

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 **MAY 27, 2014**, 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*: **June 13, 2014**

The rules will take effect: **June 16, 2014**

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 April 4, 2014, issue of the *Texas Register* (39 TexReg 2478):

Subchapter E. Equal Employment Opportunity Deferrals, §819.75

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 April 4, 2014, issue of the *Texas Register* (39 TexReg 2478):

Subchapter A. General Provisions, §819.2 and §819.3

Subchapter B. Equal Employment Opportunity Provisions, §819.11

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §§819.22 - 819.24

Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §§819.41, 819.43, and 819.45 - 819.50

Subchapter E. Equal Employment Opportunity Deferrals, §819.73

Subchapter F. Equal Employment Opportunity Records and Recordkeeping, §819.93

Subchapter G. Texas Fair Housing Act Provisions, §819.111 and §819.112

Subchapter H. Discriminatory Housing Practices, §§819.122, 819.130, and 819.132

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

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §819.199

The Commission adopts the following repeal to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, *without* changes, as published in the April 4, 2014, issue of the *Texas Register* (39 TexReg 2478):

Subchapter E. Equal Employment Opportunity Deferrals, §819.75

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. The Commission has conducted a rule review of Chapter 819, Texas Workforce Commission Civil Rights Division, and adopts amendments to the following:

- Definition of "disability";
- Methods of communication; and
- Investigation of a complaint.

The Commission also proposes to make necessary technical changes throughout the chapter.

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:

§819.2. Definitions

Section 819.2(4), the definition of "CRD director," clarifies that the authorized designee refers to "the director's" authorized designee.

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

Section 819.3(a)(4)(C) and (5)(C), regarding the responsibilities of the Commission on Human Rights, specifies that CRD, as the state Fair Employment Practices agency and state Fair Housing Assistance Program agency, is authorized to institute "civil" proceedings, not criminal proceedings.

Section 819.3(b)(1), regarding the responsibilities of CRD, adds a reference to Texas Government Code, Chapter 437, which CRD is responsible for administering.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

The Commission adopts the following amendments to Subchapter B:

§819.11. Definitions

Section 819.11(2), the definition of "Civil Rights Act," adds a reference to Texas Labor Code, Chapter 21, regarding Employment Discrimination, which CRD is charged with enforcing.

Section 819.11(7), the definition of "local commission," updates the citation from U.S. Civil Rights Act, Title VII, §717(c) to §706.

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

The Commission adopts the following amendments to Subchapter C:

§819.22. Review of Firefighter Tests

Texas Government Code §419.102(b) requires CRD to establish in rule an objective system to determine when and how to select fire departments for review.

New §819.22(a) specifies that CRD will:

- (1) consult resources of the Texas Commission on Fire Protection and other appropriate entities to determine the departments to be reviewed; and
- (2) notify each fire department of its review at the beginning of the fiscal year in which CRD conducts the review.

New §819.22(b) specifies that CRD must review firefighter tests of each fire department, as defined in Texas Government Code, Chapter 419, Subchapter F, at least once every six years.

New §819.22(g) adds that CRD can notify fire departments of their selection for a desk audit by electronic communication upon agreement of the department.

Section 819.22(h) adds that CRD can notify a fire department selected for expanded review by electronic communication upon agreement of the department.

Certain subsections have been relettered to reflect additions.

§819.23. Review of State Agency Policies and Procedures

Section 819.23(b) adds that CRD can notify a state agency of its review of the agency's personnel policies and procedures by electronic communication upon agreement of the agency.

§819.24. Standard Employment Discrimination Training

Section 819.24(b)(1) clarifies that in employment discrimination training, participants must "identify" an unlawful employment practice according to the Civil Rights Act.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

The Commission adopts the following amendments to Subchapter D:

§819.41. Filing a Complaint

Section 819.41(b)(1) clarifies that CRD must "confer" with the complainant about the facts and circumstances that "may" constitute the alleged unlawful employment practice.

Section 819.41(c) adds that a written complaint must be either 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. It also adds electronic communication as a method by which a complaint may be filed with CRD.

Section 819.41(i) clarifies that complainants and respondents must be "advised upon request" of the status of their perfected complaint, unless "doing so" would jeopardize an undercover investigation by another state, federal, or local government.

§819.43. Investigation of a Perfected Complaint

New §819.43(d)(7) adds that as part of the perfected complaint investigation, CRD may request 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.

Section 819.43(f), which states that as part of the complaint investigation, CRD may accept a statement of position or information from the complainant or respondent, is removed. The contents of this subsection are now contained in subsection (d)(7) of this section.

Certain paragraphs have been renumbered to reflect additions.

§819.45. Subpoena

Section 819.45(b) adds that CRD can provide a petitioner with the final determination on the petition by electronic communication upon agreement of the petitioner.

§819.46. Dismissal of Complaint

Section 819.46(b) adds certified mail as the method by which CRD must provide notification of its dismissal of a complaint to the complainant as required by the Texas Labor Code.

§819.47. Cause Determination

Section 819.47(b) adds that CRD can send the cause determination letter by electronic communication upon agreement of the person or entity.

§819.48. Conciliation

Section 819.48(c) is rewritten for better clarity and adds that CRD must provide notification of an unsuccessful conciliation agreement to the complainant by "certified" mail.

Section 819.48(c) removes the statement that "CRD shall then inform 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 - 21.252" because it duplicates information located in §819.50 of this subchapter.

§819.49. No Cause Determination

Section 819.49 adds that the CRD director can send the no cause determination letter by electronic communication upon agreement of the person or entity.

§819.50. Right to File a Civil Action

Section 819.50(a) adds certified mail as the method by which CRD must inform the complainant of:

- (1) the dismissal of the complaint; or

(2) the failure to resolve a complaint in writing that was filed with CRD 180 days previously. CRD must inform the complainant of the complainant's right to request from CRD a notice of right to file a civil action against the respondent.

Section 819.50(c) adds certified mail sent no later than the fifth business day after receipt of the complainant's request as the method by which CRD must send an expedited notice of right to file a civil action.

Section 819.50(c) adds that CRD must issue notice under subsection (b) of this section by certified mail.

New §819.50(d) adds that the complainant's written request must include the respondent's name, CRD complaint number, and EEOC complaint number if the complaint has been deferred by EEOC. This information was formerly located in §819.50(c).

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

The Commission adopts the following amendments to Subchapter E:

§819.75. Final Determination of a Local Commission

Section 819.75 is repealed because there is no direct statutory requirement to make local commissions take the actions stated in subsections (a) or (b), and it is inefficient to require them to do so.

New §819.75 requires that if a local commission does not intend to act on a complaint deferred by CRD, the local commission shall notify CRD by mail or electronic communication within 60 working days.

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

The Commission adopts the following amendments to Subchapter F:

§819.93. Disposal of Files and Related Documents

Section 819.93 updates the retention period for case files and related documents from two years to seven years in accordance with TWC's record retention schedule for investigations and reports.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

The Commission adopts the following amendments to Subchapter G:

§819.112. Definitions

Section 819.112(1), the definition of "accessible or readily accessible to and usable by," replaces the reference to Texas Property Code §301.025(c) with Texas Property Code §301.025(c)(3) to accurately reflect the requirements of the statute.

Section 819.112(7), the definition of "controlled substance," replaces the reference to Controlled Substances Act §102 with Controlled Substances Act, 21 U.S.C. §802 to accurately reflect the requirements of the statute.

Section 819.112(8) defines "disability." With only minor variations in structure and formatting, the Agency's current definition aligns with the content of the US Department of Housing and Urban Development's (HUD) definition of "handicap" at 24 Code of Federal Regulations (CFR) §100.201. Although the term handicap is no longer used, the definition of disability should align directly with the definition used by HUD. Additionally, both the Agency and HUD use the term "mentally retarded" in their respective definitions. That term, as well, is no longer used.

Section 819.112(8):

- reformats and restructures the definition of disability to align with the format and structure of HUD's definition of handicap, thus providing better clarity; and
- replaces the term mental retardation with the more precise term intellectual disability.

Certain subparagraphs in this section have been relettered to reflect reformatting.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

The Commission adopts the following amendments to Subchapter H:

§819.122. Exemptions Based on Familial Status

Section 819.122(a) is amended to make nonsubstantive editorial changes to improve clarity.

§819.132. Discrimination Based on Disability

Section 819.132(a) is amended to make nonsubstantive editorial changes to improve clarity.

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(b)(1) clarifies that CRD must "confer" with the complainant about the facts and circumstances that "may" constitute the alleged unlawful employment practice.

Section 819.151(c) adds electronic communication as a method by which a complaint can be filed with CRD.

Section 819.151(j) adds that the CRD director can notify each complainant on whose behalf the complaint was filed by electronic communication upon agreement of the complainant.

§819.153. Investigation of a Complaint

Section 819.153(d) adds that the CRD director can serve a notice on each respondent by electronic communication upon agreement of the respondent.

Section 819.153(f) requires an answer to be signed and affirmed by the respondent, and specifies the content of the affirmation. However, Texas Civil Practice and Remedies Code, Chapter 132, sets forth new requirements for an unsworn declaration under penalty of perjury.

Section 819.153(f):

--specifies that the answer must be written;

--removes the requirement that the answer must be signed and affirmed by the respondent; and

--adds, as required by Chapter 132, that the answer must be signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form set forth in Chapter 132.

Section 819.153(g) removes the requirement for the CRD director's consent to amend an answer. Texas Property Code §301.082(c) states that an "answer may be amended at any time" and does not require the approval of the CRD director.

New §819.153(i)(7) adds that, as part of the complaint investigation, CRD may accept 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.

Section 819.153(k), which states that as part of the complaint investigation, CRD may accept a statement of position or information from the complainant or respondent, is removed. The contents of this subsection are now contained in subsection (i)(7) of this section.

Certain subsections and paragraphs in this section have been relettered and renumbered to reflect additions and deletions.

§819.156. Reasonable Cause Determination and Issuance of a Charge

Section 819.156(e) clarifies that:

--the CRD director "shall not" issue a charge; and

--if a charge "is not issued," the CRD director must notify the complainant and respondent.

Section 819.156(h) replaces the citation to Texas Property Code §301.131(b) with Texas Property Code §301.131 to accurately reflect the requirements of statute.

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

§819.2. 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) Commission on Human Rights--The body of governance of the Texas Workforce Commission Civil Rights Division composed of seven members appointed by the Governor, as established under Texas Labor Code §301.153.
- (2) 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.
- (3) CRD--Texas Workforce Commission Civil Rights Division
- (4) CRD director--The director, or the director's authorized designee, of the Texas Workforce Commission Civil Rights Division, as established under Texas Labor Code §301.154.
- (5) 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.
- (6) 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.
- (7) Party--A person who, having a justiciable interest in a matter before CRD, is admitted to full participation in a proceeding concerning that matter.
- (8) 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.

- (9) 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 Commission on Human Rights, CRD, and CRD Director.

- (a) Responsibilities of Commission on Human Rights:
 - (1) Establish policies for CRD;
 - (2) Appoint CRD director;
 - (3) Supervise CRD director in administering the activities of CRD;
 - (4) Serve as the state Fair Employment Practices Agency that 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 Agency, 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, Chapter 419, Subchapter F, and Chapter 437; 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.
- (c) Agency Personnel Policies Applicable to CRD Director:

- (1) The CRD director is an appointee of the Commission on Human Rights and an employee of the Agency, and therefore accountable to both.
- (2) The Agency executive director and the chair of the Commission on Human Rights shall consult on all personnel matters impacting the employment status of the CRD director.
- (3) The Commission on Human Rights has the authority to appoint, supervise, and terminate the CRD director.
- (4) The Agency executive director, in consultation with the chair of the Commission on Human Rights, has the authority to take any personnel action pursuant to Agency personnel policy, excluding termination.

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.
- (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--A process to settle a dispute by mutual written agreement among the complainant, respondent, and CRD prior to reasonable cause determination or dismissal of a perfected complaint.
- (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.

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

§819.22. Review of Firefighter Tests.

- (a) CRD shall:
 - (1) consult resources of the Texas Commission on Fire Protection and other appropriate entities to determine the departments to be reviewed; and
 - (2) notify each fire department of its review at the beginning of the fiscal year in which CRD conducts the review.

- (b) CRD shall review the initial tests administered by a fire department, as provided in Texas Government Code, Chapter 419, Subchapter F, at least every six years. The initial tests, defined as written tests, physical tests, and assessment center tests for firefighter positions, are used to measure the ability of a person to perform the essential functions of the position.
- (c) CRD shall use the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, to conduct the review of the administration of initial tests by fire departments.
- (d) CRD shall develop a list of recommended tests for firefighter positions that are nationally recognized tests by independent authorities. The tests will be available on the Agency's Web site.
- (e) Fire departments that use tests from CRD's list of recommended tests are presumed to be in compliance with the law. However, if CRD perceives the need to review a fire department that is using such recommended tests, nothing shall prevent such review.
- (f) Fire departments that use a test not included on the recommended list shall submit, upon request by CRD, documentation regarding the reliability and validity of the chosen test.
- (g) Each fire department shall submit documentation concerning the administration of its initial tests, as required in this section. CRD shall perform a desk audit by reviewing these documents using risk-assessment criteria. Fire departments selected for a desk audit shall receive notice by mail, or electronic communication upon agreement of the department. Documents to be submitted for a desk audit include, but are not limited to:
 - (1) a copy of the initial test used. If it is not from CRD's recommended list of tests, then documentation regarding the reliability and validity of the test used;
 - (2) a description of how such test is administered and a copy of applicable policies and procedures governing the administration of such test; and
 - (3) information and documentation of prior complaints lodged against the fire department concerning discrimination in selection of personnel for a firefighter position.

- (h) CRD shall evaluate the requested information set forth in subsection (g) of this section as part of its risk-assessment analysis. Based on the analysis, fire departments may be selected for expanded review, including on-site investigation. CRD shall notify a fire department selected for expanded review by mail, or electronic communication upon agreement of the department.

§819.23. Review of State Agency Policies and Procedures.

- (a) CRD shall review the personnel policies and procedures of each state agency once every six years on a staggered schedule to determine compliance with Texas Labor Code, Chapter 21.
- (b) 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. Each state agency shall provide the standard training using a training program from CRD's preapproved list of training programs that have been reviewed and certified by CRD as compliant with its training standards, including the standards set forth in this subchapter.
- (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.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

§819.41. Filing a Complaint.

- (a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD or a local commission office recognized by EEOC as a Fair Employment Practices Agency 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 employment practice;
 - (2) shall assist the complainant in perfecting the complaint if the facts and circumstances appear to constitute an alleged unlawful employment practice;
or
 - (3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful employment practice.
- (c) The complaint shall be filed in writing and either 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. It may be filed with CRD by mail, electronic communication, fax, or in person with:
 - (1) the CRD office on a CRD-provided form;
 - (2) an EEOC office; or
 - (3) a local commission office recognized by EEOC as a Fair Employment Practices Agency.
- (d) The complaint shall set forth the following information:
 - (1) Harm experienced by the complainant as a result of the alleged unlawful employment practice;
 - (2) Explanation, if any, given by the employer to the complainant for the alleged unlawful employment practice;
 - (3) A declaration of unlawful discrimination under federal or state law;

- (4) Facts upon which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and
 - (5) Sufficient information to enable CRD to identify the employer, e.g., employer ID, business address, and business phone.
- (e) A complaint shall be filed within 180 days after the date on which the alleged unlawful employment practice occurred.
 - (f) A complaint may be withdrawn by a complainant only with the consent of the CRD director.
 - (g) A perfected complaint may be amended by the complainant to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful employment 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 perfected complaint to the respondent. An amended perfected complaint shall be subject to the procedures set forth in applicable law.
 - (h) A respondent shall be mailed a copy of the perfected complaint within 10 days after CRD receives the perfected complaint. If CRD receives a complaint that is not perfected within 180 days of the alleged unlawful employment practice, CRD shall notify the respondent that a complaint has been filed and the process of perfecting the complaint is in progress.
 - (i) The complainant and respondent shall be advised upon request by CRD of the status of their perfected complaint, unless doing so would jeopardize an undercover investigation by another state, federal, or local government.

§819.43. Investigation of a Perfected Complaint.

- (a) The CRD director shall determine the nature and scope of the investigation within the context of the allegations set forth in the perfected complaint.
- (b) CRD may, as part of a perfected complaint investigation, require a fact-finding conference with the complainant and the respondent prior to a determination on a perfected complaint. A fact-finding conference primarily is an investigative forum intended to define the issues, determine which elements are undisputed, and solicit information regarding the allegations.
- (c) At all reasonable times in the perfected 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 Texas Labor Code, Chapter 21, for inspection and copying.
- (d) As part of the perfected complaint investigation, CRD may request information relevant to the alleged violations of Texas Labor Code, Chapter 21. 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.
- (e) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21. The CRD director may extend such time requirements for good cause shown.

§819.45. Subpoena.

- (a) The CRD director shall have the authority to sign and issue a subpoena to compel the attendance of necessary witnesses for examination or testimony under oath or affirmation, and to compel the production of records, documents, and other evidence relevant to the investigation of alleged violations of Texas Labor Code, Chapter 21, for inspection and copying. Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued.
- (b) A person served with a subpoena issued by the CRD director who does not intend to comply may petition CRD in writing to revoke or modify the subpoena within five working days after receipt of the subpoena. Such petition shall identify separately each portion of the subpoena with which the petitioner does not intend to comply,

and for each portion shall state the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. The CRD director shall review the petition and make a final determination on revoking or modifying the subpoena. CRD shall provide a copy of the final determination on the petition to the petitioner by mail, or electronic communication upon agreement of the petitioner.

- (c) If a person fails to comply with a subpoena, CRD may apply to the district court of the county in which the person is found, resides, or transacts business for an order directing compliance pursuant to Texas Labor Code §21.306(b).

§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 and the respondent, and any agencies, as required by law, by certified mail of its 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 a panel of three commissioners of the Commission on Human Rights, as identified by the chair of the Commission on Human Rights. If at least two of the three commissioners 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.

§819.48. Conciliation.

- (a) When a letter of cause determination has been issued, CRD shall attempt to eliminate such unlawful employment practice by conciliation, and to secure a just resolution through a conciliation agreement signed by the complainant, respondent, and the CRD director.
- (b) CRD shall obtain proof of the respondent's compliance with a conciliation agreement before the case is closed.
- (c) CRD shall provide notification of an unsuccessful conciliation agreement to:
 - (1) the complainant by certified mail; and
 - (2) the respondent by mail.

§819.49. No Cause Determination.

A completed investigation may result in a determination that there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the perfected complaint. If after the review, the CRD director determines that no reasonable cause exists, the CRD director shall issue a letter of no cause determination. The no cause determination letter shall be sent 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 does not support the perfected complaint.

§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 shall 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.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

§819.73. Deferral to Local Commission.

- (a) Texas Labor Code §21.155 grants to a local commission the exclusive right to take appropriate action within the scope of its power and jurisdiction to process a complaint deferred by CRD pursuant to the requirements of Texas Labor Code §21.155, and this chapter.
- (b) CRD shall not assume jurisdiction over a complaint deferred to a local commission, pursuant to Texas Labor Code §21.155, except:
 - (1) where the local commission defers a complaint under its jurisdiction to CRD;
 - (2) where the complaint is received by CRD within 180 days of the alleged violation but beyond the period of limitation of the appropriate local commission; and
 - (3) where the local commission has not acted on the complaint pursuant to the requirements of Texas Labor Code §21.155(c), and this chapter.

§819.75. Final Determination of a Local Commission.

If a local commission does not intend to act on a complaint deferred by CRD, the local commission shall notify CRD by mail or electronic communication within 60 working days.

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

§819.93. Disposal of Files and Related Documents.

Pursuant to a certified records retention schedule, CRD shall retain case files and related documents that have not been forwarded to EEOC for seven years after the administrative review procedures have been completed, except when a civil action has been filed in state court under Texas Labor Code, Chapter 21. When a civil action has been filed in state court, case files and related documents shall be retained until the final disposition of the lawsuit. At the end of the retention period, CRD may dispose of the case files and related documents.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

§819.111. Purpose.

The purpose of Subchapters G - L of this chapter is to establish procedures for CRD to execute its responsibilities in the administration and enforcement of the Texas Fair Housing Act. Texas provides, within constitutional limitations, for fair housing throughout the state and provides rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices based on race, color, disability, religion, sex, national origin, or familial status in the sale, rental, advertising of dwellings, inspection of dwellings, entry into a neighborhood, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

§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--A public or common use area that is accessible 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.
- (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 federally 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) Mental or physical 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 mental retardation, 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. Exemptions Based on Familial Status.

- (a) Discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing designed and operated specifically to assist elderly individuals.
- (b) The Texas Fair Housing Act does 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) The Texas Fair Housing Act does not apply to housing intended and operated for occupancy by individuals 55 years of age or older if:

- (1) at least 80% 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% occupancy requirement until 25% 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% 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% 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% 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% 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.

§819.130. Discrimination in Making Loans and in the Provision of Other Financial Assistance.

- (a) It is unlawful for a person whose business includes engaging in residential real estate-related transactions to discriminate based on race, color, disability, religion, sex, national origin, or familial status in making loans or other financial assistance available for a dwelling, or which is or is to be secured by a dwelling.
- (b) It is unlawful for a person engaged in making loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of dwellings that are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance based on race, color, disability, religion, sex, national origin, or familial status.
- (c) Prohibited practices under this section include, but are not limited to:
 - (1) failing or refusing to provide to a person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures, or standards for the review and approval of loans or financial assistance, or providing information that is inaccurate or different from that provided to others based on race, color, disability, religion, sex, national origin, or familial status;
 - (2) using different policies, practices, or procedures in evaluating or determining creditworthiness of any person in connection with the provision of a loan or other financial assistance for a dwelling or for a loan or other financial assistance that is secured by residential real estate based on race, color, disability, religion, sex, national origin, or familial status; and
 - (3) determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration, or other terms of a loan or other financial assistance for a dwelling or for a loan or other financial assistance that is secured by residential real estate based on race, color, disability, religion, sex, national origin, or familial status.

§819.132. Discrimination Based on Disability.

- (a) It is unlawful to discriminate by refusing to sell or rent, or otherwise make unavailable, or deny a dwelling to a potential buyer or renter based on a disability of:

- (1) the potential buyer or renter;
 - (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (3) any person associated with that person.
- (b) It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
- (1) that buyer or renter;
 - (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (3) any person associated with that person.
- (c) It is unlawful to make an inquiry to determine whether a potential buyer or renter of a dwelling, a person intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that potential buyer or renter has a disability. However, this section does not prohibit the following inquiries, provided they are made of each potential buyer or renter, whether or not the person has a disability:
- (1) Whether the potential buyer or renter is able to meet the requirements of ownership or tenancy;
 - (2) Whether the potential buyer or renter qualifies for a dwelling available only to individuals with disabilities or to people with a particular type of disability;
 - (3) Whether the potential buyer or renter qualifies for a priority available to individuals with disabilities or to people with a particular type of disability;
 - (4) Whether the potential buyer or renter is a current illegal abuser or addict of a controlled substance; or

- (5) Whether the potential buyer or renter has been convicted of the illegal manufacture or distribution of a controlled substance.

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 on Human Rights at its first regularly scheduled meeting following the filing of the complaint. Upon a majority vote of the Commission on Human Rights, the complaint is approved and any investigation of the complaint shall continue. If the Commission on Human Rights 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.
- (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 within 10 days of identification.

- (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.
- (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 Commission on Human Rights, 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 and 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 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 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 K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

§819.199. Rehearing.

- (a) A motion for rehearing is not required to exhaust all administrative remedies. A motion for rehearing shall be made before the expiration of 21 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. Any reply to a motion for rehearing shall be filed with the Commission on Human Rights before the expiration of 30 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. 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 on Human Rights may, by written order, extend the time for filing motions and replies and for taking Commission on Human Rights action. No extension may extend the period for Commission on Human Rights action beyond 90 days after the date of the final order, as set forth in §819.198 of this subchapter. 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, 90 days from the date of the final order, as set forth in §819.198 of this subchapter.

- (c) If a party files a motion for rehearing, the Commission on Human Rights may:
 - (1) grant such motion and remand for rehearing;
 - (2) deny such motion as set forth in §819.198 of this subchapter, 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 on Human Rights does not act on the motion for rehearing within 45 calendar days, the motion is denied by operation of law and the order is final.