be found at this link on your slide (slide #55).
737 The reason I encourage you to sign up for it, is that it contains current information about equal
738 employment opportunity complaints that are filed in the state of Texas, fair housing complaints that
739 are filed in the State of Texas, it contains recent developments and case law. They might contain
740 cases where we actually filed a charge. And they also contain a section on upcoming training so that
741 folks who are interested in taking equal employment opportunity training or fair housing training
742 will know exactly how they can take that training.

743 **SUZANNE HEMPHILL:** Okay. So, we are at 2:59. We are going to run over by a couple minutes
744 and try to answer these questions. A question came in. I think it's on slide 40. The second bullet
745 states the dog has to be individually trained yet we cannot ask for training paper registration

746 documents. So, what is going on there. I'm going to navigate to slide 40. And it's something Vickie and
747 I were talking about earlier today.

748 **VICKIE COVINGTON:** Right. So great. The information that you see on that slide was taken
749 directly from the HUD guidance, the service animals and assistance animals for people with
750 disabilities and housed in HUD-funded programs. So, the interpretation that you see on the slide
751 came from that particular memorandum, so if you go ahead and you ask for information that is --
752 that you're really not supposed to ask for, then you may be getting into an area that could end up
753 with the complaint being filed with the Texas Department of Housing and Community Affairs or
754 filed with the civil rights division. So, those aren't rules that the civil rights division made up. They
755 are actually -- it's guidance that is coming from HUD.

756 **SUZANNE HEMPHILL:** So, the slide referred to a dog having to be individually trained and that
757 is under the ADA. So, if you are a housing provider that is covered under the Fair Housing
758 Act, this service animal and assistance animals for people with disabilities guidance from HUD
759 outlines your responsibilities under the fair housing act in Section 504 and those are different than
760 under the ADA. So there are different rules than guidance. It gets a little confusing. This slide is
761 talking about other disability laws. The dog having to be individually trained is under the ADA.

762 **VICKIE COVINGTON:** And I will tell you as an investigator, there are people who file
763 complaints with us, who will specifically say, the housing provider asks for registration, so how do
764 they get registration? They go to a website. They download pieces of paper, and they provide it to
765 the housing provider, and then that housing provider will say, well that's fraud. When in fact, the
766 housing provider should not be asking for registration. The housing provider needs to ask for
767 third-party reliable information that is going to help the housing provider make the decision on
768 whether to approve or deny or ask for more information when it comes to a request for reasonable
769 accommodation.

770 **SUZANNE HEMPHILL:** So, this question came in again. What kind of documentation are

771 landlords allowed to ask you for related to service animals? So I'm going to zoom to slide 18 and see
772 if that will answer it for us. So, what can I ask for when I am evaluating requests for service animal?

773 **VICKIE COVINGTON:** All right. So, according to guidance that's out there from HUD and
774 Department of Justice, there are some things that a housing provider can ask for, but the housing
775 provider must ask for information that is relevant to determining if a request for reasonable
776 accommodation is necessary because of a disability. And so there are some agencies out there, for
777 example, apartment associations that will help housing providers develop a blanket memo to ask for
778 information. You can never go wrong if you consult the HUD/DOJ joint memorandum on
779 reasonable accommodation, lift the language out of that memo, provide it to the person who is
780 making the request and ask them to come back with information that is responsive to your request.
781 And on slide 18, it says, for disability that is not obvious. So, remember, if a person is in a
782 wheelchair, and they come into your office, and they ask for a closer parking space, most likely that
783 disability is obvious, so you would not ask them to bring additional information. If a person comes
784 into your office and they are wearing a leg brace and they are limping, and they ask for a close end
785 parking space, most likely, you are not going to ask them for additional documentation. However, if
786 a person walks into your office and they may have, for example, multiple sclerosis, and they are not
787 experiencing a relapse at that time, and they ask for a close end parking space, then you may want to
788 ask them to bring you back some reliable third party information that is going to help you make a
789 decision on whether to approve, deny, or ask for additional information.

790 **SUZANNE HEMPHILL:** Okay. And there's a couple questions in here that are great about the
791 need for translation services. Are we required to have all notices, leases, et cetera, in all languages?
792 So, that's a big question. We touched on it last week. There's specific guidance out there on fair
793 housing act implications for national origin and those with limited English proficiency. I guess from
794 TDHCA standpoint, if you want to send me an e-mail about your property, I can look up the
795 funding source and help provide some information. Vicky, I don't know if you have other thoughts.

796 Specifically, what is your market, are you coming across someone who has limited English
797 proficiency or are you trying to be proactive?

798 **VICKIE COVINGTON:** The HUD guidance on this area is fairly new and I don't believe we've
799 seen any of those cases at the Texas Workforce Commission, Civil Rights Division but the HUD
800 guide is mostly centered around disparate impact. So that type of case would be very fact specific,
801 and right now, the guidance is so new, basically, what we are communicating to housing providers, is
802 to be familiar with the guidance, and if you have any questions that you're really not -- or if you're
803 really not sure what the guidance means, you can always contact us for technical assistance, and we
804 will try our best to get some information back to you, that will help you with this particular area
805 (slide #56).

806 **SUZANNE HEMPHILL:** That's right. We would absolutely prefer to answer your questions on
807 the front end than deal with complaints so maybe people didn't have equal access to the housing or
808 equal enjoyment at the dwelling. Feel free to e-mail those question, my contacts on there. There are
809 other questions out there. Sorry we didn't have time to get to all of them. Some of them are great
810 questions but really fact specific on your specific situation. So, with that, I want to thank all of you
811 for attending and participating in the TDHCA's fair housing month webinar series. This concludes
812 today's presentation and the series. I want to thank TDHCA staff who helped make this happen,
813 who have helped this run fairly smoothly. We'll have the slides posted as well as a link to the
814 recording when that's available. Thank you for attending today and working to promote fair housing,
815 choice and opportunity in Texas.

816 **VICKIE COVINGTON:** All right.

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