

# **Fair Housing Webinar Series**

April 10, 2018 from 2:00 – 3:30 pm

## **Fair Housing Webinar Series I:**

### **Fair Housing Overview**

Presented by

TDHCA and TWC

1 **SUZANNE HEMPHILL:** Hello, you're joining the webinar presented by Texas Housing Community  
2 Affairs in collaboration with the Texas Workforce Commission Civil Rights Division. We have about 600  
3 folks signed up today. We'll wait for more people to join the call. Included as a handout are the presentation  
4 slides. Feel free to download the handouts and follow along with the presentation. Again, we'll begin in  
5 approximately 15 minutes. Please stand by.

6 **SUZANNE HEMPHILL:** Good afternoon.

7 **SUZANNE HEMPHILL:** Good afternoon you're joining Texas Housing and Community Affairs in  
8 collaboration with Texas Workforce Commission Civil Rights Division for Fair Housing Overview webinar,  
9 we'll get started in another ten minutes or so. Included as a handout are presentation slides. Feel free to  
10 download that, go to the go-to webinar software panel, look for handouts and download all four. The last  
11 one is an overview from the slides we'll be discussing today. We'll get started in another ten minutes or so.  
12 We're going to give folks another chance to join us.

13 **SUZANNE HEMPHILL:** Good afternoon, thank you for joining our webinar series today. My name is  
14 Suzanne Hemphill with Texas Department of Housing and Community Affairs. April is fair housing month  
15 and TDHCA is hosting a two-part series. Today's presentation is a fair housing overview presented by Texas  
16 Workforce Commission Civil Rights Division. This is the first presentation in our series and we'll provide a  
17 foundation for next week's presentation on reasonable accommodations with accessibility. If you haven't,  
18 please answer the two polls we have started for you.

19 **SUZANNE HEMPHILL:** We've got the second poll on the screen, if you can go ahead and answer it.  
20 We have about 70 percent of folks answering it. We'd like to get your feedback on this. We'll keep it up for  
21 another 30 seconds then get started with the presentation. Thanks, everyone for participating in those polls.  
22 On the screen, you should be seeing our webinar series. It does follow today's webinar 2:00 to 3:30 p.m. It  
23 will be recorded and available on the Department's website under the fair housing section training and

24 presentation. When it's posted on the department's Website we'll send a link to all participants. Today we'll  
25 take a limited amount of questions throughout the webinar. You can submit those via the chat box. Feel  
26 free to type in questions and we'll try to answer them as we go. Attendees are on mute throughout the  
27 presentation, we set time throughout the middle and end of the presentation to answer questions. If we  
28 don't answer the questions today my contact information as well as the Texas Workforce staff will be  
29 available so feel free to reach out to us. Included as the handout, if you go to the go-to webinar box, click  
30 on the orange arrow to expand it but you'll see a bunch of different labels. You'll be looking for the  
31 handouts box and click down on that side arrow and there are your handouts one includes the webinar slide.  
32 You have a copy of it today. You can download that today and refer to it throughout the presentation or  
33 just follow along with us. The session will last around 75 minutes and will be co-presented by Ed Hill and  
34 Chalisa Warren. I'm Suzanne Hemphill. I work on all things fair housing at the department. I have been here  
35 for seven years working on single family and multifamily programs as well as Census data and reporting  
36 projects. I have Masters of Urban Planning from University of Illinois in Urbana, Champagne. So, Edward  
37 or Ed Hill, has served as Texas Workforce Commission Civil Rights Division Training and Outreach  
38 Specialist since December, 2017. Prior to joining the division, Ed held the position of Project Manager /  
39 Senior Instructional Designer at CSRA Federal contractor. There he oversaw research, development,  
40 production, deployment and evaluation of instructor led and web based training materials for the U.S.  
41 intelligence community, Department of Defense and Federal law enforcement academies.  
42 Ed is a U.S. Army veteran and a member of disabled American veterans and veterans of foreign wars  
43 organizations. He earned a Bachelor of Science degree from the American Intercontinental University in  
44 Criminal Justice with a concentration in homeland security and emergency management.  
45 Chalisa Warren joined the Texas Workforce Commission Civil Rights Division in March of 2015 as a  
46 housing investigations supervisor. Before joining Texas Workforce Commission, Chalisa worked at the city  
47 of Dallas Fair Housing office. She worked there as a Fair Housing Investigator and was eventually  
48 promoted to Senior Public Information Representative.

49 In that capacity she was responsible for coordinating and conducting Fair Housing training and outreach  
50 within the city of Dallas. She earned her Bachelor of Arts in Political Science from Xavier University of  
51 Louisiana - in New Orleans. I She later earned her JD from John Marshall Law School in Atlanta, Georgia. I  
52 want to thank Ed and Chalisa for presenting for us today. I'll turn it over to Ed.

53 **ED HILL:** This is Ed Hill, Civil Rights Division. I'll start off with my agenda. Today the agenda is in front  
54 of you, hopefully. We'll start off with training objectives, then move to the purpose of the Federal Fair  
55 Housing Act and State of Texas Fair Housing Act, then we'll go on to the mission and vision of the Civil  
56 Rights Division, we'll discuss covered or protected classes, issues and discriminatory practice, the HUD  
57 disparate impact guidance, exemptions, fair housing testing mediation and resource. We'll start with  
58 objectives. At the end of this training we expect you to identify the purpose of Federal Fair Housing Act  
59 and Texas Fair Housing Act, recognize the covered and protected classes, recognize issues and  
60 discriminatory practices, identify exemptions per the act and understand fair housing testing. Our mission at  
61 the Civil Rights Division is to reduce discrimination in employment and housing through education and  
62 enforcement of state and Federal laws. Our vision is to help create an environment in which citizens of the  
63 State of Texas may pursue and enjoy the benefit of employment and housing that are free from  
64 discrimination. So we move on into the protected classes. We'll start off with sex -- I'm sorry, we'll start off  
65 with -- try that again. I'm sorry, Texas Fair Housing Act, fair housing is not a best practice, it's the law. The  
66 purpose of the Fair Housing Act is, within constitutional limitations, provide for fair housing throughout  
67 the United States. According to the Texas Property Code chapter 301, the Texas Fair Housing Act, the  
68 purpose of this act is to, one, provide for fair housing practices in this state, two, create procedures for  
69 investigating and settling complaints of discriminatory housing practices and three, provide rights and  
70 remedies substantially equivalent to those granted under Federal law. Texas Fair Housing Act mirrors the  
71 Federal Fair Housing Act and both contain procedures for investigating and settling complaints. Now, we  
72 move on to the protected classes.

73 The whole point of the fair housing act is to avoid and prevent discrimination. Discrimination is defined as

74 difference and treatment because of membership in one or more of the protected classes. However, not  
75 every difference is and treatment is discrimination. Despite the fact that the fair housing laws have been  
76 around for many years, housing discrimination still occurs. So, just who is protected? There are seven  
77 covered and protected classes under the Federal and state laws, they are race, color, national origin, familial  
78 status, religion, sex, and disability. So, what specifically do fair housing laws prohibit housing providers and  
79 landlords from doing? It prohibits them from basing housing decisions on a person's protected class. Also,  
80 you may not or cannot apply different standards or apply standards differently to anyone because of their  
81 protected class. In addition, state and Federal law prohibit harassing anyone based on protected  
82 characteristics, finally the law says that you cannot retaliate against any applicant, tenant, buyer or consumer  
83 for engaging in protected activities, such as complaining about alleged discrimination, filing discrimination  
84 complaints against the housing provider, or testifying in hearings and Court proceedings concerning  
85 discrimination complaints.

86 The first protected class: race. Race is a classification system used to categorize people into large and distinct  
87 populations or groups by inherent appearance, ethnicity and social status. For fair housing purposes, Asian  
88 is defined as person having origins and any of the original peoples of the Far East, southeast Asia, or the  
89 Indian sub continent, including, for example, Cambodia, China, Japan, Korea, Malaysia, Pakistan, the  
90 Philippine Islands, Thailand and Vietnam. African-American or black is defined as a person having origins  
91 in any of the black racial groups of Africa, terms such as Haitian or Negro can be used in addition to black  
92 or African-American. Native American, Indian or Alaskan Native is defined as a person having origins and  
93 any of the original peoples of North and South America including Central America, and who maintains  
94 tribal affiliation or community attachment. Native Hawaiian or other Pacific Islander is a person having  
95 origins and any of the original peoples of Hawaii, Guam, Samoa or other Pacific islands. White is the person  
96 having origin of any original people of Europe, Middle East or North Africa. Some identify themselves as  
97 having more than one race. As you probably already know, it's illegal to discriminate against any housing  
98 applicant or tenant based on stereotypes or assumptions. It's also illegal to discriminate against an applicant

99 or tenant because that person is married to someone of a different race or associates with a person of a  
100 certain racial group. Racial slurs, derogatory comments, threats or other verbal or physical conduct based on  
101 a person's race are illegal. Harassment based on a person's race also violates the fair housing laws. In  
102 addition, state and Federal housing laws prohibit discrimination, based on characteristics associated with  
103 race such as hair texture or facial features.

104 Next protected class is color. Color refers to a person's skin color. Color is separate from race because  
105 people can discriminate solely on color. For example, someone can discriminate against another person  
106 whose skin is lighter or darker. Those discriminating based on color may make assumptions about a person's  
107 intelligence, social status, education, income and/or other characteristics, an example of color discrimination  
108 is making housing decisions that favor individuals with lighter complexions over those with darker  
109 complexions, even if the individuals are the same race or national origin, which brings us to our next class,  
110 national origin. In Texas, national origin discrimination is an issue. No one can be denied housing or  
111 housing opportunities because of his or her birth place, ancestry, culture or because of a housing provider's  
112 perception that a person belongs to a certain ethnic group. Unfair or illegal housing related services directed  
113 to Limited English Proficient or LEP individuals or those who speak a particular language may also  
114 constitute intentional discrimination. Advertisements containing blanket statements such as all tenants must  
115 speak English, turning away all applicants who are not fluent in English or making statements disparaging  
116 tenants from speaking non-English languages may be discrimination. If a housing provider is required to  
117 provide housing related language assistance services to LEP persons under Federal law, state law or local  
118 law, or by contract, and the housing provider fails to comply with the requirement, this, too, may constitute  
119 intentional discrimination. By failing to comply with the requirement to provide language assistance, the  
120 housing provider may be denying individuals based on their national origin and equal opportunity to enjoy  
121 the housing benefits to which that requirement entitles them.

122 Protected class: familial status. This status means the make-up of your family unit. Familial status includes  
123 persons who have children under the age of 18, or living with their parents or legal custodians, pregnant

124 women, and people who are seeking to secure the custody of children under 18. Housing providers cannot  
125 refuse to rent or sell to a woman because she is pregnant, nor can they refuse to rent or sell to a pregnant  
126 woman because of prejudices against a pregnant applicants. Examples of a landlord or housing provider  
127 statements that indicate unlawful discrimination are, we need to increase your security deposit to cover all of  
128 your kids, or, sorry, we only allow one child per bedroom. It is illegal to segregate families and/or pregnant  
129 women by assigning them to specified geographic areas, for example, it is illegal for housing providers to  
130 deny or limit families or pregnant women from purchasing or occupying certain properties or buildings. For  
131 example, you can't rent that unit. Families aren't allowed in that building because older residents don't want  
132 children there. That is a statement that indicates unlawful discrimination.

133 Our next class is religion. And religious discrimination is an important issue today and is an important issue  
134 that has long gotten housing providers in the trouble in the past. Simply put, the laws say you cannot  
135 discriminate against a person because of his or her religion. Religion refers to all aspects of religious beliefs,  
136 observances and practices, discrimination based on religion includes overt discrimination against members  
137 of a particular religion, indirect discrimination such as home owner association restrictions of symbols or  
138 decor regarding religious practices. Examples of discrimination based on religion could exist if people hear a  
139 landlord, real estate agent or lender say I will show you neighbors near -- I'll show you neighborhoods with  
140 synagogues or near synagogues or we specialize in lending to Christians.

141 Next class is sex. Discrimination based on sex or sexual stereotype perceptions. State and Federal law is very  
142 clear that any type of discrimination in housing based on a person's gender is prohibited. State and Federal  
143 laws also prohibit discrimination based on stereotypes and assumptions about a person's gender. In other  
144 words, you cannot take gender into account in rental and sale of real estate or any other housing decisions.  
145 This category includes sexual harassment, gender stereotyping, and discriminatory practice pricing because  
146 of pregnancy. Discriminatory statements may include we don't rent to single men, or I can take the price  
147 down if you go on a date with me, which would constitute sexual harassment. Now I'm going to turn you  
148 over to Chalisa to discuss the next protected class.

149 **CHALISA WARREN:** Thank you, Ed. State and Federal laws prohibit discrimination on the basis of  
150 disability. In 2016, more than 75 percent of TWCCRD cases were based on the protected class of disability.  
151 State and Federal laws ensure people with disabilities have freedom to choose where they will live and the  
152 ability to visit friends and relatives. Proactively adjusting to the needs of an evolving population, looking  
153 ahead as you meet needs and allow people to remain in and safely use their dwellings longer. A person has a  
154 disability if he or she first has a mental or physical impairment that substantially limits at least one major life  
155 activity, second, has a record of that impairment, or, third, is regarded as having an impairment. In addition  
156 to the laws covering a buyer or rental with a disability the following persons also covered. A person residing  
157 in, someone who intends to reside in after sold, rented or made available or any person associated with the  
158 buyer or renter. Please note that tenants or applicants currently engaging in illegal use of drugs are not  
159 covered when a housing provider acts on this basis of such use. Housing providers may hold drug users to  
160 the same standard as other tenants. The fair housing act does use the word handicap and not disability.  
161 However, we use the term disability in this presentation as it is more commonly accepted as an appropriate  
162 term used in the disability community. What are some of the major life activities? Seeing, hearing, breathing,  
163 walking, performing manual tasks, caring for one's self, learning, speaking and working. As discussed before,  
164 the laws protect persons who are recovering from substance abuse but they do not protect persons who are  
165 currently engaging in the current illegal use of controlled substances. Additionally, the laws do not protect  
166 an individual with a disability whose tenancy would constitute a direct threat to the health or safety of other  
167 individuals or result in substantial physical damage to the property or others unless the threat can be  
168 eliminated or significantly reduced by a reasonable accommodation. If a question arises regarding a direct  
169 threat, a determination that an individual poses a direct threat must rely on an individualized assessment that  
170 is based on the reliable objective evidence. For example, their current conduct or a recent history of overt  
171 acts. The assessment must consider one, the nature, duration and severity of the risk of injury. Two, the  
172 probability that the injury will actually occur, and then three, whether there are any reasonable  
173 accommodations that would eliminate the direct threat. Consequently, in evaluating a recent history of overt

174 acts a provider must take into account whether the individual has received intervening treatment or  
175 medication that has eliminated the direct threat. In other words, a significant risk of substantial harm. In  
176 such a situation, the provider may request that the individuals document how the circumstances have  
177 changed so he or she no longer poses a direct threat. A provider also obtains satisfactory assurances that the  
178 individual will not pose a direct threat during the tenancy and the housing provider must have reliable  
179 objective evidence that a person with a disability poses a direct threat before excluding him or her from  
180 housing on that basis. So, what specifically do the laws prohibit in housing providers and landlords? What  
181 does the law prohibit them from doing? It prohibits them from basing housing decisions on a person's race,  
182 color, national origin, familial status, religion, sex or disability. In addition, state and Federal laws prohibit  
183 harassing anyone based on a protected characteristic. If a person is disabled, a landlord cannot refuse to let  
184 the person make a reasonable modification to the person's dwelling or common use area if it is necessary for  
185 that person to use the housing and if the modifications are done at that person's own expense. For some  
186 Federal or state programs, activities or services, the landlord may be responsible for paying for that  
187 modification. For example, who is a wheelchair user requests a modification to build a ramp for the entry  
188 steps for his or her unit. It would be illegal to deny the request if the tenant is going to do it at his or her own  
189 expense and remove it when he or she actually moves. In the case of a rental, the landlord may, where it is  
190 reasonable to do so, conditionally permit a modification if the renter agrees to restore the interior of the  
191 premises to the condition that existed before the modification, reasonable wear and tear excepted. The  
192 landlord may not increase a customarily required security deposit for individuals with disability. However,  
193 where it is necessary to ensure with reasonable certainty that funds are available to pay for restorations at the  
194 end of the tenancy the landlord may negotiate as part of the restoration agreement a provision requiring the  
195 tenant pay into an interest-bearing escrow account. As a condition for granting the renter permissions for  
196 modification a landlord may require a reasonable description of proposed modifications, reasonable  
197 assurances that the work will be done in a workman-like manner and assurances that required building  
198 permits will be obtained. If a person is disabled, a landlord cannot refuse to make a reasonable

199 accommodation in the landlord's rules, policies, practices or services, if the accommodation is necessary for  
200 a person with a disability to use their housing. Some of the comments that people with disabilities have  
201 heard are as follows. We will have to charge you \$200 for your service dog. We cannot talk to people who  
202 call us over the relay service. The only accommodation we offer is disabled parking. We can't waive the  
203 breed of the animal even if it is a service animal. No, your assistance animal is not allowed in the pool area.  
204 We have to charge you a transfer fee and a deposit for the first floor units. Now let's look at a scenario.

205 **ED HILL:** Scenario 1, a housing provider's policy is to provide unassigned parking spaces to residents. A  
206 resident with a mobility impairment requests an assigned accessible parking space close to the entrance to  
207 the unit as a reasonable modification. There are available parking spaces near the entrance to the unit are  
208 accessible but those are available to all residents on a first-come-first served basis. What should the housing  
209 provider do? Go ahead and answer the poll in the window.

210 **SUZANNE HEMPHILL:** We're going to give you a minute to answer the poll, we would really like your  
211 participation and feedback on the question. About 20 percent of you have voted so far. If you go ahead and  
212 let us know what you think the correct answer is. Okay. Thanks for voting in the poll. Here's the correct  
213 answer. The housing provider should make an exception to the policy of not providing assigned parking  
214 spaces to accommodate this resident. Also included in the handouts is the HUD and Department of Justice  
215 memorandum on reasonable accommodations under the Fair Housing Act. This is listed in that memo  
216 under item 6, if you're looking for further guidance.

217 **ED HILL:** In our second scenario, a home owner with a mobility disability alleged his home owner's  
218 association denied him permission to have the space in front of his house designated as a no parking space  
219 in order to allow a ramp to be installed. If true, is this discrimination? Please answer in the window. Just a  
220 heads-up, I'll repeat the question. A home owner with a mobility disability alleged his home owner's  
221 association denied him having the space in front of his house designated as a no parking space in order to  
222 allow for a ramp to be installed. If true, is this discrimination?

223 **SUZANNE HEMPHILL:** Okay. We've got answers coming in. 27 percent not sure. There's a lot of folks

224 that aren't sure about the answer. 57 percent say yes. So, if this is true, go ahead and put the answer up.  
225 Okay. So, in this specific scenario, this is actually something that the Texas Workforce Commission Civil  
226 Rights Division handled in a complaint that they received. The complainant received \$10,000. The  
227 respondent agreed to require staff to take fair housing training and create reasonable accommodation and  
228 modification policies that adhere to the requirements of the Texas Fair Housing Act. Yes, this was  
229 discrimination. Courts have treated requests for parking spaces as requests for reasonable accommodations  
230 and have placed the responsibilities for providing the parking space on the housing provider. Providing  
231 parking accommodation can include creating signage, repainting markings, distributing space or creating  
232 space. And really quickly, we're going to check in on a question that came in. And just as a reminder, next  
233 week's webinar is going to get into this more specifically, because we're talking about reasonable  
234 accommodations and modifications at a high level. This question came in. When tenants request reasonable  
235 accommodations is it wrong to ask for documentation of their disability?

236 **CHALISA WARREN:** Good question. It is not wrong to ask for documentation if the disability is not  
237 visible. So, usually if it's a visible disability. For example, someone in a wheel chair may request grab bars,  
238 for grab bars for someone in a wheelchair or even a parking space, it may not -- you wouldn't need  
239 documentation because the disability is visible. If the disability is not visible or apparent you may request  
240 documentation why the tenant or applicant -- usually the tenant -- would need that particular modification.

241 **SUZANNE HEMPHILL:** Okay, great. This is a very complicated and nuanced area. We'll be digging into  
242 this with a little bit more depth next week during the webinar.

243 **ED HILL:** For scenario 3 I'll leave the text up and put the poll up when I read it. The complainant  
244 organization incorporated tested the ABC apartments. The tester identified herself a person with disabilities  
245 who needed a service animal so she would be afforded an equal opportunity to use and enjoy a dwelling.  
246 The tester stated she had a prescription from her doctor showing the need for the service animal. The  
247 property would not accept the prescription and stated the animal exceeded their weight limits. The property  
248 required the tester to present documentation that her 60 pound pit bull service animal was registered. The

249 tester required that the requirements be waived for her service animal and the property stated that the  
250 requirements could not be waived. Complainant organization alleged that the tester was denied by ABC  
251 apartment's discriminatory process. If this is true, is this considered discrimination?

252 **SUZANNE HEMPHILL:** So, let's see. We've got 7 percent not sure. A group of folks saying no, the dog  
253 exceeds the weight limit. Pretty overwhelmingly we've got a lot of folks are saying they believe this is  
254 discrimination. So we're going to go ahead and close it. The protected class in this complainant would be  
255 disability. The issue or discriminatory practices are reasonable accommodation. This is discrimination. Prior  
256 to the conclusion of the investigation respondent and complainant entered into a conciliation agreement  
257 where the respondents agreed to take the Texas Workforce Commission's fair housing training and they  
258 settled this matter. Turning back over to Chalisa to talk about disability related requests.

259 **CHALISA WARREN:** So, a reasonable accommodation request does not have to be on a particular form  
260 or even be in writing. So requests can be verbal. When provided with a request for reasonable  
261 accommodation, the housing provider should begin the interactive process immediately. That includes  
262 responding to the request immediately. Housing providers should carefully draft, review, and revise their  
263 reasonable accommodation policy on a regular basis. I just want to talk about the interactive process. It does  
264 not mean that you have to provide the response to the tenant right away, but you do need to acknowledge  
265 that you've received it and not ignore the request, so, I want to make sure that housing providers are aware  
266 of that. Housing provider cannot ask for detailed medical records or about the extent of the individual's  
267 disability when responding to disability related requests. Housing provider does have the right to ask the  
268 requester to provide documentation to determine if the requester meets the fair housing definition -- the fair  
269 housing acts definition of a disability, also to describe the need for the accommodation, and so the  
270 relationship between the person's disability and the need for the requested accommodation.

271 **SUZANNE HEMPHILL:** Really quickly, we had a question come in that I'm going to read out loud. I  
272 think this is something that you're familiar with. When someone submits a reasonable accommodation  
273 request can you ask them to take any sort of documentation to a doctor, medical professional and bring it

274 back to us.

275 **CHALISA WARREN:** That is a good question. You can definitely ask them but that is not required under  
276 the law. If you have a form that you want the -- anything written on, you can request that they take it. But if  
277 they refuse, you should notate this, the applicant or tenant refused it and still notate it. Usually when a  
278 doctor or medical provider provides something on their letterhead or note, that is sufficient under the fair  
279 housing act and should be sufficient for the housing provider as well.

280 **SUZANNE HEMPHILL:** Great. Thank you.

281 **CHALISA WARREN:** We will now talk about design and construction. The failure to design and  
282 construct a covered multifamily dwelling in a manner that makes them accessible and/or usable by people  
283 with a disability is also discrimination. Accessible under the design and construction under the fair housing  
284 act is something that can be used, entered or reached. Usable means either available or convenient for use,  
285 and in practice, these terms are used interchangeably, and these all applied to dwellings that were built for  
286 occupancy after March 13th, 1991.  
287 Covered buildings should have at least one building entrance on an acceptable route unless it is impractical  
288 because of unusual characteristics to the site. Unusual characteristics have to be determined and  
289 documented before, not after the property is built. Some of the public and common areas that need to be  
290 accessible, including following; laundry rooms, fitness center, theater facilities, playgrounds, fire alarms,  
291 mailboxes, storage areas, access to the pool, activity center, dumpsters and trash cans. It is common -- it is a  
292 common finding for TDHCA compliance staff to find inaccessible dumpsters and trash cans. I'll go over  
293 the seven requirements of design and construction. There has to be an accessible building entrance on an  
294 accessible route to and through the building. There must be accessible public and common use areas. Doors  
295 that allow wheelchairs to pass within and into all rooms. Accessible route into and through each covered  
296 unit. All lights switches, electrical outlets, thermostats or other environmental controls must be in an  
297 accessible location. There must be reinforcements in bathroom walls so grab bars can be added when  
298 needed and there must be a usable kitchen and bathroom so an individual in a wheelchair can maneuver

299 about the space. We will now discuss issues under the fair housing act for renting, selling and terms and  
300 conditions. I'll now turn it over to Ed.

301 **ED HILL:** Issues for a protected class: someone may not refuse to negotiate for housing, refuse to rent or  
302 sell housing, set different term conditions or privileges for sale or rental of a unit. These are all  
303 discriminatory statements that a person in a protected class might hear when negotiating to rent a unit. Sir,  
304 we're sorry, but we're not able to rent to people who have mental illnesses or this unit cannot be rented to  
305 you because you are of the Wiccan religion. This could be a statement that a person could hear when  
306 negotiating to rent a unit: We just rented the last vacant unit.

307 **SUZANNE HEMPHILL:** And we have a little scenario we wanted to share with you. When it comes to  
308 setting terms and condition, let's say there's a single working mother living in an apartment. She has four  
309 children and working two jobs. She does not have time to clean the unit in a manner that it is required to be  
310 kept according to the lease agreement. Can this mother be evicted because of her poor housekeeping? Yes,  
311 she can. As long as the housing provider is following housekeeping and eviction policies in a consistent  
312 manner. Remember Federal, state and locally funded properties may have different housekeeping and  
313 eviction rules that they have to comply with.

314 **ED HILL:** A person may not make, print, or publish a notice, a statement, or advertisement about the sale  
315 or rental of the unit that may indicate any discrimination against the protected class. Landlords, and other  
316 housing providers, need to be careful regarding advertising. It may sound very inviting to attract a certain  
317 group of people. However, it may be discriminating against protected classes. According to state and  
318 Federal law, remember, that verbal statements may constitute discrimination as well and someone is not  
319 absolved from liability by blaming another person for a discriminatory statement repeated on their behalf.  
320 According to 40 Texas Administrative Code Section 819.127, a person may not, for profit, persuade  
321 someone to sell or rent real estate by predicting an influx of a protected population. This practice is known  
322 as "block busting." An example: a loan officer is prohibited from requiring a higher down payment from an  
323 applicant because the loan officer believes applicants of that particular race are less likely to repay the loan.

324 However, loan officers may turn down the applicant because the applicant does not have steady income, if  
325 all applicants are required to have a steady income.

326 **SUZANNE HEMPHILL:** Under brokerage services, loans or other financial assistance, discriminatory  
327 statements might be: we cannot approve your loan because you're on maternity leave, you have to go back  
328 to work before we can proceed with the paperwork. Or we can't count your disability income unless you get  
329 a letter from your doctor to ensure that you will continue to receive these benefits and will receive payments  
330 for the next five years. The Texas Workforce Commission Civil Rights Division has found such cases to be  
331 discriminatory. This provision does not prevent consideration used in normal transactions as long as there is  
332 no reliance on factors based on race, color, disability, religion, sex, national origin or familial status.

333 **ED HILL:** Under the Texas fair housing rule, it is unlawful to interfere, coerce, intimidate or retaliate  
334 against any person because of that person's protected class or because that person filed a complaint or  
335 encouraged another person to file a complaint. Prohibited conduct includes but is not limited to:  
336 threatening, intimidating, or interfering with individuals in their enjoyment of a dwelling based on a person's  
337 protected class, threatening or taking an adverse employment action based on protected class of the housing  
338 consumer. Retaliating against any person because that person has made a complaint, testified, assisted or  
339 participated in any manner in a proceeding under Texas Fair Housing Act.

340 Next issue: retaliation, interference, coercion, and intimidation. HUD's quid pro quo and hostile  
341 environment act rule: what is quid pro quo harassment? It is an unwelcome request or demand to engage in  
342 conduct where submission to the request or demand, either explicitly or implicitly, is made a condition  
343 related to the sale, rental or availability of a dwelling: the terms, conditions or privileges of the sale or rental,  
344 or the provision of services or facilities in connection therewith; or the availability, terms or conditions of a  
345 residential real estate related transaction. What is hostile environment harassment? Unwelcome conduct that  
346 is sufficiently severe or pervasive as to interfere with: the sale, rental or availability of a dwelling; the terms,  
347 conditions, or privileges of the sale or rental, or the provision of services or facilities in connection  
348 therewith; or the availability, terms, or conditions of a residential real estate related transaction. Direct

349 liability: own conduct, failing to take action on employee or agent, or failing to take action on a third party.  
350 Vicarious liability refers to a person who is vicariously liable for a discriminatory housing practice by the  
351 person's agent or employee, regardless of whether the person knew or should have known of the conduct  
352 that resulted in a discriminatory housing practice, consistent with agency law.

353 **SUZANNE HEMPHILL:** Okay. This is Suzanne, I'm going to cover disparate impact: Other HUD  
354 guidance. This is something HUD released. Discriminatory effect or disparate impact defined. It's a facially  
355 neutral practice that actually or predictably results in a discriminatory effect on a group of persons protected  
356 by the Act, or something that is or has a disparate impact. It can also be an affect on a community as a  
357 whole on the basis of a protected characteristic. Elements of proof: The charging party or plaintiff bears the  
358 burden of proving the prima facie case that a practice results in or would predictably result in a  
359 discriminatory effect on the basis of a protected characteristic. The burden then shifts to the respondent or  
360 defendant to prove that the practice is necessary to achieving a substantial legitimate, nondiscriminatory  
361 interest. The standard for justifying a practice is not to be interpreted more leniently than a business  
362 necessity standard. If the respondent or defendant satisfies this burden, then the charging party or plaintiff  
363 may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be  
364 served by a practice that has a less discriminatory effect. I wanted to note here that the Supreme Court has  
365 appeared to have articulated a somewhat different standard in this case of TDHCA vs. Inclusive  
366 Communities Projects, so this is an evolving area of law. HUD has one standard, Supreme Court issued one  
367 that is different that is evolving. So, policies and practices that may have discriminatory effects could be  
368 things like enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny  
369 housing opportunities that otherwise make unavailable or deny dwelling, could be provision of loans and  
370 other financial assistance, if your community has occupancy limit of X persons per dwelling, That could  
371 have a discriminatory effect. Possibly things related to criminal history, limited English proficiency or  
372 disturbance policies. If you have rules that evict them based on different disturbances. Hopefully you're all  
373 familiar with this. It came out two years ago in April. Fair housing act use of criminal records. April 4th

374 2016 HUD released guidance on the application of Fair Housing Act standards to the use of criminal  
375 records by providers of housing and real estate related transactions. The guidance is linked on the bottom of  
376 slide 39 if you are not familiar with it. There's as many as 100 million U.S. adults or one third of population  
377 that have a criminal record of some sort. In the United States, African-Americans and Hispanics are  
378 arrested, convicted and incarcerated at rates disproportionate to the share of the general population. Since  
379 2004, an average of over 650,000 individuals have been released annually from Federal and state prison and  
380 over 95% of current inmates will be released at some point. When individuals are released from prisons and  
381 jails, they will need to access safe, secure and affordable housing. It is critical to their successful reentry to  
382 society. While having a criminal record itself is not a protected characteristic under the fair housing act,  
383 criminal history based restrictions on housing opportunities violate the act if without justification, the  
384 burden falls more often on renters or other housing market participants of one race or national origin over  
385 another. Additionally, intentional discrimination is violation of the act if a housing provider treats  
386 individuals with comparable history differently because of race or national origin or other protected class. A  
387 housing provider with a policy or practice of excluding individuals because one or more prior arrests  
388 without any conviction cannot satisfy a burden of showing such policy or practice is necessary to achieve a  
389 substantial, legitimate, nondiscriminatory interest. If you have not updated tenant selection plans and criteria  
390 to at least look like HUD guidance, it's a good time to do that, specifically if you have things that ban folks  
391 just based on arrest record which again do not show a conviction. The Supreme Court recognized that the  
392 mere fact that a man has been arrested has very little if any probative value in showing he's engaged in any  
393 misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended  
394 of an offense. Housing providers that deny a person on the basis of arrest not resulting in a conviction  
395 cannot prove the exclusion actually results in protecting a resident's safety and/or property. Arrests records  
396 are not proof of past unlawful conduct and are often incomplete. The fact of an arrest is not in and of itself  
397 a reliable basis upon which to assess potential risks to residence safety or property posed by a particular  
398 individual. So, excluding individuals with prior convictions: convictions are different than arrests. A housing

399 provider that imposes a blanket prohibition on any person with any conviction record no matter when the  
400 conviction occurred, what the underlying conduct entailed, or what the convicted person has done since  
401 then will be unable to meet this burden. This is from the HUD guidance. A housing provider must show  
402 that its policy differentiates between criminal conduct that poses a demonstrable risk to safety and property  
403 and criminal conduct that does not. You might want to consider on an individual case by case basis the  
404 nature, severity, and recency of criminal conduct and make a case by case decision. Just to give you an  
405 update, to see how this issue is working its way through the Court. In December 2017, so five months ago, a  
406 complaint was filed in the U.S. District Court against the nation's largest corporate landlord. The complaint  
407 alleges that the landlord has a policy of banning prospective residents that have a felony conviction or  
408 pending felony charges, or pending misdemeanor charges which violates the Fair Housing Act of 1968  
409 because it has disproportionate adverse impact on African-Americans and Latinos. Nationwide landlords  
410 and housing providers are watching this lawsuit to determine the impact on policies that screen for criminal  
411 background records.

412 **ED HILL:** Okay. We're going to have a couple more -- two more scenarios here. First, an applicant applied  
413 to live in a property and was denied based on her criminal history. She was convicted of a crime more than  
414 30 years prior. The applicant contended that the property could not show a substantial, legitimate and  
415 nondiscriminatory interest in denying the application based on criminal history. The applicant believed the  
416 property discriminated against her because of her race when her rental application was denied. If this is true,  
417 is this considered discrimination?

418 **SUZANNE HEMPHILL:** Okay. So we're going to go ahead and close that poll. Thanks for participating.  
419 The property agreed to lease the apartment to the applicant as long as the following conditions were met.  
420 So, was it discrimination? Possibly. The applicant would sign a statement that explained her criminal history,  
421 mitigating circumstances and rehabilitation and lack of any further criminal history. The applicant would  
422 need to meet all other rental criteria. Again this shows some of the work that Texas Workforce Commission  
423 Civil Rights Division does to kind of conciliate these complaints and work through the process that serves

424 landlords and tenants. Sometimes they don't necessarily deem something illegal or not, but work to settle it  
425 for both parties.

426 **ED HILL:** And we've got one more scenario here. The complainant is African-American, shortly after  
427 discovering the complainant's husband was white, the respondent property manager issued the complainant  
428 a lease violation accusing her children of making noise. Shortly thereafter, the property manager gave the  
429 complainant an eviction notice for nonpayment of rent, one day before the grace period ended. The  
430 property manager refused to accept the rent on the 3rd of the month although the property newsletter  
431 stated rent payments made by that date are not considered late. If true is this -- is this discrimination?

432 **SUZANNE HEMPHILL:** Okay. We're going to go ahead and close this poll. Yes. Respondent agreed to  
433 waive the complainant's balance of \$1100 as well as any other related fees including attorneys fees.  
434 Respondents agreed to remove the eviction from the complainant's rental history. Respondent agreed to  
435 provide the complainant with a neutral rental history letter and pay the complainant \$2700 as  
436 reimbursement for moving costs and hotel expenses following the eviction. There's costs incurred by the  
437 housing provider on this one and they could be in the tens of thousands of dollars depending on the  
438 specific facts at hand.

439 **ED HILL:** Now we are going to discuss exemptions, sales and rentals. Let's start with the three or less  
440 property exemptions. Sale or rental of a single family house may be exempt from application of the Fair  
441 Housing Act if the owner does not own three or more properties or does not own any interest in the  
442 proceeds from the sale or rental of more than three single family houses at any one time and does not use  
443 sales or rental facilities or services of a licensed broker, agent or salesperson or, has only one sale or rental in  
444 a 24 month period and the owner was not the most recent resident of the house at the time of rental or sale.  
445 Also, the sale or rental of the rooms or units in a dwelling occupied or intended to be occupied by not more  
446 than four families living independently of each other may be exempt if the owner maintains or occupies one  
447 of the living quarters as his or her residence. Please note: these exemptions are not available if an owner  
448 makes a discriminatory statement, notice or advertisement or engages in intimidation, interference, coercion,

449 retaliation or harassment. Other exemptions if it's non-commercial housing operated by a religious  
450 organization, they may reserve it for persons of that same religion unless that religion itself is restricted  
451 because of race, color or national origin. A private club that is not open to the public, and incidentally  
452 provides lodging other than for commercial purpose may limit the rental or occupancy of members or give  
453 them preference. An appraiser is not prohibited from considering factors other than protected classes in his  
454 or her appraisals. Both religious organizations and private clubs have many different variants in their  
455 properties, so they have to be looked at individually. Housing for the elderly is exempt from a familial status  
456 discrimination if the commission determines the property is specifically designed and operated to assist  
457 elderly individuals under a Federal or state program, intended for and solely occupied by individuals 62 years  
458 old or older, intended for an 80 percent of units are occupied by at least one individual 55 years of age or  
459 older. Note, the elderly housing exemption only requires to requirements based on familial status. Providers  
460 of exempt housing for elderly cannot discriminate on the basis of other protected classes.

461 **SUZANNE HEMPHILL:** Okay, we're going to move on to fair housing testing. Just to let you know, in  
462 our time span here we have about 20 minutes left. If you have questions you wanted answered, you can  
463 submit those to Nathan and he will take look at them. A few come in on accessibility and reasonable  
464 accommodation so we'll take those up next week. If you have questions submit them now and we'll do what  
465 we can in the next 20 minutes. Fair housing testing. In short, it refers to the investigative tool of using  
466 individuals who, without any bona fide intent to rent or purchase a home, apartment, or other dwelling,  
467 pose as prospective buyers or renters of real estate for the purpose of gathering information. The  
468 information may indicate whether a housing provider is complying with fair housing laws. Why is fair  
469 housing testing done? To gather information regarding the manner in which housing providers do business  
470 regarding; availability of units, qualification standards for tenants, design and construction compliance,  
471 treatment of home seekers, discriminatory statements, patterns of behavior to corroborate or refute the  
472 experience of a complainant. Fair housing testing organizations may receive a specific complaint and then  
473 go out to see if they can replicate that treatment or if it's different. So, why is testing done? Often to provide

474 the evidence as needed by victims of housing discrimination to meaningfully pursue a complaint, suit or  
475 administrative hearing. Testing can uncover and/or support systemic forms of housing discrimination that  
476 persist in harming individuals and communities. Evidence may show that a respondent's defense is pretext,  
477 that there's a discriminatory basis for actions, that false statements have been made, that a unit was available  
478 on a particular date, that steering or redlining has taken place. That people of protected groups have been  
479 treated differently than others or that a requested accommodation or modification has been denied although  
480 deemed reasonable and may also show a property does not comply with accessibility requirements of the  
481 Fair Housing Act or the Texas Fair Housing Act or local law, and it could show that loans or insurance are  
482 available to people of protected groups on different or unfavorable terms than made available to people in  
483 other groups. Testing is often done by pairing together two individuals who are as similar as possible in all  
484 characteristics including similar financial profiles, but who differ when it comes to the protected class  
485 involved. For example, this would be one pair: a person that used a wheelchair while the other person has  
486 no noticeable mobility impairment. Another example, one member of a pair might have a light skin tone,  
487 while the other person has a darker skin tone. They would each separately visit, they could call or e-mail the  
488 site of the housing provider within an appointed time period and inquire about the availability of housing.  
489 So, afterwards, testers objectively record in detail everything that happened during the test, what was said,  
490 what was offered, what price was quoted for an available apartment. A test coordinator compares each of  
491 the testers' objective reports to determine whether a difference in treatment occurred based on the  
492 protected classes. Testing can be applied not just in rental activities. It could be real estate services,  
493 transactions, home insurance, mortgage lending office, or an appraisal of housing. A specific test is designed  
494 based on specific bases, or protected classes, race or color, national origin, religion, sex, familial status or  
495 disability. So, the most straightforward difference in the treatment of two testers in the rental scenario is the  
496 property or unit is not available to a person with protected class. There could be other manifestations of  
497 this. They could be shown a less desirable part of the property. Property management staff might be  
498 unavailable to assist a person of a protected class. Different information on when a unit might be available.

499 They might provide different information about what is required to apply and terms and conditions. The  
500 number and type of units shown, move-in specials offered and not offered and the amount of rent. The  
501 most common testing model is on disability status, families with children, that would be familial status and  
502 color. HUD funds housing organizations and other nonprofits through the Fair Housing Initiatives  
503 Program who assist people who believe they have been victims of housing discrimination. FHIP  
504 organizations partner with HUD to help people identify government agencies that handle complaints of  
505 housing discrimination. They also conduct preliminary investigations of claims including sending testers to  
506 properties suspected of practicing housing discrimination. So, what can properties do to prepare for testing?  
507 Tough question. Because testers don't identify themselves, presume any contact a property receives could be  
508 a potential tester. The best strategy is to be informed, have staff well trained on fair housing laws and be  
509 sure to reflect this careful outlook in the way you interact with all prospects. If all prospects are treated  
510 equally as if they may be testers, you'll help ensure you don't violate fair housing laws, which is a risk with  
511 real prospects as well as testers. With that, we're going to see what questions came in. Oh, yes, Nathan is  
512 going to pop a poll up on the screen. If you guys can take a gander at that, we will put you on mute and be  
513 back in just a couple minutes. We're going to do our best to answer the questions that have come in.

514 **SUZANNE HEMPHILL:** Sorry for the delay there. We are going through your questions. We are back.  
515 I'm going to read them out loud and Ed and Chalisa will do their best to answer these. Can I request a  
516 complex be tested if I provide stories from tenants that are obvious violations?

517 **CHALISA WARREN:** This is Chalisa, and absolutely you can.

518 **SUZANNE HEMPHILL:** There are fair housing testing organizations throughout the state. That contact  
519 information is on TDHCA's website and you can reach out to us via email and we can provide local groups  
520 that might be able to test on your concern.

521 I'm not understanding the criminal conviction guidance. If we denied an applicant due to criminal  
522 background is it automatically discrimination?

523 **CHALISA WARREN:** This is Chalisa again. That's not automatically discrimination if you deny them

524 based on criminal background. One of the best practices that our office uses is when someone files a  
525 complaint because they feel they've been treated differently based on criminal background, is to suggest the  
526 housing providers to go through the criteria process first and then look at whether or not their criminal  
527 background would still be a barrier to them being a tenant. So it's not a blanket response for those. Those  
528 are case by case basis, unfortunately. If someone files a complaint and feels they are treated differently  
529 because their criminal background has -- that they've been denied because of criminal background we'll look  
530 at totality of approvals and denials of the property, obviously what the conviction was for, how long ago it  
531 was, and whether or not -- what the rehabilitation of the applicant has been. So, if you have one of those  
532 applicants that have been -- that you have thought or are thinking about it, you can always reach out to our  
533 offices and discuss this.

534 **SUZANNE HEMPHILL:** Another question: if you submitted a complaint to TDHCA, would you also  
535 need to submit to the Texas Workforce Commission? So, if you are a tenant submitting a complaint it  
536 would come to TDHCA if you participated in a program through TDHCA, if you had like a housing  
537 assistance through TDHCA or the property was, just whatever scenarios in which the provider participates  
538 in TDHCA programs. So Texas Workforce Commission, that jurisdiction, can you explain it?

539 **CHALISA WARREN:** Absolutely. The Texas Workforce Commission is for if a person feels they have  
540 been discriminated against. Our office is the enforcement arm. We will investigate allegations of housing  
541 discrimination complaints against housing providers.

542 **SUZANNE HEMPHILL:** So TDHCA's jurisdiction is more limited, there's certainly involvement  
543 depending on the funding source housing provider, general fair housing act complaints could go to TWC,  
544 but you could send it to both of us if there's funding involved with TDHCA or a program. So, we're going  
545 to cover the last couple of slides we got and maybe try to tackle a couple more questions. Ed, do you want  
546 to cover complaints?

547 **ED HILL:** Sure. If you have a complaint filed against you, you will be notified in writing. You will likely be  
548 invited to mediate. And when we invite you to mediate, that's to try to resolve the situation at the lowest

549 level. It keeps it out of the courts, keeps the costs down and also saves you time. If you decide not to  
550 mediate, you may file an answer that is in writing, under penalty of perjury, may be amended at any time.  
551 Now, if you need to file a complaint, go to [www.Texasworkforce.org/civilrights](http://www.Texasworkforce.org/civilrights), all together. On that page  
552 you can fill out the form by e-mail, fax or mail. The complaint is filed under penalty of perjury and may be  
553 amended at any time. When we talk about mediation, basically, virtually, all parties of complaints are invited  
554 to participate in mediation before the investigation begins. The mediation program is voluntary. If both  
555 parties do not agree to mediate, the complaint moves to the investigation process. The mediation program  
556 of Texas Workforce Commission Civil Rights Division that we provide, gives the following benefits. It is  
557 provided as a free service and eliminates a lengthy investigation and extensive litigation in a timely manner.  
558 Resolves complaints quickly at the lowest level and saves time and money. It opens lines of communication  
559 between disputing parties, and allows each party to understand the position of the opposing party. And  
560 when there is a resolution, it is documented with an agreement which is binding upon the complainant and  
561 respondent. I also want to point out this also helps keep the cases out of the news. Bad publicity is never a  
562 good thing. So now we're going to open the final poll -- I'm sorry, we already opened the final poll. And for  
563 training, technical assistance, please feel free to contact the Texas Workforce Commission Civil Rights  
564 Division. You can reach us through the [crdtraining@twc.state.tx.us](mailto:crdtraining@twc.state.tx.us). We have also recently launched a  
565 computer based training module that you can sign up for. All you have to do is go to the same link I just  
566 gave you and request the training and that could be for housing provider or consumer.

567 **SUZANNE HEMPHILL:** We had another question come in. This is Suzanne. It was asking if tax credit  
568 properties, these are properties that participate in the low income housing tax credit program, if they must  
569 accept Section 8 voucher recipients? The department has specific rules about denying, based on  
570 participation in a voucher program. So, denying based on participation in a voucher program in a tax credit  
571 property is not allowed. However, someone with a voucher could not lease a unit for other reasons that  
572 would be allowed if they had issues with their rental history or weren't able to provide income  
573 documentation or sufficient income to qualify for a unit or over income. It's not that it has to be accepted.

574 They just can't be discriminated against based on that. And there was another question that came in about  
575 kids. Let's see here. If you have minor children living in your community, can you make a policy or rule that  
576 they cannot be outside in the common areas? Common areas such as clubhouse, pool, playground, fitness  
577 center, et cetera, without adult supervision.

578 **CHALISA WARREN:** This is Chalisa again with the Texas Workforce Commission, you can have a policy  
579 that minors cannot be in those areas without adult supervision. You can't say they can't be outside. But the  
580 areas of the clubhouse, pool, playground, fitness center, you can have a policy that those minors are  
581 supervised when in those areas.

582 **SUZANNE HEMPHILL:** Okay, with that, I think we're going to wrap it up for today. Here is a link to  
583 the Civil Rights Reporter which is available through the Texas Workforce Commission, so you can sign up  
584 for that. Is that a quarterly publication?

585 **ED HILL:** Quarterly and next edition is scheduled to come out in mid June. We have fair housing edition  
586 but we also have an equal employment opportunity version also. You can sign up for both of them. It's free  
587 and comes directly to the e-mail account you put it into the sign-up and it's automatic.

588 **SUZANNE HEMPHILL:** So, a specific question came in about an 811 tax property. If you want to reach  
589 out to me, this is Suzanne. We can try to look that up. I'm able to advise if you're participating in TDHCA  
590 programs. I'll try to flip back to the slide with my contact information. Okay. Let me put our contact info up  
591 here. So many of these questions are fact specific. So we do our best to answer them. But we also really  
592 need to have all of the facts in a specific property and funding sources involved. So we're going to end this  
593 with contact information for myself, Ed and Chalisa. I want to thank Nathan who is in the room answering  
594 questions as he was able to and did a great job helping to facilitate this day. This concludes our presentation,  
595 we'll be back next Tuesday to discuss Reasonable Accommodation and Modifications and the numerous  
596 questions that came in so we hope you join us next week. Sign-in information is available through TDHCA  
597 calendar information on our Website. You'll look for a webinar next Tuesday. Thank you for tuning in today  
598 and promoting fair housing choice and opportunities in the State of Texas.