



2020 Fair Housing Overview Training

Presented by:

TWC Civil Rights Division &
Texas Department of Housing &
Community Affairs

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Agenda

- Learning Objectives
- Purpose of the Federal and Texas Fair Housing Acts
- TWCCRD Mission and Vision
- TDHCA Mission
- Analysis of Impediments
- Covered/Protected Classes
- Issues/Discriminatory Practices
- HUD Disparate Impact Guidance
- Exemptions
- Fair Housing Testing
- Mediation
- Resources



Learning Objectives

- Identify the Purpose of the Federal Fair Housing Act and Texas Fair Housing Act
- Recall Covered/Protected Classes
- Recognize Issue/Discriminatory Practices
- Identify Exemptions per the Acts
- Introduction to Fair Housing Testing



TWCCRD's Mission

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

TWCCRD's 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.



TDHCA's Mission

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



Analysis of Impediments

The Analysis of Impediments to Fair Housing Choice (AI) is a process that recipients of Community Planning and Development (CPD) grant funds from the U.S. Department of Housing and Urban Development (HUD), such as states, local governments, and public housing agencies, undertook as part of their obligation to affirmatively further fair housing (AFFH) under the Fair Housing Act. Currently, the AFFH rule is out for public comment and the requirements including the Analysis of Impediments will likely change.

- In Texas, TDHCA leads this process on behalf of all state agencies who receive HUD CPD funds and has released the 2019 State of Texas Analysis of Impediments to Fair Housing Choice. The AI is available on the TDHCA website.
- This AI both assesses where we are as a state as it relates to fair housing, and then identifies impediments and possible solutions, where applicable.



Analysis of Impediments

The 2019 State of Texas Analysis of Impediments is available at:

<https://www.tdhca.state.tx.us/fair-housing/analysis-impediments.htm>

By mail to:

Texas Department of Housing and

Community Affairs

Attn: Cate Tracz

P.O. Box 13941

Austin, TX 78711-3941

By email to: cate.tracz@tdhca.state.tx.us

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(512) 475-3935



Purpose of the Fair Housing Acts

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

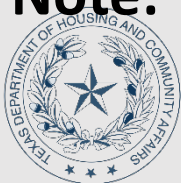


Protected Class: Color

Pigmentation of the skin



Note: Color Discrimination can occur by individuals within the same race.



Protected Class: National Origin

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



Protected Class: Familial Status

Includes persons who are:

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



Example:

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

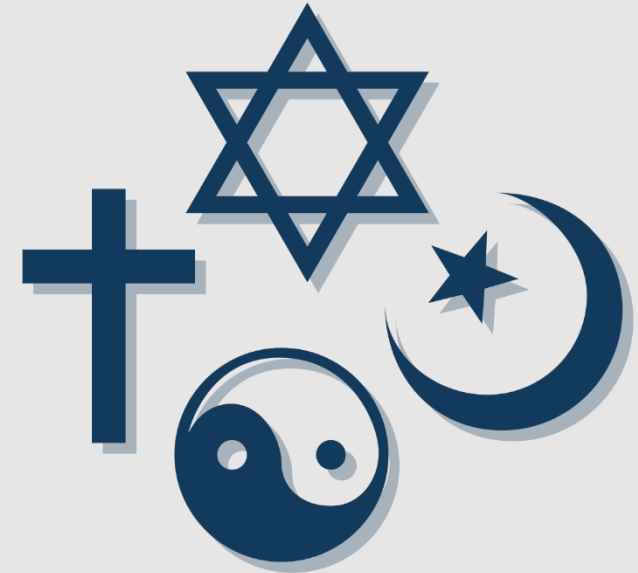


Extra Restrictions Against Children



Protected Class: Religion

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



Protected Class: Sex

Includes prohibitions on:

- Sexual Harassment
- Gender Stereotyping
- Discriminatory Pricing

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



Protected Class: Disability

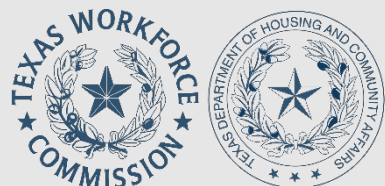
A Disability is.....

- A mental or physical impairment that substantially limits at least one major life activity
- A record of an impairment
- Being regarded as having an impairment

Protected Class: Disability (Continued)

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
- Alcoholism



Issues/Discriminatory Practices

Major Categories:

- Specific prohibitions that apply only to people who are disabled
 - Reasonable Modification
 - Reasonable Accommodation
 - Design and Construction
- Practices involving sale or rental
- Terms and conditions
- Making discriminatory statements
- Inspection
- Entry into a neighborhood
- Discriminatory lending practices
- Prohibited conduct relating to brokerage services
- Retaliation



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."



What is a Reasonable Accommodation?

Any communication that requests that you make an exception to the rules, policies, practices, or services necessary to afford a person with a disability equal opportunity to use and enjoy the dwelling

Examples: *Granting permission for an assistance animal or assigning an accessible parking space*



Why Grant a Reasonable Accommodation?

- Because policies, practices, and services may have a different effect on persons with disabilities than on other persons
- Treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling.

What do the Acts Require?

Housing providers to make reasonable accommodations to the rules, policies, practices, or services, when such accommodations *may be necessary* to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.



Reasonable Accommodation Requests

Elements for written or oral requests:

- Requestor
- Request format
- Request terminology
- Explanation of accommodation
- Local land use/zoning procedures

Requesting a Reasonable
ACCOMMODATION



Rules for Disability–Related Requests

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

Reactions and Inquiries to Avoid

Avoid asking the following:

- Questions concerning the nature and severity of an individual's disability
- If an applicant has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant has a disability

When Can I Deny a Reasonable Accommodation?

- The person poses a “direct threat” (including service animal)
- There is no disability-related need for the accommodation
- The accommodation is not reasonable
- There is an alternative accommodation that would effectively address the requester's disability-related needs



Who Pays?

Undue financial hardship and administrative burden claims considerations include:

- Housing provider's financial resources
- Cost of the reasonable accommodation
- Requested accommodation's benefits to the requestor
- Availability of other, comparable and less expensive alternatives



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.

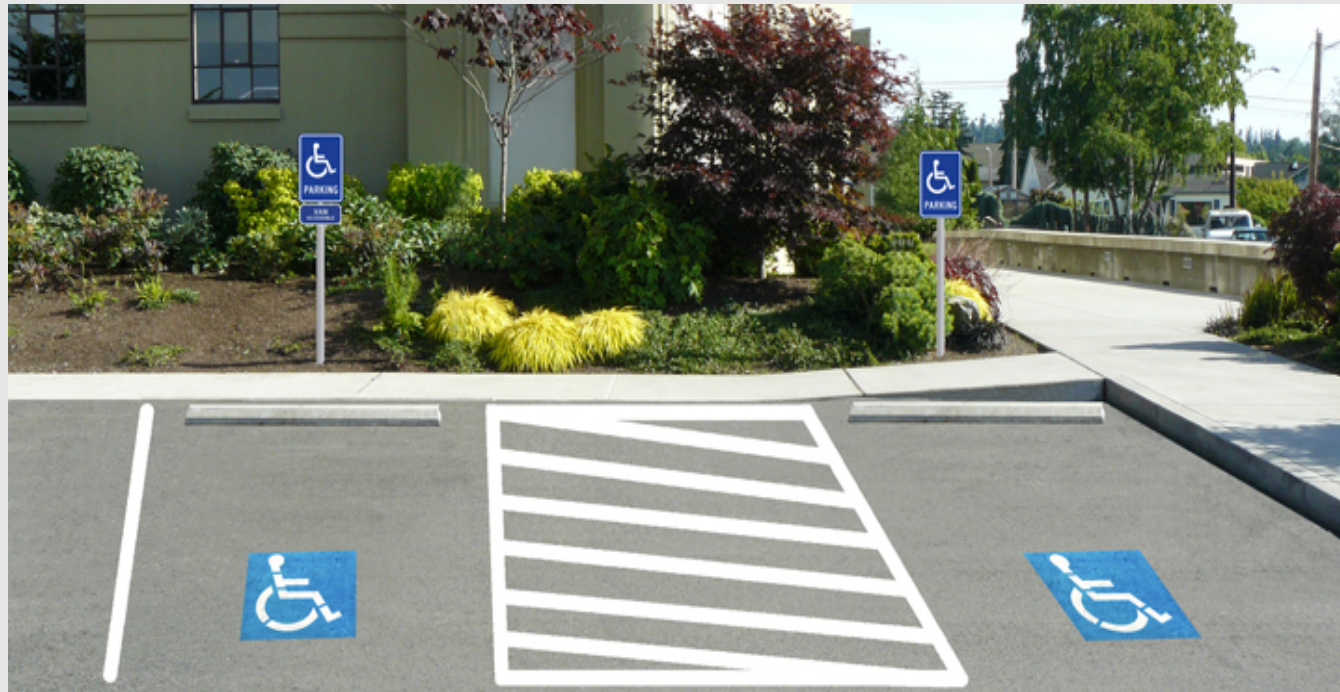
There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis.

What should the housing provider do?



Scenario #1 Solution

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 Solution

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.



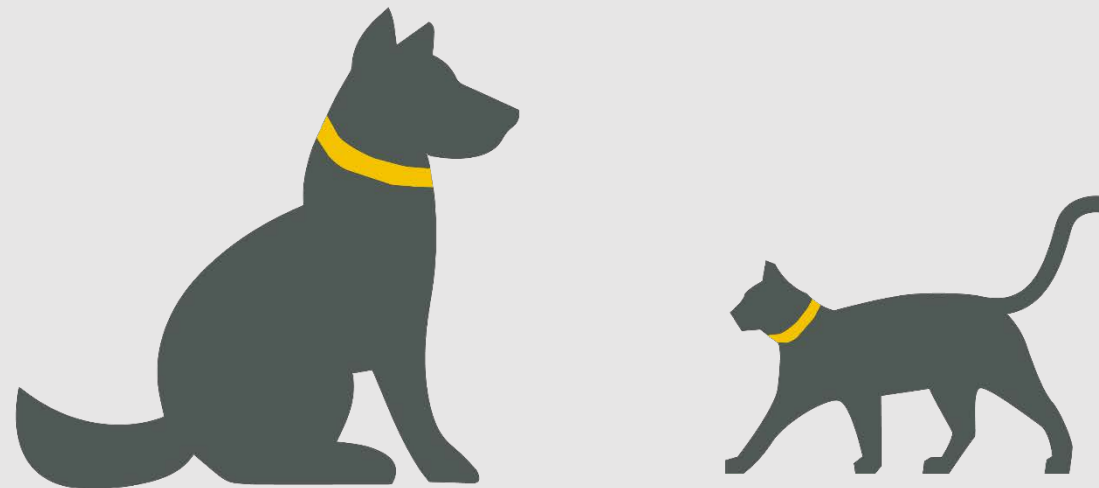
What Would You Do?

Your property has a strict “NO PETS” rule. Due to a recorded disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation.

1. What action should you take?
2. Can you charge a fee for the animal’s occupancy?
3. Is the tenant liable for damages caused by the animal?

What Do You Think?

Complainant alleged that Respondent's manager and assistant manager asked her to give them \$300 for a pet deposit for her emotional support cat and also to pay a monthly pet fee of \$10. In addition, they threatened to send a lease violation notice to the housing authority. Complainant alleged the manager was aware of her disability. The manager asked Complainant to come to the office and when she went to the office, the manager told her to sign an animal addendum for her cat.



Issue: Design and 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 and 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
- Switches, outlets, thermostats & other environmental controls in accessible locations
- Reinforcements in bathroom walls so grab bars can be added as needed
- Usable kitchens and bathrooms that accommodate a person using a wheelchair

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.***



Issue: Publication & Inspection

Publication

A person may not:

- Make
- Print
- Or publish

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

Inspection

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

- For inspection
- For sale
- For rental

when the unit is actually available for inspection.



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.
- Also known as “Blockbusting”

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

or

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



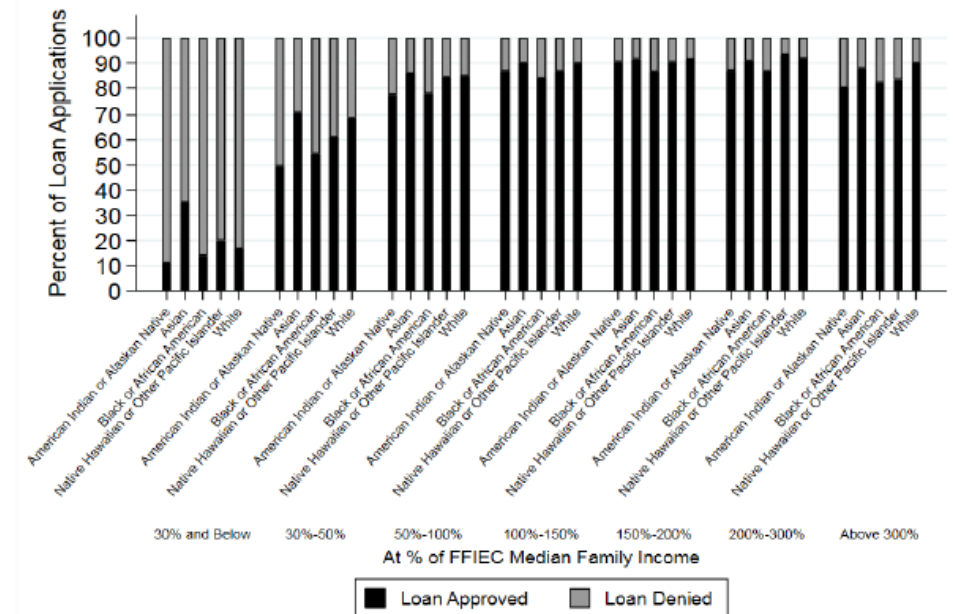
Issue: Brokerage Services, Loans and Other Financial Assistance

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 MLS

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
- Fix the amount, interest rate, duration, etc.
- Use different practices in determining credit worthiness



Source: Home Mortgage Disclosure Act Data, 2016.

Note: Includes only final decisions by a financial institution on loan applications for home purchase loans.



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



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?
- What is hostile environment harassment?



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.

Disparate Impact: Other HUD Guidance

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)



Disparate Impact: Other HUD Guidance

Elements of Proof:

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



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



Fair Housing Act, Excluding Individuals with Prior Arrests

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

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



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.



Disparate Impact: Fair Housing, Use of Criminal Records

Fair Housing Guidance on the Use of Criminal Records

Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

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



Disparate Impact : Fair Housing, Use of Criminal Records Case

In December 2017 the Equal Rights Center (ERC) filed a complaint in U.S. District Court against Mid-America Apartment (MAA) Communities, Inc. and Mid-America Apartments, L.P., the nation's largest corporate landlord.

The complaint alleged that the landlord's policy of banning prospective tenants that have a "felony conviction or pending felony charge as well as certain misdemeanors or pending misdemeanor charges" violated the Fair Housing Act of 1968 because it has a "disproportionate adverse impact on African Americans and Latinos".

Nationwide, landlords closely watched this lawsuit to determine the impact on policies that screen for criminal background records.



Case Resolution

On October 5th, 2018, the ERC announced the resolution of claims against MAA that its exclusion of housing applicants with certain criminal records, including any felony conviction, discriminated against such individuals on the basis of race and national origin.

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



Scenario #3

Allegation:

An applicant applied to live 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 #3 Solution

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



Exemptions: Sales and Rentals

The sale or rental of a single family house may be exempt from application of the Fair Housing Act, if the owner **does not**:

- Own three or more properties single-family houses at any one time; **or**
- Own any interest in, nor is there owned or reserved on the persons behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; **and**



Exemptions: Sales and Rentals (continued)

The house is sold or rented without:

- The use of the sales or rental facilities or services of a broker, agent, or licensed salesperson.....; **or**
- The prohibited publication, posting, or mailing of a notice, statement, or advertisement; **or**

The sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other.....



Exemptions: Housing for the Elderly

Exempt from Familial Status if the Commission determines the property is specifically:

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



Other Exemptions

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



Fair Housing Testing

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



**EQUAL HOUSING
OPPORTUNITY**



Why is Testing Done?

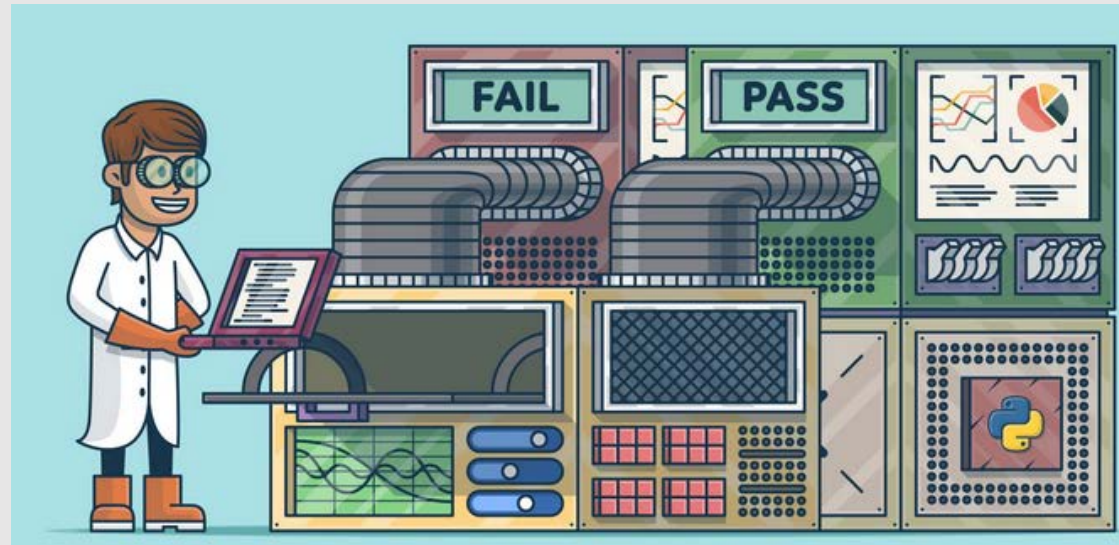
To gather information (evidence) regarding the manner in which housing providers do business regarding:

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



Testing Evidence May Reveal

- That a respondent's defense is pretext
- Discriminatory basis for actions
- That false statements have been made
- That a unit was available on a particular date
- That steering or redlining has taken place
- That people of protected groups have been treated differently than others



Testing: Settings & How it Works

- Testing is often done by pairing together two individuals who are as similar as possible in all characteristics
- They each separately visit (or call/email) the site of a housing provider (within an appointed time period) to inquire about housing availability
- Afterwards, the testers objectively record in detail everything that happened during the test
- A test coordinator compares each of the testers' objective reports to determine whether a difference occurred

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



Most Common Testing Models

- Disability status
- Families with children
- Color



Fair Housing Testing - HUD

- 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.



Fair Housing Complaints

If you have a complaint filed against you:

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

If you need to file a complaint:

- Go to: [www.texasworkforce.org/civil rights](http://www.texasworkforce.org/civil%20rights)
- 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



TEXAS WORKFORCE COMMISSION
Civil Rights Division
(TWCCRD)

Fair
Housing
Mediation



Training & Technical Assistance



Contact the Texas Workforce Commission,
Civil Rights Division

at

(888) 452-4778 or (512) 463-2642

crdtraining@twc.state.tx.us



Questions?

KEEP
CALM
AND
ASK
QUESTIONS





Thanks for your participation!

Please sign up for the Civil Rights Reporter at:

<http://www.twc.state.tx.us/partners/civil-rights-reporter>