

April 13, 2021, reasonable accommodations and accessibility.

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>> The broadcast is now starting, all attendees are in listen-only mode.

>> Good afternoon, everybody and welcome to our reasonable accommodations and accessibility webinar, part of our Fair Housing month series of webinars. We are going to get started here in about five minutes while -- about 2:05, so don't worry if you don't hear anything before then. We just want to give everybody enough time to get in, get situated and take care of any possible tech issues that always happen.

The other thing that I'm going to do is I am going to be putting up a poll. If you don't mind go ahead and answer that poll while we wait for the 2:05 mark, and we will -- again, like I said, we'll start at about 2:05.

>> Okay. Thank you all for answering the poll question. It looks like we have quite a few of you, almost half of our attendees are from either a non-profit or an advocacy organization, and the rest of you seem to be from property management or compliance staff for TDHCA monitored properties.

We do have 23% who said none of the above. If you don't mind, go ahead and in the questions box maybe drop

us a note that said -- tells us what -- where you're from, why you're here.

With that, we'll go ahead and get started. My name is Nathan Darus. I am the Fair Housing research specialist at the Texas Department of Housing and Community Affairs, TDHCA. And I'm really excited that we've got so many of you here today. Today's training is the 2021 reasonable accommodations and accessibility training. This is the second of, I believe, six trainings that we'll be giving this month as part of our Fair Housing month series.

Jeff, if you could move to the next slide. Great.

So this is just a quick disclaimer. This material is based upon work supported by the U.S. Department of Housing and Urban Development under the Fair Housing Initiatives Grant Program, introduction and outreach FE0 1900455. Any opinion, findings, conclusions or recommendations expressed in this material are those of the authors and they are not necessarily the Department of Housing and Urban Development.

Just a few notes of housekeeping. We want to let you know that all materials and the recording of this material

will be available on the TDHCA website and if you have any questions during the web, please go ahead and drop them into the questions box.

After every segment we may try to answer questions that are in that box and especially if they are relevant to the particular topic. We may also hold off on answering those until the end of the webinar.

If your question is one that requires us to do a little bit of research, we will let you know and we will get you -- get back to you by email after the webinar is over and we've had some time to get the research done.

And then finally, this training is informational only and it does not satisfy the requirements in Texas Administrative Code TAC 10.402(e)(1)-(2) for post-bond closing documentation for multi-family bond transactions.

And it does not satisfy the requirements for documentations submitted for the 10% test for housing tax credits either.

Again, my name is Nathan Darus, I'm the Fair Housing research specialist here at the Texas Department of Housing and Community Affairs.

With me is Jeff Riddle, the training specialist with the Civil Rights Division. Jeff?

>> Jeff: Good afternoon, everybody. As Nathan said my name is Jeff Riddle and I am with the Texas Workforce Commission Civil Rights Division. My information is right there on the screen and you will see this information at the end should you need it p.

So as Nathan said, we're here today, some of the things that we're going to cover, we're going to again, as the basis for everything that we do, we're going to look at the Federal Fair Housing Act and the Texas Fair Housing Act, the ADA, the Americans with Disabilities Act and Section 504.

And the main reason we're here today, reasonable accommodations and modifications, we're going to discuss that, analyze that and give you ins and outs for that. We'll talk about accessibility issues and then close it out on if you have a complaint, the complaint procedures for both of our departments at TDHCA and the Civil Rights Division, and some of the options that you get like the mediation that comes with what happens when you file a complaint.

These are the objectives that we're going to go over. It falls right along with our agenda. So you have an understanding of where the basis for reasonable accommodations and modifications come from within the acts and how the complaint process works.

So as I said, we're going to start, we'll be discussing the Federal and state laws and regulations that apply to reasonable accommodations and modifications in housing.

So the Fair Housing Act, it is the cornerstone of civil rights history in this country. It represents Title VIII of the Civil Rights Act of 1968. The Federal Fair Housing Act is the policy of the United States to provide within constitutional limitations for Fair Housing throughout the entire U.S.

No person shall be subject to discrimination because of their race, color, religion, sex, handicap -- we use that term only because it is still within the Act, but it actually has been redefined as disability. Familial status or national origin.

And that is covered in everything within housing, in the sale, rental, advertising of dwellings and in the provisions of brokerage services or in the availability

of real estate-related transactions.

So everything from listing a home to owning a home to renting a home. Everything that has to do with your home.

CFR as you see down there on the bottom, does stand for the Code of Federal Regulations, which is a document that contains all regulations published in the Federal register and it is divided into 50 sections.

Housing and urban development is found in Title 24, which is also where the majority of the Fair Housing Act regulations are located.

And then we dial down and we get to the Texas Fair Housing Act. And originally the Texas Commission on Human Rights, before Civil Rights Division within the TWC was founded, we had the Texas Commission on Human Rights and it was established by Legislature in 1983 and it was the authorizing agency to enforce the law and handle complaints filed under the commission or any complaint deferred by the United States Equal Employment Opportunity Commission.

When the Texas Fair Housing Act was passed by the Legislature on May 25th, 1989, the commission was further empowered to enforce its provisions.

So the commission was handling discrimination within employment and housing.

On September 1 of 2015, the duties and authorities of the Texas Commission on Human Rights were transferred to the Civil Rights Division of the Texas Workforce Commission. Regulations for the Texas Fair Housing Act are found in the Texas Property Code and the Texas Administrative Code.

The Texas Workforce Commission is the state agency in Texas responsible for the enforcement of the Texas Fair Housing Act, even in TDHCA monitored rental properties.

The Workforce Commission enforces the Fair Housing Act and processes all Fair Housing complaints and mediation, which of course we will discuss later on in this webinar at the end when we talk about complaints and mediation.

So when it comes to the Act, the bases of Fair Housing is to prevent and avoid discrimination. That is defined as a difference in treatment because of membership in one or more of the protected classes. There are these seven protected classes under Federal and state law and that's race, color, national origin, familial status, also known

as your family status, religion, sex and disability.

The Texas and Federal housing laws prohibit the basing of housing decisions on a person's protected class. It also prohibits the application of different standards to anyone because of their protected class.

In addition these laws prohibit harassing anyone based on a protected characteristic. These laws also state that you cannot retaliate against any applicant, tenant, buyer or a consumer for engaging in protected activities such as complaining about their alleged discrimination.

Filing a discrimination complaint against a housing provider or a lender or testifying, providing a statement or a witness in hearings, investigations or court proceedings concerning discrimination complaints.

For the purpose of today's webinar topic, we will be focused specifically on the protected class disability as that is where the reasonable accommodations and modifications come from.

There we go. All right. A disability is a mental or physical impairment that substantially limits one or more major life activities. It is a record of having an

impairment. Or being recorded as having an impairment.

So obviously the mental or physical impairment substantially limiting one major life activity, we'll go into what constitutes major life activities.

When somebody has a record of impairment, it means that they have a history of having such an impairment. Not all impairments are an active part of everybody's lives. They could come and go and that's what having a record of an impairment is.

By being regarded, that's meaning being treated as having an impairment when the individual does not or that impairment limits a major life activity and it does not.

In addition to the laws covering a buyer or renter with a disability, the following persons are covered and that's a person residing in or intending to reside in the dwelling after it's sold, rented or made available and any person associated with the buyer or renter. That is a person who is covered.

So as I said, what are some of those major life activities, one or more? You've got caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

And again, a disability can affect one or multiple of these major life activities.

So some common impairments that we see that do affect those major life activities are right here. The Fair Housing laws do protect persons who are recovering from substance abuse as you see the last ones, but they do not protect persons who are currently engaging in the current illegal use of a controlled substance.

So the drug addiction and alcoholism, that is somebody that's in a recovery program, not a current illegal drug user for the drug addiction.

Additionally these laws do not protect an individual with a disability whose tenancy would constitute a direct threat to the health or safety of other individuals or result in the substantial physical damage to property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation.

And of course, this list is not exhaustive. This is just some examples. The Act does not allow for the exclusion of individuals with disabilities based upon fear, speculation or stereotype about a particular disability or persons with a disability in general.

However, the Act does not protect an individual -- I've already talked about the direct threat.

And if a question does arise regarding the direct threat, because it is important, a determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence.

The assessment must consider the nature, duration and severity of the risk of injury, the probability that an injury will actually occur, and whether there are any reasonable accommodations that would eliminate the direct threat.

Consequently in evaluating a recent history of over Acts, a provider must take into account whether an individual has received intervening treatment or medication that has eliminated the direct threat or the significant risk of substantial harm.

In such a situation the provider may request the individual document how the circumstances have changed so that they no longer possess a direct threat or pose a direct threat.

A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during their tenancy.

The housing provider must have reliable objective evidence that a person with a disability poses a direct threat before excluding them from housing on that basis.

So as we continue to reference the Fair Housing Acts, both the Federal and Texas, they are very similar. There's not a major difference between them so I will probably refer to them as the Acts. We will be referencing the text of the Fair Housing amendments act of 1988, which amends the Civil Rights Act of 1968 to include further definition of discriminatory housing practice and includes the addition of disability and familial status to the list of protected classes.

The act was signed into law in September of 1988 as an amendment to Title VIII of the Civil Rights Act. Also known as the Fair Housing Act. It became effective March 12th, 1989 and extends housing protections to persons with disabilities and families with minor children.

It is enforced by HUD and then in turn by Civil Rights

Division here in the State of Texas as well. There are five other additional Fair Housing agencies that are substantially equivalent to Federal Law and that's within the cities of Dallas, Fort Worth, Austin, Garland and Corpus Christi.

If you have a complaint and you're watching this webinar and you live in one of those cities, the first people you would go to is your local City's Fair Housing office.

Another Federal Law that applies to reasonable accommodations and modifications is Section 504 of the Rehabilitation Act. Section 504 is the first civil rights protection for individuals with disabilities. It was drafted in 1973 and took effect in '77. It's the first civil rights protections for people with disabilities. It states that no other otherwise qualified individual with handicaps in the United States shall solely by reason of his or her handicap, be excluded from the participation in, be denied by the benefits of, be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

And again, the term handicap is there. We have moved away from that and have turned it to disability, but for the purpose of this it's still listed that way in the law. Just know that any time we refer to handicap it also refers to disability.

So under Section 504 it does have specific guidelines, requirements and restrictions for all housing programs and providers who fall under the purview of Section 504.

And they are found in 24 CFR, sections 8.4 and 8.53 if you would like to look those up.

If not, here's some requirements for you. You are required to make and pay for reasonable structural modifications to units and/or common areas. Operate housing that is not segregated based on disability, unless authorized by Federal statute or executive order.

Provide auxiliary aids and services necessary for effective communication.

Perform a self-evaluation of the owner's programs and policies to ensure that they do not discriminate based on disability.

Develop a transition plan to ensure that structural changes are properly implemented.

Operate programs in the most integrated setting appropriate to the needs of the qualified persons with disability.

Provide the newly constructed or rehabilitated housing, including a five percent of units. There is a one-unit minimum there. Are accessible for persons with mobility impairments and two percent of units be accessible for persons with hearing or visual impairments.

So basically in a housing development with 100 units, five must be accessible for people with mobility impairments and two be accessible for people with hearing or visual impairments.

If the development has only 10 units, one must be accessible for individuals with mobility impairments and hearing or vision impairments.

And then the last one, if you employ 15 or more you must designate at least one person to coordinate Section 504 compliance and adopt grievance procedures that incorporate due process standards and provides for prompt, equitable resolution of complaints from applicants for employment or housing and residences.

The Section 504 prohibitions. And again, this is found in 24 CFR, but we have them listed right here for you. And that is denying the opportunity to participate in a program, service or activity due to anyone's disability.

Deny or refuse to rent housing to a person with a disability because of a disability.

Impose tenant selection criteria, fees or conditions that are different from those required of or provided to persons who do not have disabilities.

Require persons with disabilities to live on certain floors or in certain areas of the community.

Refuse to make repairs or limit access to public or common areas, parking privileges or services available to other residents.

Deny opportunities to persons with disabilities to participate on advisory or planning boards.

So these requirements and prohibitions are applicable to all housing programs except mortgage insurance, loan guarantee, but does not include the HOME programs and Community Development Block Grant programs.

Section 504 does also cover employees of federally

assisted housing as well as applicants and tenants. And Section 504 did pave the way for the Americans with disabilities act of 1990.

Which is our next slide.

So the Americans with Disabilities Act was signed into law on July 26th of 1990. It does provide protection against discrimination based on disabilities in many areas of life in the United States. It is divided into five titles. Title II and III apply to Fair Housing out of the five.

Title II covers non-discrimination on the basis of disabilities by public entities. And a public entity is any state or local government, any department, agency, special purpose district or other instrumentality of a state or local government. This does include public housing authorities.

And the National Railroad Passenger Corporation or any other commuter authority.

The Title III of the Americans with Disabilities Act covers the public and common use areas at housing developments. When these public areas are by their nature open to the general public and when they are made

available to the general public.

An example, it covers the rental office since by nature that rental office is open to the general public.

In addition, if a day care center or a community room is made available to the general public, it would be covered by Title III. Title III applies irrespective of whether the public and common use areas are by a federally assisted provider or entity.

If the community room or the day care center mentioned were only opened to residents of that building, Title III would not apply.

So if you need a key card to get in there, it's not generally open to the public. But you don't necessarily need a key card to get into the apartment manager's office, is a good example of that.

And then wrapping up all the rules, regulations, policies, everything that encompass and give us our basis for reasonable accommodations and modifications is the housing and urban development and Department of Justice memorandum on reasonable accommodations and modifications.

And basically they released a memo back in 2004 and

a memorandum on reasonable modifications in 2008. We'll explain the difference here in a minute between accommodations and modifications.

And both memorandums clarified questions regarding the implementation of the law, including clarification on the verification of a need for reasonable accommodation or modification for an individual with a disability.

So let's get into the meat and potatoes of today. Reasonable accommodations and modifications.

>> Nathan: Jeff, if we have a second, we did have a question related to protected class and protected status.

>> Jeff: Okay.

>> Nathan: Seems like a good time to catch it.

The question was tenants who have disabilities who also happen to have sexual orientation that may be gay or lesbians, are they still protected?

And a follow-up on that was for people who are gay or lesbian and have HIV, are they still protected?

>> Jeff: Yes. And you can belong to one or more classes. A disability is a disability no matter the protections.

Now, as of January of this year, President Biden

signed an executive order bringing the rights and regulations in line with the recent Supreme Court decision of last year, [indiscernible] versus Clayton county. And having gender orientation and sexual identity included into the sex-protected class.

And he signed that executive order in January requiring all agencies to ensure that they were including those in their sex-protected class, gender identity and sexual orientation, as basis of discrimination. So you are now protected under that protected class based on those new guidelines.

>> Nathan: So basically to sort of give the quick answer to what seemed like a long question is that not only would tenants who have disabilities still be protected because of their disability regardless of their sexual orientation, the Bostock memo or executive record 13988 added sexual orientation and sexual preference as protected under sex in one of the original protected classes.

And I think that's all the questions we have right now for this section.

>> Jeff: Okay. Just let me know if there are more

questions that pop up.

We will move into, as I said, reasonable accommodations and modifications.

So what are reasonable accommodations and modifications? A reasonable accommodation is a change, exception or an adjustment to a rule, policy, practice and/or service. An example of this is a reasonable accommodation is making an exception to a property's pet policy to accommodate for a tenant's assistant animal.

An apartment complex has a policy no animals or no pets, I should say, and you are requesting an exemption to this policy because you have a service animal and so you're changing the rules, making an exemption to those rules, policies or procedures as an accommodation.

A modification is a structural change to a dwelling or common area. An example would be adding accessible ramps or adding accessible parking spaces inside a housing, home, complex.

Under the Texas Fair Housing Act, it is unlawful for any person to refuse to make a reasonable accommodation or modification in rules, policies, practices or services when such an accommodation may be necessary to afford a

person with a disability equal opportunity to use and enjoy the dwelling.

So it's important to remember on this one a housing provider cannot refuse. We will get into denying, but they can't outright refuse to make a reasonable accommodation or modification.

So getting a little bit more into this, in general you must provide all reasonable accommodations requested unless doing so would result in a fundamental alteration of the program or an undue financial and administrative burden.

If you ever refuse a request because it is not reasonable, you should engage in an interactive conversation to seek an alternative accommodation.

With the undue financial and administrative burden there's no one mark on the wall that says once you cross this line or this monetary amount it becomes that financial and administrative burden. It is on a case-by-case basis a lot goes into that, your providers, how much money they bring in, what their business looks like, their operating model. So somebody that rents out four or five homes or townhomes is different from a

multi-conglomerate apartment complex.

So there's not one mark on the wall. Just know it would be looked at on a case-by-case basis.

And remember, it's always important to have that interactive process that one person might want to have escalators put into their two-story town home, but you might be able to provide one of those stair lifts instead because they were only thinking of one thing and you can provide something else.

So it's always good to engage in that interactive process to come to a reasonable ground.

Some comments that we have heard in the past when it comes to reasonable accommodations is the provider stating we have to charge you \$200 extra for your service dog. Or we can't talk to people who call us over a relay service.

The only accommodation we offer is disabled parking. That's it. We can't offer anything else.

We can't waive the breed of that animal even if it is a service animal. Or no, your assistant animal is not allowed in the pool area.

And then another one we've heard is, we have to charge

you an additional transfer fee and deposit for that first floor unit. So if somebody has a reasonable mobility impairment and moving from a higher story apartment down to the first floor due to not being able to navigate stairs, incurring extra transfer fees and deposit fees for that move as an accommodation.

And again, these are all things we have heard in complaints that have come to our agency.

When it comes to reasonable modification, if a tenant does have a disability, again, a landlord cannot refuse to let that person make reasonable modifications to that dwelling or common use area if it is necessary for that person to use the housing and the modifications are done at that person's own expense.

For example, a tenant who is a wheelchair user requires -- requests to build a ramp for entry steps to their unit, it would be illegal to deny that request if the tenant is going to do the work at their own expense and then when they move they take that ramp and they return any possible damage or they return everything back to its original condition.

In the case after rental, the landlord may where it

is reasonable to do so, conditionally permit a modification. If the renter agrees to restore the interior of the premises to the condition it existed before the modification, with the exception of reasonable wear and tear.

The landlord may not customarily require a security deposit for individuals with disabilities. So you can't increase a security deposit because money should be is going to put in a modification.

However, where it is necessary to ensure with reasonable certainty that funds are available to pay for the restorations at the end of the tenancy, the landlord may negotiate, negotiate, as part of such restoration agreement a provision requiring that the tenant pay into an interest-bearing escrow account. And that does come out of Texas Administrative Code.

And again, it's negotiating. It's not has to pay into.

There are some modifications such as a sign for an assigned parking space that the department -- Jeff has said landlords must pay for because of the cost is de mi ni mi s.

As a condition for granting a renter permission for a modification, a landlord may require a reasonable description of the proposed modification, reasonable assurances that the work will be done in a workmanlike manner and assurances that require building permits will be obtained.

If it's a bigger undertaking to install a simple ramp, the renter will be required to obtain all permits, pay for everything and make sure everything is done professionally.

So what do the Acts require? We've talked about what a reasonable accommodation is and a modification.

The Acts, both Texas and Federal, do require that practices, policies, practices and services may effect persons with disabilities rather than other persons. So treating persons with disabilities exactly the same as others would sometimes deny them an equal opportunity to use and enjoy a dwelling.

So you have to make -- you can't outright refuse to make reasonable accommodations and modifications.

Now, the biggest term in here is that may be necessary to afford persons with disabilities an equal enjoyment and

use. And that may be necessary is important because it shows that there must be a nexus, a relationship between the specific disability and what is being requested.

So a person with the mobility disability who is in a wheelchair, who is asking for an assigned parking space now or a wheelchair ramp they want to have installed, there is a nexus between what that disability is and what that disability related request is.

So there has to be that. If there is not a nexus, a causation between the two, then it's not a reasonable accommodation or modification request.

And of course why would we grant these? I mentioned it earlier and it's because they do have -- having the same rule for everybody does not allow equitable treatment. Just because you have the same rule and it says oh, I'm treating everybody equally because everybody has the same rule, but that could have different affects on persons with disabilities.

So by granting that reasonable accommodation, you are allowing that person the equal use of a dwelling that they wouldn't normally have due to their disability.

When it comes to rules for reasonable accommodation

requests -- and again, these come out of everything that we discussed earlier and the most important one that I can rely to everybody is accept verbal requests. This comes out of that HUD Department of Justice memorandum. You do not have to use a magic word. You do not even have to use the word reasonable accommodation request.

You can simply state that, I need a parking space closer to my building because I am now using an assisted walking device.

That's all you have to say and that is a reasonable accommodation request.

Now, places might have websites, specific forms, certain programs that they would like you to use to make those requests, and I encourage those, as always, for a good record of that process between both the housing provider and the consumer, but that is not the only way you could do it.

I'm not going to accept your request because you did not go on to our self-help -- our program and fill out a reasonable accommodation request the same as you would a work order.

It is not the be all end all.

So the most important thing for rules on reasonable accommodation requests is they can come in any way, shape or form and do not have to use specific terminology.

Once that request has come in through any means, immediately you begin that interactive process. Carefully draft, review and revise policy on a regular basis. So always look at your reasonable accommodation requests. They could change and update.

Ask for appropriate, reliable, disability-related information. And we will get to that, what you can and cannot ask for.

Provide prompt responses and document all actions and interactions.

So again, yes, it can be verbal, but then put them on a computer and say hey, can you fill out this request form? He got it, we're going to process it.

That will not delay the interactive process. Oh, I have to send this off to our lawyers or the property manager who is in another city and you don't respond back to that tenant for weeks or months on end because that could also be looked at as a delay and allow for a complaint of discrimination to happen.

So as long as there is an active process and it is actively being worked, you will not have a problem.

When it comes to asking for that appropriate reliable disability information, if you know what the disability is and you see what their disability-related need is, you cannot ask for any further verification.

Then on the other complete end of the spectrum, if you do not know that that person has a disability, so obviously if you do not know they have a disability and you do not know what that disability-related need is, you can get verification from a health care provider, documenting what the disability is and that disability-related need is.

And another rule we have here, TDHCA does have guidance that indicates that a reasonable accommodation should be processed in a reasonable time. For TDHCA programs like the emergency solutions grant program, a reasonable processing time is immediate.

Otherwise as you see, they do have a not to exceed 14 calendar days. It's not business days, not work days, it's 14 concerned days, so it's including the weekends -- it's calendar days, so it's including the

weekends.

So if you fall under TDHCA programs, you have a specific timeline in order to respond to a reasonable accommodation request.

So we have an example here of a request for a reasonable accommodation.

A housing provider has a policy requiring tenants to come to the tenant office in-person to pay their rent. A tenant has a disability that gives her anxiety about leaving her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation.

Everybody can think about this one for a minute. Everybody will probably get this one because I know everybody who is watching this has got this, right? And so in this situation that housing provider must make an exemption to its -- exception to its payment policy to accommodate this tenant.

So some reactions and inquiries to avoid. So what should you not do when you receive a request for a reasonable accommodation or modification? You cannot

orderly ask the nature and severity of an individual's disability. Again, as I said, you can get that there is a disability, you just can't get the nature and severity of a disability.

You can also -- 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 is not a question to ask.

You're a property manager or you've gone to a property manager and they're like, do you have a disability? Is anybody going to be living with you going to have a disability? That's not something that should be asked.

Again, there are some exceptions, as we stated, there are some disabilities and because of some of those disabilities, say recovering alcoholics, and there is a specific home, house, recovery program where they are living in one area, and so it is specifically designed for people with that disability, then yes, you can ask if they have that disability because that is the purpose of those home units.

So what inquiries can I make if a resident asks for a reasonable accommodation? So a housing provider may

ask for information relevant to determining if a requested reasonable accommodation is necessary because of a disability.

For a disability that is not obvious or the need is not obvious, the housing provider may request reliable he related disability information that does verify that the person meets the Act's definition of a disability.

Describes the needed accommodation. And shows the relationship between the person's disability and the need for the requested accommodation.

A doctor or other medical professional, a peer support group, nonmedical service agency or a reliable third-party who is in a position to know about the individual's disability may also provide verification of a disability.

And again, with this one where it's not so obvious, it does fall more in line with the mental health -- not just mental health, but those unseen disabilities that we saw earlier, PTSD, depression, autism.

Some of them you won't be able to see and you may not know that by looking at that person, but then they come to you with a reasonable accommodation request and so now

you would get documentation that shows that yes, this person does have PTSD and requires the use of an emotional support animal.

Which to give the quick plug out, we will have later this week on Thursday if you would like to know more about emotional support animals and service animals, please come to that webinar where we will do a deep dive into that subject because it is a lot more involved than just the surface.

But that is a good example of needing documentation and getting verification of a disability and that disability-related need and how they match.

So on our next example, a tenant with a disability makes a request for a reasonable accommodation to the apartment manager for an early termination of their lease because they're going to be hospitalized for treatment due to their disability.

So again, how should a manager respond? Is this a reasonable request? I'll give you a minute to think it over or a couple, few seconds as everybody is thinking.

Hopefully everybody got this right because I know you are all smart so I know you did, but the answer on this

one what happened was a manager denied the reasonable accommodation. And this was actually a complaint that happened in 2017. That consumer filed a complaint against the property manager and the settlement terms of the agreement the property agreed to refund the tenant's rent for three months. The tenant agreed to vacate the unit and the property agreed to take Fair Housing training.

Usually if there is a Fair Housing complaint, there is always a public interest aspect to it and they will receive some Fair Housing training so they don't have issues going forward in the future.

So as I stated before, you cannot refuse a reasonable accommodation or a reasonable modification request, but when can you deny that request? You have to accept it, you can't just outright refuse it, but there are times when you can deny it.

And it's under the following conditions. If a housing provider has reliable, objective evidence that a person with a disability poses a direct threat to others, including their service animal. Say a person has -- we're not in Florida, but it has happened before

where somebody had the emotional support animal that was a crocodile/alligator, one of the two. I can't remember which one of the two or the difference of the one in Florida is, but that posed a direct threat to others.

There was also a case where a person had a lemur as an emotional support animal and this lemur had reportedly had four instances of biting other people in the complex. So it could be denied because that animal posed a direct threat based on the history of biting other people.

Again, if there is no disability-related need for that accommodation -- again, remember there has to be a nexus. You can't ask for an elevator to be put into your apartment because you have a disability of being in a recovering alcoholic program. There's not a need between the two.

There's got to be a disability-related need, remember that nexus, and also if it's not reasonable, consider their alternative, accommodations that would effectively address the request of a disability related need.

Like I said, that person who comes to you and says I want an elevator or escalator to be put into the apartment complex or into my home, and you can provide one of those stair lifts as a means to still accomplish the same goal,

it just wasn't the intended initial request. And that's why the interactive process is very important.

So when it comes to modifications, because modifications remember do change a structure or a dwelling. Who pays for that?

So housing providers may claim an undue financial and administrative burden. Remember that's different, it's case by case. Or that a requested accommodation or modification constitutes a fundamental alteration of their operations. So you've got to look at these considerations. The financial resources of the provider, the cost of the reasonable accommodation or modification. The benefits to the requester for that accommodation or modification. The availability of other less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related need.

It's important to note that for TDHCA funded developments with Federal or state funds or they were awarded tax credits after 2001, the owner is responsible for paying for that reasonable accommodation or modification unless it is a fundamental change to the

operations or again it's that undue financial administrative burden.

So if you're within side of one of those TDHCA funded developments, then you will pay for that accommodation modification, otherwise it is on that tent's responsibility to pay for it.

In a nutshell, if you have not all of your income comes from your tenants, it comes from other sources, TDHCA grants funds, tax credits, is a good measure of who is going to pay for a modification or accommodation.

And these are some things to think about when it comes to determining also who pays for it. Is it a single or multi-family dwelling? Does that property receive Federal financial assistance? When was the property built for first occupancy?

For multi-family dwellings if it's an accessibility multi-family dwellings built after 1991 were built with accessibility in mind so multi-family dwellings built before 1991 would fall under this when it was first built for occupancy because they weren't built with accessibility in mind so you would basically be bringing them up to code for multi-family dwellings.

Again, does the property participate in a low income housing tax credit program like one of the TDHCA programs? What type of accessibility feature is being requested?

And does the -- is there an agreement that exists between the parties?

If there is already an agreement made between the parties, then that agreement would determine who pays for that modification.

When it comes to Section 504 and TDHCA's low income housing tax credit, I'm going to turn this over to Nathan who is from the TDHCA and can explain this a lot better than I can. Nathan?

>> Nathan: Absolutely. So many of TDHCA's properties will be subject additionally to Section 504 of the Rehabilitation Act of 1973. Specifically if you receive any of the department's HOME, emergency solutions grant, neighborhood stabilization program, any HUD funds through the department. Or if you were awarded low income housing tax credits after 2001, then you are subject to Section 504 requirements.

In those cases, if you are subject to Section 504 you would be required to provide and pay for reasonable

modifications, that would be including structural modifications, to dwelling units or public and common use areas, as long as those do not amount to an undue financial and administrative burden or are not -- or do not constitute a fundamental alteration of the nature, service of the program.

A little bit more about TDHCA accessibility, according to Texas Administrative Code 10 TAC 1.204, a recipient that owns an LIHTC or multi-family bond development with no Federal or state funds awarded before September 1, 2001, must allow for a reasonable accommodation, but does not need to pay for said reasonable accommodation, unless the accommodation requested met the requirements under the Fair Housing Act or is a reasonable accommodation identified by the U.S. Department of Justice with a de minimis cost, like allowing service or assistance animals with no deposit or pet rent and having assigned parking spots.

And this may be other small modifications that would fit under that. It is very situation specific.

So in general, denial of reasonable accommodations most often occur due to misunderstandings of what

reasonable accommodations are and how they work and who is required to make them.

So that was all very, very complicated, particularly determining who pays.

If you want to go to the next slide, Jeff. Do not worry if you cannot read this. This is very small on the screen, I'm well aware, but this is a flow chart that shows who would need to pay for a reasonable accommodation? And this comes to us thanks to the Fair Housing Council of Greater San Antonio. You can see that down at the bottom you see where the low income housing tax credits awarded after 2001, the owner of the property doesn't need to pay for a modification, whereas if it was low income housing tax credit awarded before 2001, then that would not make that cut.

But if you have Federal funds on the property, like I said, HOME or ESG, NSP, any of those would require you to pay for reasonable accommodations in those cases.

Okay. So we do have quite a few questions, unsurprisingly, reasonable accommodations usually gets a lot of questions.

Jeff, I'm going to toss a couple of these to you and

then I'm going to -- I can handle a couple of them as well, but also feel free to tag me in if you want some additional help.

The first one is a little bit strange. I don't think I've ever heard this question before, but it is a good question.

Does the Fair Housing Act require assistance animals to be allowed at open houses at properties for sale? Say like a single-family house.

>> Jeff: I'm actually looking for that question right now.

>> Nathan: It came in very early.

>> Jeff: Okay.

Fair Housing Act requires assistance animals to be allowed at open houses for properties for sale...

So I would think if it's a service animal -- ooh.

That one I might actually have to do a little research because I'm not sure how to define an open house, if it would be a public space and fall under the ADA. It is an open house so it is open to the general public at that time and not a residence. That one I might have to come back to.

>> Nathan: The other question that I would have, and this would even put it under the Fair Housing Act -- again, this is not' strict answer. We are not attorneys. We cannot give you legal advice. But another way to look at this would be that it would be an undue -- it would be burdensome on a person who required an assistance animal to disallow the assistance animal when touring a home for sale.

While we usually handle rental properties, sale of properties, it is also covered by the Fair Housing Act.

So this is one that we're going to dead and do a little bit of research on and we will get -- we're going to go ahead and do a little bit of research on and we will get back to you on this.

Okay. Another question that came in, Jeff, when a reasonable accommodation is made for a temporary disability, is the property required to continue giving the accommodation or modification even if the tenant no longer has the disability?

So example one, tenant has a broken leg and was given reserved parking. They no longer wear the cast so it seems clear that the disability is over, the temporary

disability.

Can they tell -- can the property tell this individual that they no longer qualify for the reserved spot?

>> Jeff: And again, what would come down to that is remember there has to be may be necessary to enjoy equal use of dwelling and common use areas and may be necessary. So there has to be a nexus between a disability and a disability-related need.

If there is no longer a disability, then there is no longer a disability-related need because there is no disability. So they would be in their right if there is no longer a disability, then to go back to normal operations because there is no longer a disability, thus a disability-related need between the two.

>> Nathan: Another follow-up question to this, Jeff, I do not know the answer to this. I generally do not deal in disabilities that are temporary.

How do you define a temporary disability and does a temporary disability actually qualify for a reasonable accommodation?

>> Jeff: Yes. So again, whether it's a permanent or a temporary disability, a disability does have to affect

one or more of those major life activities.

So in that other case, a broken leg and now you were on crutches for the next month or so does affect a person's ability to walk and maneuver around so that would be a disability. And would allow for a disability-related accommodation.

Now, once that disability again has gone away because it is a temporary disability, then there is no more causation between the two. But it doesn't matter whether it's temporary or permanent, a disability that affects a major life activity is a disability, but the temporary and permanent aspect of it is the deciding factor on if that accommodation goes away or stays through the remains of that person's tenancy in their dwelling.

>> Nathan: Okay. So a couple more questions here. I think I can cover these.

What if a tenant is asking for an assigned spot, parking space, in an apartment complex with limited parking, say the apartment has 70 apartments and 62 parking spaces? What do you do when a majority of tenants have handicapped placards? The answer to this is you treat each and every reasonable accommodation on its own.

And if more accommodations are asked for later, you treat them as they come one at a time and you treat them individually. There's no "I only need to give out five parking spaces before there aren't any left."

It is going to be as long as you have someone requesting an assigned spot and there is a disability-related need for that particular accommodation, you need to treat it as it is, you know, as an individual request.

The next question is if a tenant asks for a larger room because the unit next to them makes too much noise or we changed -- do you know what? This is a very specific question. And if you have very specific questions or very specific situations, there's no way for us to be able to actually answer that because it's going to depend on an awful lot of things.

So if you have specific questions, go ahead and email them to us either at fair.housing@TDHCA.state.tx.us or you can email Jeff. Jeff, what's your email for questions?

>> It will be at the end, but it's CRDtraining@TDHCA.state.tx.us.

>> Nathan: I'm going to do one more question here which is who can be considered a reliable third-party for validation of either disability or disability-related need? Jeff, do you want to cover that or I can get that?

>> Jeff: Yes. Reliable third-party, I always default -- the best thing to do when it comes to verifying a disability and disability-related need is going to be a health care provider. And it offers no wiggle room involved in that aspect for going back and forth and verifications because a housing provider is -- can get verification. When you provide them with letter with a disability and disability-related need they can get verification.

So a friend when they're trying to verify that, is not necessarily going to be that, but a family member could be.

Did you have anything to add to that?

>> Nathan: Usually what we would say is that a reliable third-party would be a related professional who has a working relationship with the requester or anybody who is in a position to know about the disability and disability-related need of the individual.

So theoretically a family member may be in that position. A social worker may also be in that position and then obviously any medical professional, doctor, nurse, psychiatrist, psychologist, that's working with the individual would also be in a place to know.

So there's not a hard line but I would say that the closer to the person or the closer to a medical professional you get, the more reliable the verification would be.

In fringe cases, you know, you're going to have to -- you're going to have to make that choice yourself, but I would absolutely -- I would absolutely seek legal counsel in those fringe cases.

A follow-up question would be can we require who fills out a verification form? No, you cannot require specific information. You can only require that a person who fits the description -- so an individual who would be in a position to know of the existence and disability-related need for the individual or medical professional who has a professional relationship in that capacity as well, but you cannot require specific people to fill out a request or a verification form.

Okay. Let's go ahead and move on to accessibility.

We'll try to come back to some of these other questions at the end.

>> Jeff: So design and construction requirements when it comes to accessibility.

So as I referred to earlier, as a refresher, for all covered multi-family dwellings that were built for first occupancy after March 13th, 1991, they have to be designed and constructed in a manner that is: Accessible, which means a place they can be used, entered or reached, and usable, which is available or convenient for use. And in practice these terms are interchangeable, accessible and usable.

So some design and construction requirements. Covered buildings should have at least one accessible entrance on a route unless it is impractical because of unusual characteristics of the site. Unusual characteristics has been determined and documented before, not after an issue is brought up or the property is built.

Public and common areas that need to be accessible include laundry facilities, fitness centers. If there's

a theater facility, playgrounds. And in some of your areas like fire alarms, being able to be reached and accessible. Mailboxes, storage area. Access to a pool if there is one. Activity center. Recreation center. Workout center if there was one. Dumpsters and trash cans. And also light switches, electrical outlets, thermostats, environmental controls in accessible locations. Reinforcement in bathroom walls so grab bars can be added when needed. And usable kitchens and bathrooms so that a disabled person can accommodate throughout the space.

When it comes to terms and conditions, it is illegal to set different terms, conditions or privileges for sale or rental because of a disability.

An example of that would be a housing provider may not treat disabled tenants differently when it comes to issuing lease violations because of the disability of that person.

If they're treating them differently than everybody else.

Or a housing provider may not require disabled persons sign an extra addendum to use the pool at the property.

We actually-- an example of that, we had a case where somebody had a sensitivity to the sun and light and they requested to use the pool after hours. The pool was closed and locked at 10:00. They were requested to use that pool after that time because they didn't want to be out in the sun. And you know here in Texas, summers can last well into the night.

So the property wanted to add an extra addendum to that person's lease agreement where they would have to pay for additional security because they were using the pool and opening up that gate at night.

The tenant filed a complaint. A settlement was reached where the tenant was not paying for additional security because there was already security on the premises and they were able to use the pool after 10:00 at night. But you can't add extra addendums because of a person's disability.

Some accessibility examples again is require residents an accessible parking space that will accommodate wheelchair equipped vans. A reasonable accommodation could include relocating an enlarging an existing space that will serve the van. So taking two

spaces and turning them into one accessible parking spot.

Another example here is a resident uses a scooter type of wheelchair, which is 38 inches in width and they request a ramp to enter their ground floor unit. The ramp requested must be at least 40 inches wide, gives two inches on each side. It must have a slope of no more than three percent and the landing of the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided even though they may exceed the usually specifications of such alteration.

In another example, a resident needs a ramped entrance to their ground floor unit to accommodate their wheelchair. They don't wish to move to an accessible unit. They like where they're living.

The recipient must provide an accessible entrance at the resident's current unit unless it would, again, have undue financial and administrative hardship or fundamental alteration of the program to do so. Would have on to show an undue financial hardship or fundamental alteration of their process to change and not provide that ramp.

And then we also have a resident with quadraplegia requests replacement of a bathtub in their unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that installation of a roll-in shower in that unit is impossible.

The on-site manager should meet with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

So that would show that there is that fundamental change to the operations. They would not be able to put that roll-in shower in place without a complete change of plumbing and everything else. So then you would have to start that process to figure out a different accommodation that could suit that person with that disability.

Finishing up right along here so we can get to the questions, as I said we would talk about how complaints and our mediation process work should you have any issues.

So when it comes to filing a complaint, a Fair Housing complaint with the Civil Rights Division, if you have a complaint filed against you, you will be notified of the allegation. You will likely -- it's not even likely.

You will be invited to mediate, also called conciliation.

If you decide not to mediate you could file your answer that is in writing, under penalty of perjury and may be amended at any time.

Once a Fair Housing complaint is made, you have the option as I said to mediate conciliate and that process is open throughout the entire time of the investigation.

Should you decide to come together and try to resolve the issue through mediation, the investigation will still continue at the same time that the conciliation is happening. And if conciliation does not work, the mediation will continue and finish out. And if conciliation works, then the investigation is then halted once the conciliation agreement is reached between the two parties.

And speaking of that process, when it comes to mediation conciliation, it is a free service. You do not have to pay for it. It does eliminate the lengthy litigation and investigation time. It does speed up a resolution of a complaint as there is no long investigation process. It does save time and money.

It does open the lines of communication between the

parties. An agreement is binding on both the complainant and the respondent. And everything that happens in mediation and conciliation is confidential. So anything that is brought to the will table, anything that is said during conciliation is not part of public record and it is not part of the investigation. They cannot move any statements made in the conciliation over to the investigation side.

And if a settlement is reached, it is not part of public knowledge.

TDHCA for their funded properties have their own process that Nathan will address.

>> Nathan: Yes, absolutely. 10 TAC section 1.2, the Texas housing and community affairs has a process to address complaints about its properties and programs. Within 15 business days the complainant will receive a response from the department either that the complaint has been resolved or that it will be resolved by a certain date. After that the complainant will be notified about the complaint at least quarterly until final resolution in my experience, I've not seen many complaints that require quarterly notifications or quarterly updates.

Most complaints are resolved before that time frame.

And usually you hear from TDHCA about your complaint much faster than 15 business days. That first response is usually within just a couple of days.

So if we could move on to the next slide.

In the State of Texas, about 60% of all Fair Housing complaints are based upon disability as the protected class. And within those -- within that 60%, most, far more than any other groups, among those, are discriminatory terms, services of facilities or failure to make reasonable accommodations. And that is based upon data in Texas from 2013 to 2018. So it's a pretty substantive sample size there. So it's -- reasonable accommodations are not rare, they are in fact quite common and they are also very common in Fair Housing complaints. So it is important to make sure that you're handling reasonable accommodations and reasonable modifications properly so you don't end up having to deal with the Texas Workforce Commission Civil Rights Division because you've had a Fair Housing complaint against you. Try to nip that in the bud and deal with it beforehand rather than let it get to that point.

So in that vein if you have training or technical assistance needs you can contact either the Texas Workforce Civil Rights Division. The information is there. Their number is 512- 756- 3949. And as Jeff stated earlier, the email address to reach out to is crdtraining@TWC. state. tx. us.

And for the Texas Department of Housing and Community Affairs, you can reach out to me, Nathan Darus, at 512- 475- 0306.

My email address are as follows: You can get to me at fair.housing@TDHCA. state. tx. us.

That second email address is going to be phased out here in the next few months. I'll still get those emails, but you will want to send them to the fair.housing@TDHCA. state. tx. us.

So I think that we have gotten to the end of what we have prepared so we have some questions.

I wanted to hold off on some of these until the end because it looked like there were some patterns, Jeff.

So one of the things that has come up is how often should the need for a reasonable accommodation be reviewed or reverified or is there any type of temporary disability

that would not allow for reasonable accommodation, but a lot of the questions are to -- when can you use a reasonable accommodation to request if it is still necessary?

There is no specific time limit listed within the acts for that. That is going between that housing provider and that consumer.

Now, again if that is have a housing provider who is reviewing it monthly could seem excessive and could potentially be and could be determined by a consumer as discriminatory. You could be opening yourself up for a complaint by having that.

It's important to have as a housing provider to have regulations that are looked at as well internally I would probably say every year you are looking at your own policies and procedures for reasonable accommodations. And when you have a tenant who is requesting a reasonable accommodation request and is providing documentation if necessary, that could be part of the documentation and could be also part of your interactive process with that tenant.

Okay. This is a permanent disability so we will never

revisit this.

This is a temporary disability but we know some temporary disabilities, one might be extended or that temporary disability may turn into a permanent. And if you have that interactive process, even though there are no specific timelines per any of the acts, you can have that interactive process and say we will revisit this in six months.

Or we will revisit your reasonable accommodation when your lease agreement is up for renewal which would be for me as good marks on the wall to see and what we've seen in the past would be good timelines to establish for revisiting a reasonable accommodation or modification.

>> Nathan: All right. And then this is another one that we had a little bit of -- a little repeat business on this question. So can a resident without a car request a parking space for someone who comes to help the resident weekly?

>> Jeff: Yes. And this works in -- I can think of an example that we've seen that is similar in vain to this, but if you -- if you have a tenant whose mother is in a wheelchair that's on a weekly basis and that tenant

requests to build a ramp for his mother to get approximate into his house without having to lift her upstairs, that modification again cannot be refused due to the nature. It would be similar to this one because you also have a person who is a -- that person could be a caregiver or a guardian type person over an adult who is also assisting with that person and they drive a car, so you can request that reasonable accommodation to those policies, practices, procedures, with your housing provider.

And again, remember reasonable accommodations cannot be refused, but they can be denied, but they have to show that there is fundamental change to that provider's operation or it is [indiscernible]. So they would be right in requesting for that reasonable accommodation of a parking space for their did you say caregiver, I think?

>> Nathan: Well, it didn't state whether it was a caregiver, but for someone who comes to help the resident weekly.

And I think the question was also whether or not the request for the spot would also be that it was a reserved spot.

>> Jeff: If you're trying to get a reserved spot for

a person not in that complex, there may not be a nexus there between the two. So -- but to get a spot or a reasonable accommodation to ask for that person who comes weekly to do something along the lines -- remember, there has to be -- you know, without knowing specifics of this situation, I come back to there has to be a nexus, a reason, a disability, and a disability-related need for a reasonable accommodation request.

You can't just -- there has to be something between the two. You can't be just like I have a disability, but I'm going to ask for something that has nothing to do with it because then there's not a nexus, a causation between the two.

So I would default to that without knowing the specifics that you can ask for this accommodation if there is a nexus between the two.

>> Nathan: So I think another way to put this might be that if we frame this, excuse me, as two different questions, one is can you request that someone who does come to help you as a resident who has a disability on say a weekly basis requests that this person that helps you be allowed to park without being towed, if the property

requires parking permits or something, that would be like a no brainer, absolutely -- that's probably a reasonable accommodation.

Whereas if they are asking for a reserved spot for someone who comes weekly to help, that nexus is probably not there or it may be -- may be a little more blurred.

All right. I think that that actually gets us to the end of our questions. Look at that, an hour and a half exactly from when we started.

So again, if you have questions, if you have questions go ahead and email them to us. We can roll back to the training and technical assistance slide. Oh, you already did that. Great.

>> Jeff: Yes, I did.

>> Nathan: We did have one more question come in. I'm going to try to read it real quick to see if it's something we can answer.

>> Jeff: Okay.

>> Nathan: Oh. This is actually a good one.

Does a landlord need to approve an accommodation to pay to maintain something in a home if the tenant cannot physically maintain it themselves and cannot afford to

hire someone to maintain it? It's a lot of if's and and's.

>> Jeff: Yes, it is.

>> Nathan: So I'm going to answer this by saying this is probably something very specific, so if -- there's got to be details that we're missing here because every situation is unique.

Go ahead and email us that question with more details and we can probably get you a better answer because as it is, I don't know.

>> Jeff: Yeah. And I come back to this one, an accommodation is a change, an exception to rules, policies or procedures. I mean, it can involve pay and there is a line between where we get into technical assistance to legal advice when it comes to what's in people's lease agreements and rental agreements that we really can't speak to.

>> Nathan: I would say the more I'm reading this now the more it sounds like the request might be for something that the property is not usually in the business of, so there could also be that. The request could be for something that would fundamentally alter the nature of the business -- the service provided.

So yeah, if you have specific situations, reach out to us by email, that's going to be the best way for us to get you a more full answer. And the answer may be we don't know, you might need to consult legal counsel because again we are not attorneys and we can't give you specific legal advice.

I think that that is going to wrap is up for us today. Remember that on Thursday we do have a webinar specifically about assistance animals. Then that will also be at 2:00 p.m., the same as this one. So be on the lookout for the -- an email that comes from this webinar. It will have a link to register for the assistance animal webinar as well. And so we will see you all there hopefully and thank you for joining us today. And Jeff, thanks for presenting for us.

>> Jeff: Yes, thank you for having me.

[End of webinar].