

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON JULY 12, 2016, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **July 29, 2016**

The rules will take effect: **August 1, 2016**

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter H. Discriminatory Housing Practices, §819.136

The Commission adopts amendments to the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without changes*, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter A. General Provisions, §§819.1 - 819.3

Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §§819.23 - 819.25

Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §§819.46, 819.47, 819.50, and 819.52

Subchapter E. Equal Employment Opportunity Deferrals, §819.72

Subchapter G. Texas Fair Housing Act Provisions, §819.112

Subchapter H. Discriminatory Housing Practices, §819.122

Subchapter I. Texas Fair Housing Act Complaints and Appeals Process, §§819.151, 819.153, and 819.156

Subchapter J. Fair Housing Deferral to Municipalities, §819.171

Subchapter L. Fair Housing Fund, §§819.221

The Commission adopts the repeal of the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §819.22

Subchapter J. Fair Housing Deferral to Municipalities, §819.172

The Commission adopts the repeal of the following subchapter of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, in its entirety, as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3271):

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

The Commission adopts the following new subchapter to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without changes*, as published in the May 6, 2016, issue of the Texas Register (41 TexReg 3271):

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

PART I. PURPOSE, BACKGROUND, AND AUTHORITY
PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The 84th Texas Legislature, Regular Session (2015), enacted the following changes, requiring amendments to Chapter 819, the Texas Workforce Commission Civil Rights Division rules:

--Senate Bill (SB) 208, relating to the continuing functions of the Texas Workforce Commission (Agency), which abolishes the Commission on Human Rights and transfers its duties to the Agency, in addition to streamlining and clarifying several CRD functions, including review of other state agencies and reporting requirements to the legislature.

--SB 1267, relating to contested cases conducted under the Administrative Procedure Act (APA);

--House Bill (HB) 2154, relating to the functions and operation of the State Office of Administrative Hearings, resulting in changes to Texas Government Code, Chapter 2001, APA;

--HB 577, relating to pay, benefits, and requirements for state active duty service members; and

--SB 652, relating to excluding a franchisor as an employer of a franchisee or a franchisee's employees, which impacts the definition of "Employer" in §819.11.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§819.1. Purpose

Section 819.1 adds a reference to Texas Government Code §437.204 and Subchapter I and removes the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

§819.2. Definitions

Section 819.2(1) and (2) are amended to remove the definition of "Commission on Human Rights" and add the definitions of "Agency" and "Commission" to implement SB 208.

Section 819.2(4), the definition of CRD director, is amended to implement SB 208 by:
--removing Texas Labor Code reference §301.154 and adding the reference to §301.009(a); and
--adding that the CRD director is the Agency's authorized designee to implement SB 208.

Certain paragraphs have been renumbered to reflect additions.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director

Section 819.3 is amended by renaming the section title as "Roles and Responsibilities of the Texas Workforce Commission and CRD" to implement SB 208.

Section 819.3(a) is amended by replacing "Commission on Human Rights" with "Agency" to implement SB 208.

Section 819.3(a)(2) is amended by adding that the Agency's executive director will appoint the CRD director in order to implement SB 208.

Section 819.3(a)(3) is amended to add that the Agency's executive director will supervise its CRD director in administering the activities of CRD.

Section 819.3(b)(1) is amended to add the reference to Texas Government Code §437.204 and Subchapter I and remove the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) and Chapter 437 to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

Section 819.3(c), Agency Personnel Policies Applicable to CRD Director, is removed to implement SB 208.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

The Commission adopts the following amendments to Subchapter B:

§819.11. Definitions

Section 819.11(6) is amended to clarify the definition of "Employer" to implement:
--HB 577, which excludes the Texas Military Forces from being considered employers; and
--SB 652, which excludes franchisors from being considered employers.

Section 819.11(8) is amended by clarifying that "Mediation" is an "alternative dispute resolution" process intended to "resolve" a dispute and removing "prior to reasonable cause

determination or dismissal of a perfected complaint." This change aligns the definition with Agency practice.

§819.12. Unlawful Employment Practices

Section 819.12(g) is amended to replace "Commission on Human Rights" with "Agency" and to update section language to implement SB 208.

Certain paragraphs and subparagraphs have been renumbered and relettered to reflect revisions.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

The Commission adopts the following amendments to Subchapter C:

§819.22. Review of Firefighter Tests

Section 819.22, "Review of Firefighter Tests," is repealed to implement SB 208.

§819.23. Review of State Agency Policies and Procedures

Section 819.23(a) and new (b) update procedures in reviewing other state agencies' personnel policies and procedures systems (PPPS), which allows reviews of state agencies' PPPS more frequently than every six years, using risk assessment with the implementation of SB 208.

Certain subsections have been relettered to reflect additions.

§819.24. Standard Employment Discrimination Training

Section 819.24(a) is amended to:

- remove the requirement that a preapproved list of standard and compliance training be maintained; and
- add that the Agency shall develop materials for use by state agencies in providing standard employment discrimination training.

§819.25. Compliance Employment Discrimination Training

Section 819.25(b):

- removes the requirement that preapproved list of standard and compliance training be maintained by CRD; and
- adds that compliance training may be provided by the Agency or by another entity or person approved by the Agency.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

The Commission adopts the following amendments to Subchapter D:

§819.46. Dismissal of Complaint

Section 819.46(b) is amended to align with Texas Labor Code §21.208 on the legal communication method to the complainant, respondent, and any applicable federal enforcement agency.

§819.47. Cause Determination

Section 819.47(b) is amended to replace "Commission on Human Rights" with "Commission members" to implement SB 208.

§819.50. Right to File a Civil Action

Section 819.50(a)(2) is amended to replace "shall" with "may" to align with Texas Labor Code §21.252(c).

§819.52. Judicial Enforcement

Section 819.52(a) is amended to add "On a majority vote of the Commission" to implement SB 208.

Section 819.52(b) is amended to specify that the Commission makes the determination to bring a civil action and that CRD shall notify the complainant by certified mail to implement SB 208.

Section 819.52(c) is amended to replace "Commission on Human Rights" with "Commission" to implement SB 208.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

The Commission adopts the following amendments to Subchapter E:

§819.72. Requirements for a Local Commission

Section 819.72 is amended to reflect current operations by specifying that the local commission must be currently certified by EEOC as a Fair Employment Practices Agency (FEPA).

Certain paragraphs in this section have been renumbered to accommodate revisions.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

The Commission adopts the following amendments to Subchapter G:

§819.112. Definitions

Section 819.112(8)(A)(ii) is amended to replace "mental retardation" with "intellectual disability," in accordance with rule changes that were previously approved in June 2014.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

The Commission adopts the following amendments to Subchapter H:

§819.122. Exemptions Based on Familial Status

The heading to §819.122 is amended to add "Three" to emphasize that there are three distinct exemptions.

Section 819.122(a) is amended by adding language in reference to a federal or state program for clarification.

Section 819.122(b) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended for and solely occupied by individuals 62 years of age or older.

Section 819.122(c) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended and operated for occupancy by individuals 55 years of age or older, given specific criteria.

New §819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation

New §819.136, "Prohibited Interference, Coercion, Intimidation, or Retaliation," retains the provisions of §819.201 of Subchapter K of this chapter, concurrently proposed for repeal.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

The Commission adopts the following amendments to Subchapter I:

§819.151. Filing a Complaint

Section 819.151(h) is amended to replace "Commission on Human Rights" with "Commission" and to specify that if a majority of the Commission does not approve the complaint, the complaint shall be withdrawn by CRD to implement SB 208.

§819.153. Investigation of a Complaint

Section 819.153(a) is amended to add language further clarifying CRD internal practice.

Section 819.153(d) is amended to remove the phrase "within 10 days of identification" to align with Texas Property Code §301.084 and §301.081(f)(3).

Section 819.153(k) is amended to add "unless it is impracticable to do so" to align with federal Fair Housing Act §810(a)(1)(C).

§819.156. Reasonable Cause Determination and Issuance of a Charge

Section 819.156(a) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208. Additionally, "and" is changed to "or" to clarify that reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent, or otherwise disclosed during the investigation.

Section 819.156(e) is amended to add "trial of" to align with Texas Property Code §301.092 and federal Fair Housing Act §810(g)(4) and to reflect that a charge may not be issued upon commencement of a trial of a civil action rather than commencement of the civil action itself.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

The Commission adopts the following amendments to Subchapter J:

§819.171. Deferral

Section 819.171 is amended to reflect that CRD may defer proceedings and refer complaints to a municipality that is currently certified by the U.S. Department of Housing and Urban Development (HUD) by adding the phrase "as a Fair Housing Assistance Program (FHAP) to

investigate fair housing complaints and enforce violations" to (a) and removing subsections (b) and (c).

§819.172. Memoranda of Understanding

Section 819.172 is repealed in order to eliminate the requirement of memoranda of understanding, thereby streamlining fair housing deferrals to municipalities.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission adopts the repeal of Subchapter K in its entirety:

- §819.191. Administrative Hearings
- §819.192. Ex Parte Communications
- §819.193. Proposal for Decision and Hearing Officer's Report
- §819.194. Countersignature by the CRD Director
- §819.195. Oral Argument before the Commission on Human Rights
- §819.196. Pleading Before Order
- §819.197. Form and Content of the Order
- §819.198. Final Order
- §819.199. Rehearing
- §819.200. Judicial Review
- §819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission adopts new Subchapter K:

Subchapter K is being repealed and replaced to streamline, update, and clarify the rules governing administrative proceedings for adjudication of fair housing complaints as required in Texas Property Code, Chapter 301.

New Subchapter K aligns with APA, as amended by SB 1267 and HB 2154, regarding notices of hearing, proposals for decision, motions for rehearing, and suits for judicial review.

§819.191. Administrative Hearings

New §819.191 provides that FHA hearings will be conducted by the Agency's Special Hearings Department in accordance with Texas Government Code, Chapter 2001.

§819.192. Parties

New §819.192 sets forth requirement and time frame in regards to parties.

§819.193. Evidence and Prehearing Conference

New §819.193 provides for the admissibility of evidence and handling of exhibits.

§819.194. Notice of Hearing

New §819.194 sets forth the requirements and time frames for issuing a notice of hearing.

§819.195. Postponement and Continuance

New §819.195 provides that a hearing may be postponed at the discretion of the hearing officer.

§819.196. Default

New §819.196 sets forth the procedures to be followed if a party does not appear for a hearing.

§819.197. Ex Parte Communications

New §819.197 generally prohibits communication between parties and a Commission member or Agency employee outside of the hearing process.

§819.198. Proposal for Decision

New §819.198 sets forth the procedures for drafting and exchanging the proposal for decision and exceptions to the proposal.

§819.199. Commission Decision

New §819.199 sets forth the procedures for issuing the Commission decision and when the decision becomes final.

§819.200. Motion for Rehearing

New §819.200 describes the procedures and deadlines for filing a motion for rehearing.

§819.201. Judicial Review

New §819.201 sets forth the right to appeal the Commission decision to a court under Texas Government Code, Chapter 2001.

SUBCHAPTER L. FAIR HOUSING FUND

The Commission adopts the following amendments to Subchapter L:

§819.221. Fair Housing Fund

Section 819.221(c) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208.

No comments were received.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

SUBCHAPTER A. GENERAL PROVISIONS

§819.1. Purpose.

The purpose of this chapter is to implement the following statutory provisions: Texas Labor Code, Chapter 21 (relating to employment discrimination) and Chapter 301, Subchapter I (relating to the Civil Rights Division); Texas Property Code, Chapter 301, (relating to the Texas Fair Housing Act); and Texas Government Code, Chapter 437, §437.204 and Subchapter I (relating to unlawful termination of state military members ordered to training or duty).

§819.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission.
- (2) Commission--The body of governance established under Texas Labor Code, Chapter 301.
- (3) Complainant--A person claiming to be aggrieved by a violation of Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301, and who files a complaint under one of these chapters.
- (4) CRD--Texas Workforce Commission Civil Rights Division
- (5) CRD director--The director, or the director's authorized designee, of the Texas Workforce Commission Civil Rights Division, as established under Texas Labor Code §301.009(a). The CRD director is the authorized designee of the Agency's executive director for purposes of enforcing the statutes referenced in §819.1 of this subchapter.
- (6) Fair Employment Practices Agency--A state or local government agency designated by the U.S. Equal Employment Opportunity Commission (EEOC) to investigate perfected employment discrimination complaints in the state or local government agency's jurisdiction.
- (7) Fair Housing Assistance Program Agency--A state or local government agency designated by the U.S. Department of Housing and Urban Development (HUD) to investigate Fair Housing Act complaints in the state or local government agency's jurisdiction.

- (8) Party--A person who, having a justiciable interest in a matter before CRD, is admitted to full participation in a proceeding concerning that matter.
- (9) Person--One or more individuals or an association, corporation, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.
- (10) Respondent--A person against whom a complaint has been filed in accordance with Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301.

§819.3. Roles and Responsibilities of the Texas Workforce Commission and CRD.

(a) Responsibilities of the Agency:

- (1) Establish policies for CRD;
- (2) Appoint CRD director by and through the Agency's executive director;
- (3) Supervise CRD director by and through the Agency's executive director in administering the activities of CRD;
- (4) Serve as the state Fair Employment Practices Agency (FEPA), which is authorized, with respect to unlawful employment practices, to:
 - (A) seek relief;
 - (B) grant relief; and
 - (C) institute civil proceedings; and
- (5) Serve as the state Fair Housing Assistance Program (FHAP), which is authorized, with respect to unlawful housing practices, to:
 - (A) seek relief;
 - (B) grant relief; and
 - (C) institute civil proceedings.

(b) Responsibilities of CRD:

- (1) Administer Texas Labor Code, Chapter 21; Texas Property Code, Chapter 301; and Texas Government Code §437.204 and Subchapter I; and

- (2) Collect, analyze, and report statewide information regarding employment and housing discrimination complaints filed with CRD, EEOC, HUD, local commissions, and municipalities in Texas to be included in CRD's annual report to the Governor and the Texas legislature.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

§819.11. Definitions.

The following words and terms, when used in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Bona fide occupational qualification--A qualification:
 - (A) that is reasonably related to the satisfactory performance of the duties of a job; and
 - (B) for which there is a factual basis for believing that no members of the excluded group would be able to satisfactorily perform the duties of the job with safety and efficiency.
- (2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1976, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and Texas Labor Code, Chapter 21, regarding Employment Discrimination.
- (3) Complaint--A written statement made under oath stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, and received within 180 days of the alleged unlawful employment practice.
- (4) Conciliation--The settlement of a dispute by mutual written agreement in order to avoid litigation where a determination has been made that there is reasonable cause to believe an unlawful employment practice has occurred.
- (5) Disability--A mental or physical impairment that substantially limits at least one major life activity of an individual, a record of such mental or physical impairment, or being regarded as having such an impairment as set forth in

§3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas Labor Code §21.002(6).

- (6) Employer--A person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in Texas or a political subdivision of Texas, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed. The term excludes a franchisor from being considered an employer of a franchisee or a franchisee's employees. The term also exempts the Texas Military Forces from being an employer, as claims of discrimination against the Texas Military Forces by service members on state active duty shall be processed in accordance with military regulations and procedures as authorized by Texas Government Code §437.212.
- (7) Local commission--Created by one or more political subdivisions acting jointly, pursuant to Texas Labor Code §21.152, and recognized as a Fair Employment Practices Agency by EEOC pursuant to U.S. Civil Rights Act, Title VII, §706, as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act of 1990, as amended.
- (8) Mediation--An alternative dispute resolution process to resolve a dispute by mutual written agreement among the complainant, respondent, and CRD.
- (9) Perfected complaint--An employment discrimination complaint that CRD has determined meets all of the requirements of Texas Labor Code, Chapter 21, and for which CRD will initiate an investigation.

§819.12. Unlawful Employment Practices.

- (a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:
 - (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or
 - (2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner the status of an employee.

- (b) **Discrimination by Employment Agency.** An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:
 - (1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or
 - (2) classifies or refers an individual for employment on that basis.
- (c) **Discrimination by Labor Organization.** A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:
 - (1) excludes or expels from membership or discriminates in any other manner against an individual; or
 - (2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in a manner that:
 - (A) deprives or tends to deprive an individual of any employment opportunity;
 - (B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or
 - (C) causes or attempts to cause an employer to violate this subchapter.
- (d) **Admission or Participation in Training Program.** An employer, labor organization, or joint labor management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it discriminates against an individual in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age but younger than 56 years of age.
- (e) **Retaliation.** An employer, employment agency, or labor organization, commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age if the employer, employment agency, or labor organization retaliates or discriminates against a person who:
 - (1) opposes a discriminatory practice;
 - (2) makes or files a charge;

- (3) files a complaint; or
- (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.
- (f) **Aiding or Abetting Discrimination.** An employer, employment agency, or labor organization commits an unlawful employment practice if it aids, abets, incites, or coerces a person to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.
- (g) **Interference with the Agency or CRD.** An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully interferes with the performance of a duty or the exercise of a power by CRD or by the Agency in relation to CRD.
- (h) **Prevention of Compliance.** An employer, employment agency, or labor organization, commits an unlawful employment practice if it willfully obstructs or prevents a person from complying with Texas Labor Code, Chapter 21, or a rule adopted or order issued under Texas Labor Code, Chapter 21.
- (i) **Discriminatory Notice or Advertisement.** An employer, employment agency, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if it prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:
 - (1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
 - (2) concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.
- (j) A bona fide occupational qualification is an affirmative defense to discrimination.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

§819.23. Review of State Agency Policies and Procedures.

- (a) Except as provided by subsection (b) of this section, CRD shall review the personnel policies and procedures system (PPPS) of each state agency once every six years on a staggered schedule to determine compliance with Texas Labor Code, Chapter 21.

- (b) CRD may conduct a review of the PPPS of a state agency more frequently than required by subsection (a) when such review is indicated by a risk assessment based on the following criteria:
- (1) Data on complaints against a state agency;
 - (2) Previous review findings;
 - (3) Changes in leadership of a state agency;
 - (4) The date of the last on-site review;
 - (5) Compliance by the state agency with submission of a self-assessment to CRD;
and
 - (6) Any other related information collected and maintained by the Agency.
- (c) CRD shall notify a state agency of its review of the agency's personnel policies and procedures by mail, or electronic communication upon agreement of the agency, at the beginning of the fiscal year in which CRD is to conduct the review. The review of each state agency shall be completed and recommendations issued on or before the one-year anniversary date on which CRD issued its notification letter to the agency head.

§819.24. Standard Employment Discrimination Training.

- (a) Each state agency shall provide its employees with standard employment discrimination training no later than the 30th day after the date the employee is hired by the agency, with supplemental training every two years thereafter. The Agency shall develop or approve the materials for use by state agencies in providing standard employment discrimination training.
- (b) The minimum standards for the content of standard employment discrimination training shall include, but not be limited to, requiring participants to:
- (1) identify an unlawful employment practice according to the Civil Rights Act;
 - (2) apply knowledge of the applicable laws by correctly identifying whether individual case studies would be considered violations;
 - (3) identify the protected classes under federal and state law;
 - (4) list a complainant's rights and remedies;
 - (5) identify the agency personnel to whom a complaint shall be addressed; and

- (6) describe the general stages involved in processing a complaint.

§819.25. Compliance Employment Discrimination Training.

- (a) For purposes of this section, the term "complaint with merit" shall mean a complaint that is resolved, either by a cause finding or through withdrawal of the complaint with a remedy favorable to the complainant, such as a negotiated settlement, withdrawal with benefits, or conciliation.
- (b) State agencies receiving three or more complaints with merit within a fiscal year shall provide compliance employment discrimination training. The training may be provided by the Agency or by another entity or person approved by the Agency.
- (c) CRD's minimum standards for the content of compliance employment discrimination training shall include, but not be limited to, requiring participants to:
 - (1) distinguish between disparate treatment and disparate impact;
 - (2) identify the elements of a complaint involving disparate treatment and disparate impact;
 - (3) explain the defenses available to an employer resulting from both statute and case law involving disparate treatment and disparate impact;
 - (4) explain the burden of proof requirements for disparate treatment and disparate impact;
 - (5) identify criteria for accurately measuring compliance with applicable laws;
 - (6) define the different types of employment discrimination;
 - (7) identify the appropriate action to be taken in a situation involving a potential case of employment discrimination; and
 - (8) describe strategies for prevention of employment discrimination.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

§819.46. Dismissal of Complaint.

- (a) The CRD director may dismiss a complaint if:
 - (1) it is not filed timely;

- (2) it fails to state a claim under Texas Labor Code, Chapter 21;
 - (3) a complainant fails to perfect a complaint within 10 days of the receipt of the complaint; or
 - (4) a complainant fails to cooperate, fails or refuses to appear or to be available for interviews or conferences, or fails or refuses to provide requested information. Prior to dismissing the complaint, the complainant shall be notified and given a reasonable time to respond.
- (b) CRD shall notify the complainant as required by law, by certified mail of its dismissal of a complaint. The respondent and any federal enforcement agency shall be notified of the dismissal of a complaint.
 - (c) CRD shall notify the complainant, by mail, of the complainant's right to file a civil action against the respondent named in the perfected complaint pursuant to Texas Labor Code §21.208 and §21.252, and §819.50 of this subchapter.

§819.47. Cause Determination.

- (a) The CRD director shall review the investigation report and record of evidence to determine if there is reasonable cause to believe the respondent has engaged in an unlawful employment practice.
- (b) If after the review, the CRD director determines that reasonable cause exists, the CRD director shall confer with the Commission members. If at least two of the three Commission members concur with the CRD director's determination that the respondent has engaged in an unlawful employment practice, the CRD director shall issue a letter of cause determination. The cause determination letter shall be provided by mail, or electronic communication upon agreement of the person or entity, to the complainant, respondent, and any agency as required by law and shall contain the CRD director's finding that the evidence supports the perfected complaint and include an invitation to participate in conciliation.

§819.50. Right to File a Civil Action.

- (a) CRD shall inform the complainant by certified mail of:
 - (1) the dismissal of a complaint filed with CRD; or
 - (2) the failure to resolve a complaint in writing that was filed with CRD 180 days previously. CRD shall inform the complainant of the complainant's right to request from CRD a notice of right to file a civil action against the respondent. Upon receipt of a written request, CRD may issue a notice of right to file a civil action.

- (b) Before the expiration of 180 days after filing the complaint and upon a written request from a complainant, CRD shall issue a notice of right to file a civil action if:
 - (1) written confirmation by a physician licensed to practice medicine in Texas states that the complainant has a life threatening illness; or
 - (2) certification by the CRD director states that the administrative processing of the perfected complaint cannot be completed before the expiration of the 180th day after the complaint was filed. The certification shall take into account the exigent circumstances of the complainant.
- (c) CRD shall issue notice under subsection (b) of this section by certified mail no later than the fifth business day after receipt of the complainant's request.
- (d) The complainant's written request shall include the respondent's name, CRD complaint number, and EEOC complaint number if the complaint has been deferred by EEOC.

§819.52. Judicial Enforcement.

- (a) On a majority vote of the Commission, CRD may bring a civil action against a respondent named in a perfected complaint pursuant to the requirements of Texas Labor Code §21.251.
- (b) Upon a determination by the Commission to bring a civil action, CRD shall notify the complainant by certified mail.
- (c) On a majority vote of the Commission, CRD may pursue intervention in a civil action pursuant to the requirements of Texas Labor Code §21.255.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

§819.72. Requirements for a Local Commission.

To be a local commission eligible to receive deferrals from CRD, pursuant to Texas Labor Code §§21.151 - 21.156, and this chapter, the local commission must be currently certified by the EEOC as a Fair Employment Practices Agency (FEPA).

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

§819.112. Definitions.

The following words and terms, when used in Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial

Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Accessible or readily accessible to and usable by--means a public or common use area can be approached, entered, and used by individuals with disabilities, as set forth in Texas Property Code §301.025(c)(3). Compliance with the appropriate requirements of the American National Standards Institute (ANSI) for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.
- (2) Accessible building entrance--A building entrance that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.
- (3) Accessible route--A route that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.
- (4) Building--A structure, facility, or the portion thereof that contains or serves one or more dwelling units.
- (5) Common use areas--Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents or the guests of a building. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.
- (6) Complaint--A written statement made under oath stating that an unlawful housing practice has been committed, setting forth the facts on which the complaint is based, and received within one year of the date the alleged unlawful housing practice occurred or terminated, whichever is later, and for which CRD shall initiate an investigation.
- (7) Controlled substance--Any drug or other substance or immediate precursor as defined in the Controlled Substances Act, 21 U.S.C. §802 or the Texas Controlled Substances Act, Texas Health and Safety Code Chapter 481.
- (8) Disability--A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or controlled substance; and reference to "an

individual with a disability" or perceived as "disabled" does not apply to an individual based on that individual's sexual orientation or because that individual is a transvestite.

- (A) Physical or mental impairment includes:
 - (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or
 - (ii) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.
- (B) Major life activity means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (C) A record of having such an impairment means a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity.
- (D) Being regarded as having an impairment means having:
 - (i) a physical or mental impairment that does not substantially limit one or more major life activity but that is treated by another person as constituting such a limitation;
 - (ii) a physical or mental impairment that substantially limits one or more major life activity only as a result of the attitudes of others toward such impairment; or
 - (iii) none of the impairments in subparagraph (A) of this paragraph but is treated by another person as having such an impairment.

- (9) Discriminatory housing practice--An action prohibited by Texas Fair Housing Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act, Subchapter I.
- (10) Entrance--Any access point to a building or portion of a building used by residents for the purpose of entering the building.
- (11) Exterior--All areas of the premises outside of an individual dwelling unit.
- (12) Ground floor--Within a building, any floor with an entrance on an accessible route. A building may have more than one ground floor.
- (13) Interior--The spaces, parts, components, or elements of an individual dwelling unit.
- (14) Modification--Any change to the public or common use areas of a building or any change to a dwelling unit.
- (15) Premises--The interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.
- (16) Public use areas--Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.
- (17) Site--A parcel of land bounded by a property line or a designated portion of a public right of way.
- (18) Texas Fair Housing Act--Texas Property Code, Chapter 301.
- (19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

§819.122. Three Exemptions Based on Familial Status.

- (a) Discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing provided under any federal or state program that is designed and operated specifically to assist elderly individuals, as defined in the federal or state program.
- (b) Discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended for and solely occupied by individuals 62 years of age or older. This exemption shall apply regardless of the fact that:

- (1) there were individuals residing in such housing on September 13, 1988, who were under 62 years of age, provided that all new occupants are 62 years of age or older;
 - (2) there are unoccupied units, provided that such units are reserved for occupancy for individuals 62 years of age or older; or
 - (3) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.
- (c) Discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended and operated for occupancy by individuals 55 years of age or older if:
- (1) at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older. However:
 - (A) a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this 80 percent occupancy requirement until 25 percent of the units in the facility are occupied; and
 - (B) a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children in order to achieve occupancy of at least 80 percent of the occupied units by at least one person 55 years of age or older;
 - (2) the owner or manager of a housing facility publishes and adheres to policies and procedures that demonstrate an intent by the owner or manager to provide housing for individuals 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:
 - (A) The manner in which the housing facility is described to prospective residents;
 - (B) The nature of any advertising designed to attract prospective residents;
 - (C) Age verification procedures;
 - (D) Lease provisions;
 - (E) Written rules and regulations;

- (F) Actual practices of the housing facility or community; and
 - (G) Public posting in common areas of statements describing the facility or community as housing for individuals 55 years of age or older; and
- (3) the housing facility satisfies the requirements of this section regardless of the fact that:
- (A) as of September 13, 1988, under 80 percent of the occupied units in the housing facility were occupied by at least one person 55 years of age or older, provided that at least 80 percent of the units that were occupied by new occupants after September 13, 1988, were occupied by at least one person 55 years of age or older;
 - (B) there are unoccupied units, provided that at least 80 percent of such units are reserved for occupancy by at least one person 55 years of age or older; and
 - (C) there are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation.

- (a) It is unlawful to interfere, coerce, intimidate, or retaliate against any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Texas Fair Housing Act.
- (b) Prohibited conduct made unlawful under this section includes, but is not limited to:
 - (1) coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate--related transaction based on race, color, disability, religion, sex, national origin, or familial status;
 - (2) threatening, intimidating, or interfering with individuals in their enjoyment of a dwelling based on race, color, disability, religion, sex, national origin, or familial status of such individuals, or of visitors or associates of such individuals;
 - (3) threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to

any residential real estate-related transaction, based on the race, color, disability, religion, sex, national origin, or familial status of that person or of any person associated with that individual;

- (4) intimidating or threatening any person because that person is engaging in activities designed to make other individuals aware of, or encouraging such other individuals to exercise rights granted or protected by this chapter; and
- (5) retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Texas Fair Housing Act.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

§819.151. Filing a Complaint.

- (a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD to obtain information on filing a complaint with CRD.
- (b) At the complainant's request, CRD:
 - (1) shall confer with the complainant about the facts and circumstances that may constitute the alleged unlawful housing practice; and
 - (2) shall assist the complainant with preparation of the complaint if the facts and circumstances constitute an alleged unlawful housing practice; or
 - (3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful housing practice.
- (c) The complaint shall be filed in writing and under oath with CRD by electronic communication, mail, fax, or in person with:
 - (1) the CRD office on a CRD-provided form;
 - (2) a HUD office; or
 - (3) a local municipality certified by HUD.
- (d) The CRD director may require complaints to be made in writing, under oath, on a prescribed form. The complaint shall include the following information:
 - (1) The name and address of the complainant;
 - (2) The name and address of the respondent;

- (3) A description and address of the dwelling that is involved, if appropriate;
 - (4) The basis for the alleged discriminatory housing practices, which may include any of the following: race, color, disability, religion, sex, national origin, or familial status;
 - (5) A concise statement of the facts and circumstances that constitute alleged discriminatory housing practices under the Texas Fair Housing Act, including identification of personal harm, reason given to complainant by respondent for the action taken; and
 - (6) A declaration of unlawful discrimination under federal or state law.
- (e) A complaint shall be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later.
 - (f) The date of the filing of the complaint is the date when it is received by CRD or dual-filed with HUD, except when the CRD director determines that a complaint is timely filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone by the complainant and documented by CRD) that is substantially equivalent to the information identified in subsection (d) of this section. When a complaint alleges discriminatory housing practices that are continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely when filed within one year of the last alleged occurrence.
 - (g) A complaint may be amended to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful housing practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the complaint to the respondent. An amended complaint shall be subject to the procedures set forth in applicable law.
 - (h) The CRD director may file a complaint when the CRD director receives information from a credible source that one or more individuals may have violated the rights of one or more individuals protected by the Texas Fair Housing Act. A complaint filed by the CRD director shall be considered for approval by the Commission at a meeting following the filing of the complaint. Upon a majority vote of the Commission, the complaint is approved and any investigation of the complaint shall continue. If a majority of the Commission does not approve the complaint, such complaint shall be withdrawn by CRD.
 - (i) The complainant and respondent shall be notified periodically by CRD of the status of their complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

- (j) Upon the acceptance of a complaint, the CRD director shall notify by mail, or electronic communication upon agreement of the complainant, each complainant on whose behalf the complaint was filed. The notice shall:
 - (1) acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
 - (2) include a copy of the complaint;
 - (3) advise the complainant of the time limits applicable to complaint processing and of the procedural rights and obligations of the complainant under the Texas Fair Housing Act and this chapter;
 - (4) advise the complainant of his or her right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter and Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice; and
 - (5) advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act and this chapter.

§819.153. Investigation of a Complaint.

- (a) Upon the acceptance of a complaint under this chapter, CRD shall initiate an investigation. The CRD director may initiate an investigation to determine whether a complaint should be filed under this chapter and the Texas Fair Housing Act, Subchapter E. Such investigations shall be conducted in accordance with the procedures set forth in this chapter. CRD also may invite the parties to participate in a voluntary mediation program in an effort to conciliate the dispute.
- (b) The CRD director shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint.
- (c) At all reasonable times in the complaint investigation, the CRD director shall have access to:
 - (1) necessary witnesses for examination under oath or affirmation; and

- (2) records, documents, and other information relevant to the investigation of alleged violations of the Texas Fair Housing Act, for inspection and copying.
- (d) Within 20 days of the acceptance of a complaint or amended complaint under this chapter, the CRD director shall serve a notice on each respondent by regular mail, or electronic communication upon agreement of the respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under the Texas Fair Housing Act, Subchapter E, and this chapter, as a person who is alleged to be engaged or to have engaged in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice on the person under this section.
 - (e) The notice to a respondent shall include, but not be limited to, the following:
 - (1) Identification of the alleged discriminatory housing practice upon which the complaint is based, and a copy of the complaint;
 - (2) Date that the complaint was accepted for filing;
 - (3) Time limits applicable to complaint processing under this chapter and the procedural rights and obligations of the respondent under the Texas Fair Housing Act, and this chapter, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice;
 - (4) Complainant's right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; an explanation that the computation of the two-year period excludes any time during which an administrative hearing is pending under this chapter or the Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice;
 - (5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, an explanation of the basis for the CRD director's belief that the joined person is properly joined as a respondent;
 - (6) Instruction that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act;
 - (7) Invitation to enter into a conciliation agreement for the purpose of resolving the complaint; and

- (8) Initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.
- (f) The respondent may file an answer not later than 10 days after receipt of the notice described in this section. The respondent may assert any defense that might be available to a defendant in a court of law. The written answer shall either be signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form prescribed by Texas Civil Practice and Remedies Code, Chapter 132, or its successor statute.
- (g) An answer may be reasonably and fairly amended at any time.
- (h) CRD may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under the Texas Fair Housing Act, Subchapter E. The CRD director shall have the power to issue subpoenas described under the Texas Fair Housing Act, Subchapter D, in support of the investigation.
- (i) As part of the complaint investigation, CRD may request information relevant to the alleged violations of the Texas Fair Housing Act. In obtaining this information, CRD may use, but is not limited to using, any of the following:
 - (1) Oral and video interviews and depositions;
 - (2) Written interrogatories;
 - (3) Production of documents and records;
 - (4) Requests for admissions;
 - (5) On-site inspection of respondent's facilities;
 - (6) Written statements or affidavits;
 - (7) A written statement of position or information provided by the complainant or the respondent that is either under oath or subscribed in conformity with this section regarding the allegations in the complaint; or
 - (8) Other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081 - 2001.103, or the Texas Rules of Civil Procedure.
- (j) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of the Texas Fair

Housing Act. The CRD director may extend such time requirements for good cause shown.

- (k) CRD shall complete the initial investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint, unless it is impracticable to do so.
- (l) The complaint shall remain open until a no reasonable cause determination is made, a charge is made, or a conciliation agreement is executed and approved under this chapter and the Texas Fair Housing Act, Subchapter E.
- (m) At the end of each investigation under this chapter, CRD shall prepare a final investigative report. The investigative report shall contain:
 - (1) the names and dates of contacts with witnesses. The report shall not disclose the names of witnesses that request anonymity; however, the names of such witnesses may be required to be disclosed in the course of an administrative hearing or a civil action;
 - (2) a summary and the dates of correspondence and other contacts with the complainant and the respondent;
 - (3) a summary description of other pertinent records;
 - (4) a summary of witness statements; and
 - (5) answers to interrogatories.
- (n) A final investigative report may be amended if additional evidence is discovered.
- (o) CRD shall provide a summary of the final determination and shall make available the full investigative report to the complainant and the respondent.

§819.156. Reasonable Cause Determination and Issuance of a Charge.

- (a) If a conciliation agreement under this chapter and the Texas Fair Housing Act, Subchapter E, has not been executed by the complainant and the respondent, and approved by the CRD director, the CRD director on behalf of the Agency, within the time limits set forth in subsection (f) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred. The reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent or otherwise disclosed during the investigation. In making the reasonable cause determination, the CRD director shall consider whether the facts concerning

the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in state district court.

- (b) If the CRD director determines that reasonable cause exists, the CRD director shall immediately issue a charge under the Texas Fair Housing Act, Subchapter E, and this chapter on behalf of the complainant, and shall notify the complainant and the respondent of this determination by certified mail or personal service.
- (c) If the CRD director determines that no reasonable cause exists, the CRD director shall issue a short written statement of the facts upon which the CRD director has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal.
- (d) If the CRD director determines that the matter involves the legality of local zoning or land use laws or ordinances, the CRD director, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the Office of the Attorney General for appropriate action under the Texas Fair Housing Act, Subchapter G, and shall notify the complainant and the respondent of this action by certified mail or personal service.
- (e) The CRD director shall not issue a charge under this chapter and the Texas Fair Housing Act, Subchapter E, regarding an alleged discriminatory housing practice, if a complainant has commenced the trial of a civil action under federal or state law seeking relief with respect to the alleged discriminatory housing practice. If a charge is not issued because of the commencement of a trial of a civil action, the CRD director shall notify the complainant and the respondent by certified mail or personal service.
- (f) The CRD director shall make a reasonable cause determination within 100 days after filing of the complaint.
- (g) If the CRD director is unable to make the determination within the 100-day period, the CRD director shall notify the complainant and the respondent, by certified mail or personal service, of the reasons for the delay.

- (h) The CRD director shall notify the complainant and respondent, and any aggrieved person on whose behalf a complaint has been filed, that they may elect to have the claims asserted in the charge decided in a civil action, as provided in Texas Property Code §301.131, or an administrative hearing pursuant to §819.191 of this chapter.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

§819.171. Deferral.

Pursuant to Texas Fair Housing Act §301.068, CRD may defer proceedings and refer complaints to a municipality that is currently certified by HUD as a Fair Housing Assistance Program (FHAP) to investigate fair housing complaints and enforce violations.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

§819.191. Administrative Hearings.

- (a) Administrative hearings shall be conducted by the Agency's Special Hearings Department pursuant to the procedures set forth in this Subchapter K, which incorporates the procedures set forth in Texas Government Code, Chapter 2001, Subchapters C - D, F - H, and Z, and adapts such procedures specifically for fair housing administrative hearings. If any procedures under this Subchapter K are in conflict with Texas Government Code, Chapter 2001, Subchapters C - D, F - H, or Z, such subchapters under Chapter 2001 shall control.
- (b) Hearings may be conducted by electronic means, including but not limited to telephonic hearings, unless the hearing officer determines that an in-person hearing is necessary.
- (c) Parties needing special accommodations, including the need for a bilingual or sign language interpreter, shall make this request before the hearing is set, if possible, or as soon as practical.

§819.192. Parties.

- (a) Parties to proceedings under this section are the Agency, respondent(s) and any intervenors. Respondents include persons named as such in a charge issued under §819.156.
- (b) An aggrieved person as defined under Texas Property Code §301.003(1) is not a party but may file a motion to intervene. Requests for intervention shall be filed within 50 days after the issuance of the charge; however, the hearing officer may

allow intervention beyond that time. An intervenor's right to participate as a party may be restricted by order of the hearing officer.

- (c) Intervention shall be permitted if the person requesting intervention is:
 - (1) The aggrieved person on whose behalf the charge is issued; or
 - (2) An aggrieved person who claims an interest in the property or transaction that is the subject of the charge and the disposition of the charge may, as a practical matter, impair or impede this person's ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.
- (d) If an aggrieved person does not intervene within 50 days after issuance of the charge, and the parties have reached a settlement, the hearing officer shall dismiss the case.

§819.193. Evidence and Pre-hearing Conference.

- (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in conducting their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.
- (b) Exchange of Exhibits. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties in advance of the hearing and a copy shall be provided to the hearing officer in advance of the hearing. Upon consideration of a party's proffered reason for failure to exchange documentary evidence in advance of the hearing, the hearing officer may admit or exclude same, or grant a postponement of the hearing, in the discretion of the hearing officer.
- (c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to facts that are not in controversy. The hearing officer may decide the appeal on the basis of such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.
- (d) The hearing officer may, on the hearing officer's own motion or at the request of any party, set an informal prehearing conference and require that all parties attend. Notice of the conference shall be in writing to each party. The conference will be held in accordance with §819.191 of these Rules, and will be an official part of the hearing record. Pursuant to the conference, the hearing officer may consider:

- (1) establishing the identities of parties and witnesses;
- (2) the agreement of the parties on facts that are not in controversy;
- (3) conciliation of the dispute;
- (4) clarification of the issues;
- (5) procedures for scheduling and conduct of the hearing;
- (6) exchange of documents; and
- (7) any other matter that promotes the orderly and prompt conduct of the hearing.

§819.194. Notice of Hearing.

- (a) The Agency shall assign a hearing officer and mail a notice of hearing to the parties and/or their designated representatives. The notice of hearing shall be in writing and include:
 - (1) a statement of the date, time, place, and nature of the hearing;
 - (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) a reference to the particular sections of the statutes and rules involved; and
 - (4) a short, plain statement of the factual matters asserted.
- (b) The notice of hearing shall be issued at least 10 calendar days before the date of the hearing by sending it to each party's last known address as shown by Agency records by first-classmail..

§819.195. Postponement and Continuance.

On the hearing officer's own motion, or for good cause, at a party's request, the hearing officer may postpone or continue a hearing.

§819.196. Default.

If a party to whom a notice of hearing is served or provided under this section fails to appear for hearing, the hearing officer may proceed in that party's absence on a default basis. If a proposal for decision or final decision is issued, the factual allegations listed in the notice of hearing may be deemed admitted. If a party fails to appear at a hearing, the

hearing officer will issue a notice of default to that party. A party may file a motion no later than 15 calendar days after the notice of default is mailed to set aside a default announced at the hearing and to reopen the record. If a timely motion to set aside a default is filed, the hearing officer may grant the motion, set aside the default, and reopen the hearing for good cause shown, or in the interests of justice.

§819.197. Ex Parte Communications.

- (a) Except as provided in this chapter, and unless required for the disposition of ex parte matters authorized by law, neither the hearing officer nor a Commission member may communicate, directly or indirectly, in connection with any issue of fact or law with a party or representative of a party, except on notice and opportunity for all parties to participate.
- (b) The hearing officer or a Commission member may communicate concerning the case with an Agency employee who has not participated in the hearing, but may do so only for the purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.
- (c) For purposes of this section, the Agency is considered to be a party to the case.

§819.198. Proposal for Decision.

- (a) The hearing officer shall prepare a proposal for decision containing a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law.
- (b) The hearing officer shall submit a copy of the proposal for decision to each party by first-class mail. The parties may submit to the hearing officer exceptions to the proposal for decision and replies to exceptions to the proposal for decision.
- (c) Exceptions shall be filed within 15 calendar days after the date of service of the proposal for decision. A reply to the exceptions shall be filed within 15 calendar days of the filing of the exceptions. The date of service shall be presumed to be on the third day after the date on which the proposal for decision is mailed. The hearing officer may extend or shorten the time to file exceptions or replies.
- (d) The hearing officer shall review all exceptions and replies and notify the parties as to whether the hearing officer recommends any changes to the proposal for decision.
- (e) The hearing officer will not issue a proposal for decision during the 15-day period referenced in §819.196 within which a defaulting party may file a motion to set aside a default and to reopen the record.

§819.199. Commission Decision.

- (a) After the time for filing exceptions and replies to exceptions has expired, the Commission shall consider the hearing officer's report and the proposal for decision. The Commission may adopt the proposal for decision, modify and adopt it, reject it and issue a Commission decision, or remand the matter to the hearing officer. The Commission shall issue its decision within 60 calendar days of the end of the exceptions period. The hearing officer may extend the period in which the decision may be signed and prepare the decision for the Commission.
- (b) A Commission decision that is adverse to one or more parties shall be in writing and signed after a majority vote of the Commission. Such a decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- (c) The Agency shall notify each party to a contested case of any decision or order of the Commission by first-class mail.
- (d) A Commission decision becomes final:
 - (1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;
 - (2) if a motion for rehearing is filed on time, on the date:
 - (A) the order overruling the motion for rehearing is signed; or
 - (B) the motion is overruled by operation of law;
 - (3) if the Commission finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision on the date the decision is signed, provided that the Commission incorporates in the decision a factual and legal basis establishing such imminent peril; or
 - (4) on the date specified in the decision for a case in which all parties agree to the specified date in writing or on the record, if the specified date is not before the date the decision is signed or later than the 20th day after the date the decision was issued.

§819.200. Motion for Rehearing.

- (a) A motion for rehearing is required to exhaust all administrative remedies. A motion for rehearing must be filed not later than the 25th calendar day after the date the Commission decision is signed, unless the time for filing the motion has been modified by agreement between the parties and approved by the Commission. Any

reply to a motion for rehearing shall be filed with the Commission not later than the 40th calendar day after the date the Commission decision is signed. A party filing a motion for rehearing or a reply to a motion for rehearing shall serve a copy on each party within the filing deadline.

- (b) The Commission may, by written order, extend the time for filing motions and replies and for taking Commission action. No extension may extend the period for Commission action beyond 100 days after the date the decision is signed. In the event of an extension, a motion for rehearing is denied on the date fixed by the written order or, in the absence of a fixed date, 100 days from the date the decision is signed.
- (c) If a party files a motion for rehearing, the Commission may:
 - (1) grant such motion and remand for rehearing;
 - (2) deny such motion, either expressly or by operation of law; or
 - (3) render a decision and issue an order that no rehearing shall be necessary because imminent peril to the public health, safety, or welfare requires immediate effect be given to the final order.
- (d) If the Commission does not act on the motion for rehearing within 55 calendar days after the date the decision was signed, the motion is denied by operation of law and the decision is final.
- (e) A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

§819.201. Judicial Review.

- (a) A person who has exhausted all administrative remedies available under the Texas Fair Housing Act and who is aggrieved by a final decision of the Commission is entitled to judicial review under the substantial evidence rule as set forth in Administrative Procedure Act §2001.001, et seq.
- (b) Proceedings for judicial review are instituted by filing a petition in a Travis County district court within 30 calendar days after the final decision is mailed.

SUBCHAPTER L. FAIR HOUSING FUND

§819.221. Fair Housing Fund.

- (a) A fair housing fund is a fund in the state treasury in the custody of the Texas Comptroller of Public Accounts.
- (b) Civil penalties assessed against a respondent under the Texas Fair Housing Act, Subchapters E and G, shall be deposited to the credit of the fair housing fund.
- (c) The Agency may use monies deposited to the credit of the fair housing fund for the administration of the Texas Fair Housing Act.
- (d) Gifts and grants received as authorized by the Texas Fair Housing Act, Subchapter D, shall be deposited to the credit of the fair housing fund.