

# **Texas Workforce Commission Civil Rights Division ("CRD")**

Fair Housing Overview

Training



# Fair Housing Webinar Series



- April 10 from 2:00-3:30pm: Fair Housing Overview
- April 17 from 2:00-3:30pm: Reasonable Accommodations and Accessibility

Webinar information located at <https://www.tdhca.state.tx.us/fair-housing/announcements.htm> or the calendar portion of [TDHCA's website](#).

For further information, please contact Suzanne Hemphill, TDHCA Fair Housing Project Manager at [suzanne.hemphill@tdhca.state.tx.us](mailto:suzanne.hemphill@tdhca.state.tx.us)

# Presenters



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# Agenda



- **Training Objectives**
- **Purpose of the Federal Fair Housing Act and the Texas Fair Housing Act (“the Acts”)**
- **Mission and Vision of CRD**
- **Covered/Protected Classes**
- **Issues/Discriminatory Practices**
- **HUD Disparate Impact Guidance**
- **Exemptions**
- **Fair Housing Testing**
- **Mediation**
- **Resources**

# Objectives

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- **Identify the Purpose of the Federal Fair Housing Act and Texas Fair Housing Act**
- **Recognize Covered/Protected Classes**
- **Recognize Issues/Discriminatory Practices**
- **Identify Exemptions per the Acts**
- **Understand Fair Housing Testing**

# Mission and Vision of CRD



Our mission is to reduce discrimination in employment and housing through education and enforcement of state and federal laws.

Our vision is to help create an environment in which citizens of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.



# Texas Fair Housing Act



The purpose of the Federal Fair Housing Act is to, within constitutional limitations, provide for fair housing throughout the United States.

The purpose of the Texas Fair Housing Act is to:

- Provide for fair housing practices.
- Create a procedure for investigation and settling complaints.
- Provide rights and remedies substantially equivalent to federal law.



# Protected Classes/Bases



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





# Protected Class: Race



- Asian
- African American or Black
- Native American or Alaska Native
- Native Hawaiian or Other Pacific Islander
- White



# Protected Class: Color



Pigmentation of the skin

# Protected Class: National Origin



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



# Protected Class: Familial Status



Includes persons who are:

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

*Example:*

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



# Protected Class: Religion



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

# Protected Class: Sex



I'VE HEARD ABOUT  
**SEXUAL HARASSMENT**  
AT WORK... BUT I DIDN'T EXPECT IT  
**IN MY OWN APARTMENT.**

- Sexual Harassment
- Gender Stereotyping
- Discriminatory Pricing because of pregnancy

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



# Protected Class: Disability



Disability means:

- A mental or physical impairment that substantially limits at least one major life activity.
- A record of an impairment.
- Being regarded as having an impairment.
- The Fair Housing Act uses the term “handicap” instead of “disability.”



# Protected Class: Disability



What are some major life activities?

- Seeing
- Hearing
- Breathing
- Walking
- Performing manual tasks
- Caring for one's self
- Learning
- Speaking
- Working





# Protected Class: Disability



What are some examples of impairments which may result in a disability?

- Visual, speech, and hearing impairments
- Cerebral palsy
- Autism
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- Human Immunodeficiency Virus (HIV) infection
- Drug addiction (other than addiction caused by current, illegal use of a controlled substance)
- Alcoholism





# Issue:

# Reasonable Modification



First specific prohibition if a person is disabled...

...a landlord cannot refuse to let that person make reasonable modifications to the person's dwelling or common use areas, at that person's own expense, if necessary for that person to use the housing.

Example:

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

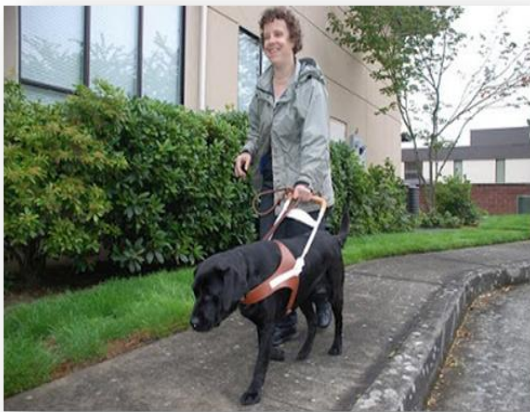


# Issue: Reasonable Accommodation



Second specific prohibition if a person is disabled...

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



Example:

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





# Scenario 1



A housing provider's policy is to provide unassigned parking spaces to residents.

A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation.

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

**What should the housing provider do?**



# Scenario 1



The housing provider should make an exception to its policy of not providing assigned parking spaces to accommodate this resident.



## Scenario 2



### Allegation:

A homeowner with a mobility disability alleged that his homeowner's association denied him permission to have the space in front of his house designated as a No Parking Space, in order to allow a ramp to be installed.



## Scenario 2



### Settlement terms:

Complainant received \$10,000.

The respondents agreed to require staff to take fair housing training and create reasonable accommodation and reasonable modification policies that adhere to the requirements of the Texas Fair Housing Act.





# Scenario 3



## Allegation:

Complainant Organization, Inc. tested the ABC Apartments. The tester identified herself as a person with disabilities who needed a service animal so she would be afforded an equal opportunity to use and enjoy a dwelling.

Tester stated that she had a prescription from her doctor showing the need for the service animal. The property would not accept the prescription and stated that the animal exceeded their weight limits.

The property required the tester to present documentation that her 60 pound Pitbull service animal was registered. The tester requested that the requirements be waived for her service animal and the property stated that the requirements could not be waived.

Complainant Organization, Inc. alleged that the tester was denied the reasonable accommodation request to waive ABC Apartments' discriminatory process.

# Disability-related requests

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- A reasonable accommodation request does not have to be on a housing provider's form or even be in writing
- When provided with a request for a reasonable accommodation, the housing provider should begin the interactive process immediately
- Housing providers should carefully draft, review, and revise the reasonable accommodation policy on a regular basis

# Disability-related requests

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- A housing provider cannot ask for the requester's detailed medical records or about the extent of the individual's disability
- A housing provider has the right to ask a requester to provide documentation to determine if the requester meets the Fair Housing Act's definition of a disability, describe the need for the accommodation, and show the relationship between the person's disability and the need for the requested accommodation

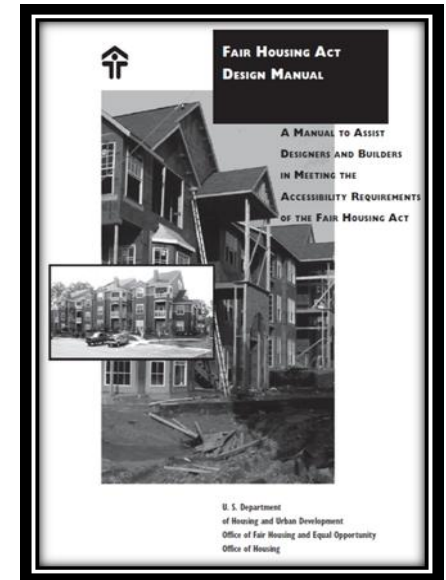
# Issue: Design & Construction



Third specific prohibition if a person is disabled...

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

- Accessible
- Usable



# Issue: Design & Construction Requirements



## Requirements

- Accessible building entrance on an accessible route into and through the dwelling.
- Accessible public and common use areas.
- Doors that allow (wheelchair) passage into and within all rooms.
- Accessible route into and through each covered unit
- Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Reinforcements in bathroom walls so grab bars can be added when needed.
- Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.



# Issue: Rent, Sell, Terms & Conditions



It is illegal to ...

- Refuse to negotiate for housing;
- Refuse to rent or sell housing;
- Deny a unit; or
- Set different terms, conditions or privileges for sale or rental of a unit or in providing services

*because of someone's protected class status.*

*"We just rented the last vacant unit."*

# Issues: Publication & Inspection



## Publication

A person may not:

For Rent  
Great for  
Adults!

- Make
- Print
- Or publish



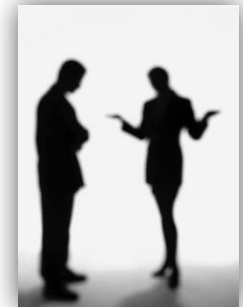
a notice a statement, or an advertisement about the sale or rental of a unit that may indicate any preference, or limitation, or discrimination because of a protected class.

## Inspection

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

- For inspection
- For sale
- Or for rental

when the unit is actually available for inspection.



Example: *"I can't show you this home because the owner does not want to sell to someone not of the owner's race."*

# Issue: Entry into Neighborhood



A person may not:

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

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



*Property taxes will go up when the national origin changes, sell now.”*



# Issue: Brokerage Services, Loans and Other Financial Assistance

## Brokerage Services:

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

## In lending and other financial assistance:

- Refuse to provide a person
  - Loan or financial assistance availability
  - Application requirements
- Provide information that is inaccurate or different
- Determine the type of loan or financial assistance based on protected class
- Fix the amount, interest rate, duration, etc. based on protected class
- Use different practices in determining credit worthiness.



*Example: "You have to pay a higher interest rate because people of your national origin are a higher credit risk."*

# Issue: Retaliation, Interference, Coercion, Intimidation



Under the Texas Workforce Commission Fair Housing Rules, someone cannot:

- Interfere with an individual in their enjoyment of a dwelling
- Coerce a person
- Threaten
- Intimidate
- Retaliate

\*No exemptions apply\*



Example:

*“Assistant Manager, you are fired because you refuse to rent to only Americans.”*

*“You are evicted because you filed a fair housing complaint.”*

# Issue: Retaliation, Interference, Coercion, Intimidation



HUD's Quid Pro Quo and Hostile Environment Harassment Rule

<https://www.gpo.gov/fdsys/pkg/FR-2016-09-14/pdf/2016-21868.pdf>



- What is quid pro quo harassment?

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

- What is hostile environment harassment?

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

# Issue: Retaliation, Interference, Coercion, Intimidation



## HUD's Quid Pro Quo and Hostile Environment Harassment Rule

- Direct liability
  - Own Conduct
  - Failing to take action on employee or agent
  - Failing to take action on third party
- Vicarious liability
  - A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.



*Notes: Title VII affirmative defense does not apply to housing cases, and, for purposes of determining liability, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person.*

# Disparate Impact: Other HUD Guidance



HUD's Fair Housing Act's Discriminatory Effects (Disparate Impact) Standard

<http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>

Discriminatory Effect (Disparate Impact) Defined:

- Facially neutral practice
- Actually or predictably results in a discriminatory effect on a group of persons protected by the Act (that is, has a disparate impact),
- Or on the community as a whole on the basis of a protected characteristic (perpetuation of segregation).

Elements of Proof:

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

# Disparate Impact: Other HUD Guidance



## HUD's Fair Housing Act's Discriminatory Effects (Disparate Impact) Standard

- Policies and Practices that May have Discriminatory Effects (Disparate Impact)
  - Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings
  - Provision of loans and other financial assistance
  - Community's occupancy limit of X persons per dwelling
  - Criminal history
  - Limited English Proficiency (LEP)
  - Disturbance Policies

# Fair Housing Act, Use of Criminal Records



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

HUD Guidance, Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions:

[http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf)

# Fair Housing Act, Excluding Individuals with Prior Arrests

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A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.

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



# Fair Housing Act, Excluding Individuals with Prior Arrests



## Excluding individuals with prior convictions

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

Must be based on a case-by-case basis

### **HUD Guidance, Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions:**

[http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidApp\\_FHStandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidApp_FHStandCR.pdf)



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-0500

April 4, 2016

#### **Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions**

##### **I. Introduction**

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.<sup>1</sup> HUD's Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

# Disparate Impact: Fair Housing, Use of Criminal Records



- In December 2017 a [complaint](#) was filed in U.S. District Court against the nation’s largest corporate landlord
- The complaint alleges that the landlord has a policy of banning prospective tenants that have a “felony conviction or pending felony charge as well as certain misdemeanors or pending misdemeanor charges” which violates the Fair Housing Act of 1968 because it has a “disproportionate adverse impact on African Americans and Latinos”
- Nationwide landlords are watching this lawsuit to determine the impact on policies that screen for criminal background records:  
<http://kut.org/post/federal-lawsuit-could-impact-how-austin-landlords-screen-people-criminal-records>



## Scenario 4



### Allegation:

An applicant applied to live in a property and was denied based on her criminal history. She was convicted of a crime committed more than 30 years prior.

The applicant contended that the property could not show a substantial, legitimate and nondiscriminatory interest in denying the application based on criminal history.

The applicant believed the property discriminated against her because of her Race when her rental application was denied.



## Scenario 4



### Settlement terms:

The property agreed to lease the apartment to the applicant as long as the following conditions were met:

The applicant would sign a statement that explained her criminal history, mitigating circumstances, rehabilitation and lack of any further criminal history; the applicant would need to meet all other rental criteria



## Scenario 5



### Allegation:

Complainant is African American. Shortly after discovering the complainant's husband was White, the respondent property manager issued the complainant a lease violation, accusing her children of making noise.

Shortly thereafter the property manager gave the complainant an Eviction Notice for nonpayment of rent— one day before the grace period ended.

The property manager refused to accept the rent on the 3<sup>rd</sup> of the month, although the property newsletter stated rent payments made by that date are not considered late.



# Scenario 5



## Settlement terms:

Respondents agreed to waive the Complainant's balance of \$1,100 as well as any other related fees, including attorney fees

Respondent agreed to remove the eviction from complainant's rental history

Respondent agreed to provide the Complainant with a neutral rental history letter

Respondent agreed to pay the complainant \$2,700 as reimbursement for moving costs and hotel expenses following the eviction

# Exemptions: Sales and Rentals



- The sale or rental of a single family house may be exempt from application of the Fair Housing Acts, if the owner:
  - does not own three or more properties (OR)
  - does not own any interest in the proceeds from the sale or rental of more than three single-family houses at any one time (applies if owner has only one sale or rental in a 24-month period, and the owner was not the most recent resident of the house at the time of the sale or rental) (AND)
  - does not use sales or rental facilities or services of a licensed broker, agent, or salesperson (OR)
  - does not publish, post, or mail (discriminatory statement) about the sale or rental that indicates a preference or limitation based on protected class
- Owner may be exempt in the sale or rental of the rooms or units in a dwelling occupied, or intended to be occupied by not more than four families if the owner maintains or occupies one of the living quarters as his or her residence.



*Note: These exemptions are not available if an owner makes a discriminatory statement, notice or advertisement or engages in intimidation, interference, coercion, retaliation or harassment.*

# Other Exemptions



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





# Exemptions: Housing for the Elderly



Housing for elderly is exempt from the covered or protected class of familial status if the Commission determines the property is specifically:

- Designed and operated to assist elderly individual under a federal or state program;
- Intended for and solely occupied by individuals 62 years old or older; or
- Intended for and 80% of the units are occupied by at least one individual 55 years of age or older for each unit.



# Fair Housing Testing



In short, testing refers to the investigative tool of using individuals who, without any bona fide intent to rent or purchase a home, apartment, or other dwelling, pose as prospective buyers or renters of real estate for the purpose of gathering information; this information may indicate whether a housing provider is complying with fair housing laws.

# Why is Testing Done?



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

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

# Why is Testing Done?



- Testing investigations often provide the evidence that is needed by victims of housing discrimination to meaningfully pursue a complaint, suit or administrative hearing.
- Testing can uncover and/or support systemic forms of housing discrimination that persist in harming individuals and communities.

# Testing Evidence May Show

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- That a respondent's defense is pretext
- Discriminatory basis for actions
- That false statements have been made
- That a unit was available on a particular date
- That steering or redlining has taken place
- That people of protected groups have been treated differently than others
- That a requested accommodation or modification has been denied although reasonable
- That a property does not comply with the accessibility requirements of the Fair Housing Act or Texas Fair Housing Act or local law
- That loans or insurance are available to people of protected groups on different and unfavorable terms than made available to people in other groups

# Testing – How it Works



Testing is often done by pairing together two individuals who are as similar as possible in all characteristics including similar financial profiles, but who differ when it comes to the protected class involved.

- For example, one member of a pair might use a wheelchair while the other person has no noticeable mobility impairment.
- For example, one member of a pair might have a light skin tone, while the other person has a darker skin tone.

They each separately visit (or call/email) the site of a housing provider (within an appointed time period) and inquire about the availability of housing.

# Testing – How it Works

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- Afterwards, the testers objectively record in detail everything that happened during the test — what was said, what was offered, what price was quoted for an available apartment, etc.
- A test coordinator compares each of the testers' objective reports to determine whether a difference in treatment based on the protected class may have occurred.

# Testing Settings



- Testing can be applied in settings other than rental activities, including real estate services, home insurance, mortgage lending offices, and appraisal of housing.
- A specific test is designed based upon specific bases, or protected classes — race or color, national origin, religion, sex, familial status, and disability.



# Testing Disparities



The most straightforward differences in the treatment of the two testers in a rental scenario is the property saying a unit is just not available to the person with the protected class

Many other manifestations:

- Shown units in less desirable parts of the property
- Property management staff being unavailable to assist
- When the unit might be available
- What is required to apply, terms and conditions
- Number and type of units shown
- Move in specials offered (or not offered)
- Amount of rent

# Most Common Testing Models



- Disability status
- Families with children
- Color



# Fair Housing Testing - HUD

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- HUD funds fair housing organizations and other non-profits through the Fair Housing Initiatives Program (“FHIP”) who assist people who believe they have been victims of housing discrimination.
- FHIP organizations partner with HUD to help people identify government agencies that handle complaints of housing discrimination.
- They also conduct preliminary investigation of claims, including sending "testers" to properties suspected of practicing housing discrimination.

# What Properties Can do to Prepare for Testing



- Because testers don't identify themselves, presume any contact a property receives could be a potential tester.
- The best strategy is to be informed and have staff well trained on fair housing laws and be sure to reflect this careful outlook on the way you interact with all prospects.
- If all prospects are treated equally as if they may be testers, you'll help ensure you don't violate fair housing law, which is a risk with real prospects as well as testers.

# Complaints



If you have a complaint filed against you:

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

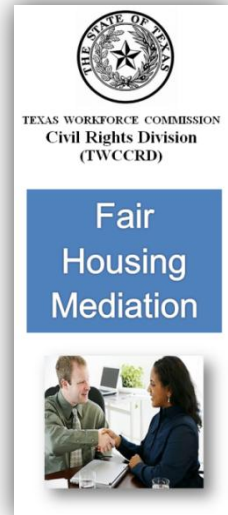
If you need to file a complaint:

- Go to: [texasworkforce.org/civilrights](http://texasworkforce.org/civilrights)
- Fill out Form and submit by email, fax or mail

# Mediation



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



# Training & Technical Assistance



**Contact the Texas Workforce  
Commission, Civil Rights Division at  
(888) 452-4778 or (512) 463-2642  
[crdtraining@twc.state.tx.us](mailto:crdtraining@twc.state.tx.us)**

# Questions?



Please sign up for the Civil Rights Reporter  
at:

[http://www.twc.state.tx.us/partners/civil-  
rights-reporter](http://www.twc.state.tx.us/partners/civil-rights-reporter)

