



### Mission Statement

The mission of the Civil Rights Division is to reduce discrimination in employment and housing through education and enforcement of state and federal laws.

### Vision

The vision of the Civil Rights Division is to help create an environment in which the people of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.

### Texas Workforce Commission Commissioners

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**Ruth R. Hughs**  
*Commissioner Representing Employers*

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*Commissioner Representing Labor*



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## Governor Abbott Issues Proclamation Recognizing the 26th Anniversary of the Americans with Disabilities Act (ADA)

*July 26th is often regarded as America's second Independence Day for the estimated 56 million Americans with disabilities. On that day, many agencies and organizations around our state observed the anniversary of the ADA with local celebrations to raise awareness of the rights of Texans with disabilities and the many contributions they make to our state.*

*The Texas Governor's Committee on People with Disabilities (GCPD) is honored to share Governor Abbott's ADA proclamation and best wishes to the state for the 26th Anniversary of the ADA.*

The State of Texas - Governor

To all to whom these presents shall come,

Greetings: Know ye that this official certificate is presented in recognition of the:

26th Anniversary of the Americans with Disabilities Act

In Texas, we understand that everyone deserves the opportunity to pursue their American Dream. In 1990, President George H.W. Bush – a Texan – signed the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in many areas, including employment, public accommodations, transportation, housing and education. The ADA is critical to ensuring accessibility and full inclusion for men and women with disabilities. Through continued commitment to fairness and equality of opportunity, we can ensure a bright future for all residents of the Lone Star State.

As you gather to celebrate the anniversary of this historic legislation, First Lady Cecilia Abbott joins me in sending best wishes.

In testimony whereof, I have signed my name and caused the Seal of the State of Texas to be affixed at the City of Austin, this the 30th day of June, 2016.

Greg Abbott  
Governor of Texas

A printable copy of the official 26th ADA Anniversary Proclamation is available on the Governor's website.

Resource: Texas Governor's website ■

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*Let's Work Together  
for Fair Housing*

# The Case of the Comfort Hens: HOAs and Reasonable Accommodation Request Considerations

## Ten Hens at a Residence

In February 2011, a family purchased several hens. The daughter took care of the hens, cleaned the coop, and occasionally allowed the hens to come into the house.

A problem arose, however. The family's home is within a Homeowner's Association (HOA) neighborhood that prohibits poultry and allows household pets. The family initially argued that its ten hens were household pets, and not poultry.

Starting in February 2012, the homeowners received their first violation notice from the HOA regarding the hens. At the March 2012 HOA board meeting, the Complainants presented a slide show that contained evidence their chickens were pets which should be allowed to remain on their property. They contended that, on occasion, their chickens were allowed to roam in the house. At the November 9, 2012 meeting, the Board modified the restrictive covenant. In particular, the revised covenant states "animals that fall under the following classification are not 'usual house hold pets' and can never be deemed as such: poultry (such as chickens, turkeys, ducks, geese, and guinea fowl)." The previous version of the restrictive covenant did not specifically list poultry as an exclusion from the usual household pet classification and did not define "poultry" by way of examples.

In early 2013, a lawsuit against the family was filed by the HOA and the neighbors. Shortly afterward the family sent a letter to the HOA requesting a hearing for a reasonable accommodation to allow the family to keep the hens. The family filed a housing complaint in the spring of 2013 alleging disability discrimination due to a denial of a reasonable accommodation request. In June 2013, the HOA began fining the family \$5 per day for violating the poultry provision.

After an extensive investigation was conducted, the Texas Workforce Commission Civil Rights Division (CRD) determined that there was no reasonable cause of discrimination. In particular, CRD found that the request to keep the hens on the Complainant's property was not reasonable because of the health and safety concerns raised by the Respondents regarding the sanitary condition of the chicken coop. In addition, evidence found by the investigator raised doubt of the daughter's need for an emotional support (comfort) animal.

## Joint Memorandum on Reasonable Accommodation

According to the U.S. Department of Justice and U.S. Department of Housing and Urban Development (HUD) Joint Memorandum on Reasonable Accommodation (“Joint Memo”) ([hud.gov/offices/fheo/library/huddojstatement.pdf](http://hud.gov/offices/fheo/library/huddojstatement.pdf)) an HOA must analyze a request for reasonable accommodations based on these factors: 1) The request must be made “by or on behalf of a person with a disability; 2) there is a disability-related need for the accommodation; 3) the request not “impose an undue financial and administrative burden” or “fundamentally alter the nature of the provider’s operations.”

In the event that a request is denied, an HOA must be able to provide concrete evidence that the reasonable accommodation request would result in an undue financial and administrative burden. The factors that the Joint Memo identifies are “the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester’s disability-related needs.” Unless an HOA possesses evidence of these factors, the HOA should seriously consider approving a reasonable accommodation request.

## Tips for Handling Reasonable Accommodation Requests

The case of the comfort hens provides some lessons learned for HOAs about how best to handle reasonable accommodation requests. Below are a few tips from the case and beyond:

*The homeowner initially refused to provide medical documentation of her daughter’s alleged disability, claiming concern for the child’s privacy if the information was released to the HOA.*

Tip #1: According to the Joint Memo, HOAs have the right to ask for documentation that clearly states the reasonable accommodation requested is necessary in order for the person with disabilities to be afforded “the equal opportunity to use and enjoy a dwelling.” For instance, the HOA can ask the requester if he or she has a disability. If a disability is not obvious (or the connection between the apparent disability and an assistance animal is not readily apparent), the Association has the right to ask the requester to provide documentation from a physician, psychiatrist, social worker, or other mental health professional to determine if the requester meets the Fair Housing Act’s definition of a disability, describes the need for the accommodation, and shows the relationship between the person’s disability and the need for the requested accommodation. It should also be noted that the HOA cannot

ask for the requester’s detailed medical records or about the extent of the individual’s disability.

*The HOA in this case offered to allow the Complainant to keep two of the hens as an accommodation. The Complainant rejected the offer and claimed that all ten of the hens were necessary. The fact that the HOA offered an alternative accommodation indicates its participation in the interactive reasonable accommodation request process.*

Tip #2: When provided with a request for a reasonable accommodation, HOAs should begin the interactive process immediately. In particular, HOAs should seriously consider approving the requested accommodation within a short period of time. While there is no definite deadline, in the case of *Groome Resources Ltd. v. Parish of Jefferson*, 234 F.3d 192, 205-15 (5th Cir. 2000) a delay of granting a reasonable accommodation request was “was tantamount to a denial.” The HOA should suggest an alternative option if it believes the request is unreasonable because granting it will cause an undue administrative and financial burden, or because the requested accommodation will not provide the homeowner with the desired emotional support.

*In this case, the HOA revised the bylaws to clarify the definition of “household pet,” and to exclude chickens and other poultry from that*



Photo courtesy of CRD

classification after the Complainant made the initial argument that the hens met the definition in the rules of pets.

Tip #3: An HOAs should carefully draft, review, and revise its policies on a regular basis.

In this case, the HOA's restrictive covenant initially stated the following:

"No horses, cows, sheep, goat, hogs, chickens, ducks, rabbits or any other animals, poultry or fowl, except household pets, shall be kept, ridden or permitted on any residential lot in said subdivision, but in no event shall any person keep household pets for commercial purposes."

Nine months after the homeowners first claimed their chickens were household pets, the HOA amended that provision in the restrictive covenant. In particular,

the restrictive covenant now states the following:

"The Board of Directors shall have the right to determine what animal shall be deemed a "usual household pet," applying the common meaning of the phrase."

It should be noted that the HOA did not only revise its definition of poultry, but also revised its definition of livestock, in the restrictive covenant. Since it is clear that other sections of the provision that did not relate to the Complainants were also revised, there is no evidence of retaliation. HOAs are advised to review and revise their policies and procedures on a regular basis, and thereby limit the perception that such actions were undertaken for retaliatory reasons.

Additional Tips: The person requesting a reasonable accommodation cannot be charged a

deposit, fee, or surcharge by the HOA for a service or emotional support animal. In addition, the HOA cannot require that a service or emotional support animal have specific training or that the assistance animal wear or carry a special collar, harness, vest, emblem, or other means of identifying it as such.

### Was the Request Reasonable?

In this particular case, the answer to that question was "No." However, situations involving accommodation requests must be assessed on a case by case basis. In fact, TWCCRD also investigated a separate chickens-as-assistance-animals matter with distinctive facts, which was resolved as no reasonable cause on different grounds. The key to helping HOAs defend themselves against discrimination complaints due to reasonable accommodation request denials is very simple:

1) act immediately upon a reasonable accommodation request; 2) ask only for relevant documentation about the requester's disability and the need for the accommodation; 3) analyze whether or not the request will result in an undue financial and administrative burden or fundamentally alter any program; and 4) actively participate in the interactive process, and if necessary, suggest alternatives to the request. HOAs should make sure to seriously consider all written and oral requests for reasonable accommodations, or else the "chickens may come home to roost." ■

# Recent Fair Housing Texas Case Summary

*Miles v. Housing Authority of Texarkana*  
2016 U.S. App. LEXIS 12328  
Summarized by Corra Dunigan,  
Texas Workforce Commission  
Assistant General Counsel

In this appeal to the 5th Circuit, the Court held that the applicant was unsuccessful in stating a claim for discrimination under

the Fair Housing Act (FHA) because she failed to allege a handicap as defined by the FHA. Although the applicant stated throughout her complaint that she had a disability, she never identified this disability, alleged that the disability had any effect on her major life activities, alleged that there was a record of a qualifying impairment, or

showed that she was regarded as having a qualified impairment. Furthermore, the applicant failed to state a claim of discrimination under the FHA because she had not alleged that she was qualified to purchase the housing under this program. ■

## CRD Education, Training & Outreach



The Civil Rights Division Director, Lowell A. Keig, spoke at the Apartment Association of the Panhandle in Amarillo, Texas. Photo courtesy of CRD.

The Texas Workforce Commission Civil Rights Division (CRD) is committed to providing training and technical assistance, outreach and education programs to assist housing providers, consumers and other

stakeholders in understanding and preventing discrimination. We believe that discrimination can be averted if everyone knows their rights and responsibilities.

### **Low-Cost Outreach and Education Programs:** CRD

representatives are available on a limited basis at low cost to make presentation and participate in meetings with employees and employers, and their representative groups, as well as community organization and other members of the general public.

### **TWCCRD Education, Training & Technical Assistance:** CRD

provides low-cost, fee-based trainings and technical assistance programs via webinars and in-person sessions throughout the State of Texas.

For more information, availability, and training designed for your needs, contact CRD at (888) 452-4778 or [CRDTraining@twc.state.tx.us](mailto:CRDTraining@twc.state.tx.us). ■