

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON JUNE 14, 2005, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

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Estimated End of Comment Period: August 1, 2005

THE TEXAS WORKFORCE COMMISSION PROPOSES THE REPEAL OF CHAPTER 819 RELATING TO TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION IN ITS ENTIRITY AND PROPOSES THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

The Texas Workforce Commission (Commission) proposes new Chapter 819 as follows:

- Subchapter A General Provisions
- 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
- Subchapter F Equal Employment Opportunity Records and Recordkeeping
- 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
- Subchapter L Fair Housing Fund

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Purpose

The purpose of the proposed repeal of Chapter 819 and proposed new Chapter 819 is, in part, to:

- (1) align the rules with House Bill (HB) 2933, enacted by the 78th Texas Legislature, Regular Session, effective March 1, 2004, that directed the abolition of the Texas Commission on Human Rights, the creation of the Texas Workforce Commission Civil Rights Division (CRD), and the reinstatement of the Commission on Human Rights with authority different from that of the abolished Texas Commission on Human Rights; and
- (2) remove duplicative and obsolete administrative processes, procedures, references, and terminology.

Other issues addressed through this proposed repeal and proposed new rules include:

- (1) clarifying the procedures for processing employment and housing discrimination complaints;
- (2) improving the procedures for review of state agency personnel policies and firefighter tests;
- (3) distinguishing between the nature and content of standard and compliance employment discrimination training for state agency employees;
- (4) defining the term "complaint with merit" for purposes of compliance employment discrimination training;
- (5) providing standards for evaluating employment discrimination training programs for state agency employees, as required by statute; and
- (6) clarifying Agency personnel policy as it applies to the CRD director.

The Commission proposes new Chapter 819 to retain only the provisions required by Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Labor Code, Chapter 301, Subchapter I, concerning the Civil Rights Division; Texas Property Code, Chapter 301, concerning housing discrimination; and Texas Government Code, Chapter 419, §§419.102–419.105, concerning firefighter test review.

Background and Authority

In 2003, the 78th Texas Legislature passed HB 2933, abolishing the Texas Commission on Human Rights, transferring the powers and duties of the abolished Texas Commission on Human Rights to the newly created CRD, and reinstating a Commission on Human Rights with authority different from that of the abolished Texas Commission on Human Rights. The current Chapter 819 rules set forth the procedures and policies of the now-abolished Texas Commission on Human Rights, and therefore do not accurately reflect the changes of HB 2933. Thus, the Commission has designed the proposed new Chapter 819 rules to incorporate the legislative direction of HB 2933.

The Commission reviewed Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Civil Rights Act of 1991; Americans with Disabilities Act of 1990, as amended; and 29 U.S.C. Chapter 14, regarding Age Discrimination in Employment, to effectuate the changes directed in HB 2933. Additionally, the Commission reviewed Texas Labor Code, Chapters 21 and 301; Texas Property Code, Chapter 301; and Texas Government Code, Chapter 419. Language that is not necessary to the understanding of the rule or duplicates language found in statute or other rules is eliminated. Therefore, the following topics are not proposed in the new rules:

Employment General Construction

Employment Authority
Employment Severability
Employment Availability
General Description
Term of Office
Meetings
Reimbursements
General Powers
Employee Training and Education
Historically Underutilized Business Program
Confidentiality
Temporary Injunctive Relief
Policy
Office of Alternative Dispute Resolution
Referral of Pending Complaints for Alternative Dispute Resolution
Notification and Objection
Appointment of Mediators
Standards and Duties of Mediators
Compensation of Mediators
Conduct and Decorum
Confidentiality of Communications during Alternative Dispute Resolution Procedures
Conformity
Housing General Construction
Housing Authority
Housing Severability
Housing Availability
Powers of Commission
Referral Authority
Sale or Rental of a Single Family House by an Owner
Sale, Rental or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not-for-Profit Institute
Housing Owned or Operated by a Private Club
Local or State Restrictions on Maximum Number of Occupants of a Dwelling
Appraisals of Real Property
Illegal Manufacture or Distribution of a Controlled Substance
Health or Safety of Individuals or Damage to Property
Real Estate Practices Prohibited
Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental
Prohibited Interference, Coercion, Intimidation, or Retaliation
Persons against Whom Complaints May Be Filed
Cooperation with Federal Agencies
Relief Sought for Aggrieved Persons during Conciliation
Conciliation Provisions Relating to Public Interest

Prohibitions and Requirements for Disclosure of Information Obtained during Conciliation
Issuance of Charge
Election of Civil Action or Provision of Administrative Hearing Procedure
Administrative Penalties
Effect of Commission Order
Filings of Exceptions and Replies
Form of Exceptions and Replies
Emergency Orders
Show Cause Orders and Complaints
Temporary and Preliminary Relief
Enforcement by Attorney General
Subpoena Enforcement Power
Civil Action
Court Appointed Attorney
Relief Granted
Effect of Relief Granted
Intervention by Attorney General
Licensed or Regulated Businesses
Order in Preceding Five Years
Prevailing Party
Statutory Authority
Effective Date

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

§819.1. Purpose

The Commission proposes new §819.1 to implement the following statutory provisions: Texas Labor Code, Chapter 21 (relating to Employment Discrimination) and Chapter 301, Subchapter I (relating to Civil Rights Division); Texas Property Code, Chapter 301, (relating to Texas Fair Housing Act); and Texas Government Code, Chapter 419, Subchapter F (relating to Review of Fire Department Tests).

§819.2. Definitions

The Commission proposes new §819.2 to clarify terminology used in both the employment and housing portions of the rules. The changes better align with the terminology and direction of HB 2933. The rules also include definitions that are applicable only to employment discrimination in §819.11 and to housing discrimination in §819.112. Furthermore, the following definitions found in current rule are not included in the proposed new Chapter 819 because they are defined in the Texas Labor Code: act, age, alternative dispute resolution, chairman, commission, commissioner, court, deferral or referral, demonstrates, designee, employee, employment agency, executive director, federal government,

Government Code, labor organization, local ordinance, national origin, political subdivision, religion, and sex.

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

The Commission proposes new §819.3 to delineate the responsibilities of the new Commission on Human Rights and the newly created CRD. In addition, the rule clarifies the relationship between the CRD director, the Commission on Human Rights, and the Agency.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

§819.10. Purpose

The Commission proposes new §819.10, which states the purpose of Subchapters B–F is to set forth the procedures for CRD to execute its responsibilities in the administration and enforcement of Texas Labor Code, Chapter 21.

§819.11. Definitions

The Commission proposes new §819.11 to provide definitions that pertain exclusively to employment issues addressed 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. The terms defined include bona fide occupational qualification, Civil Rights Act, complaint, conciliation, disability, employer, local commission, mediation, and perfected complaint. In particular, complaint and perfected complaint are defined to distinguish between a complaint that is filed with CRD, and a perfected complaint that triggers an investigation by CRD. In addition, mediation and conciliation are defined to distinguish between efforts by a complainant and respondent to resolve the perfected complaint. Mediation is offered during an investigation prior to a determination of cause, while conciliation is used after a determination of cause is rendered.

§819.12. Unlawful Employment Practices

The Commission proposes new §819.12 to delineate and explain the types of employment discrimination, which include (1) discrimination by an employer; (2) discrimination by an employment agency; (3) discrimination by a labor organization; (4) discrimination during admission or participation in a training program; (5) discrimination through retaliation; (6) discrimination by aiding and abetting in discriminatory practices; (7) discrimination through interference with the Commission on Human Rights and CRD; (8) discrimination by obstructing or preventing persons from complying with the Texas Labor Code; and (9) discrimination through notice or advertisement;

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

§819.21. Civilian Workforce Composition Report

The Commission proposes new §819.21, relating to the quality of data to be utilized for preparation of the civilian workforce composition report pursuant to Texas Labor Code §21.035.

§819.22. Review of Firefighter Tests

The Commission proposes new §819.22 to describe the procedures to be used to review the administration of firefighter tests by local fire departments to determine compliance with Texas Labor Code, Chapter 21. Current rule does not provide for the timely review of firefighter exams. As stated in current rule, no less than three percent of fire departments are to be reviewed each year on a random basis. As a consequence, a fire department may not be reviewed for 30 years. Furthermore, the current rule's review mechanism lacks the ability to identify and prioritize departments most in need of review. The proposed new rule provides fire departments with a list of preapproved tests for firefighter positions that have already been determined to be nondiscriminatory. For those fire departments choosing to use a test not on the preapproved list, provisions are made for obtaining CRD approval. Additionally, the proposed new rule establishes an efficient system for reviewing all fire departments using a desk audit, and then provides for an expanded review for select departments based on a risk-assessment analysis.

§819.23. Review of State Agency Policies and Procedures

The Commission proposes new §819.23 to describe the process to be used to review the personnel policies and procedures employed by state agencies for compliance with Texas Labor Code, Chapter 21.

§819.24. Standard Employment Discrimination Training

The Commission proposes §819.24 to set forth the requirements for standard employment discrimination training for all state employees, including minimum standards for the content of such training.

§819.25. Compliance Employment Discrimination Training

The Commission proposes new §819.25, as directed by the Texas Labor Code §21.556, to specify the conditions necessitating compliance training. The proposed rule defines the term complaint with merit as a complaint that is resolved by either a cause finding or a withdrawal of the complaint with a remedy favorable to the complainant. This definition is consistent with terminology used by U.S. Equal Employment Opportunity Commission and avoids both the issue of cost inefficiency and prejudice. According to statute, a state agency that receives three or more "complaints of employment

discrimination in a fiscal year, other than complaints determined to be without merit" shall provide comprehensive equal employment opportunity training, referred to as compliance training. In the absence of a statutory definition of complaint without merit, the current rule established an administrative processing test that determines merit based on meeting the initial burden of a prima facie case such that the complaint appears to be a potential case worthy of further investigation. This definition has presented several difficulties. First, it is not cost-efficient, necessitating that CRD use additional time and staff to perform the analysis required in the rule in order to ascertain if it is a complaint with merit. Second, employers argue that labeling a complaint with merit before the investigation is complete and a cause decision rendered is prejudicial to the outcome of the cause determination.

§819.26. Standard and Compliance Employment Discrimination Training Delivery

The Commission proposes new §819.26 to set forth the minimum standards for delivering standard and compliance employment discrimination training.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

§819.41. Filing a Complaint

The Commission proposes new §819.41 to specify the steps to be taken and the requirements to be met to file an employment discrimination complaint.

§819.42. Legal Representation

The Commission proposes new §819.42 to notify complainants and respondents of their right to be represented by an attorney or designated agent during the course of a complaint process.

§819.43. Investigation of a Perfected Complaint

The Commission proposes new §819.43 to set forth the procedures to be followed by the complainant, respondent, and CRD in the investigation of a perfected complaint.

§819.44. Mediation

The Commission proposes new §819.44 to set forth the procedures involved in voluntary mediation, an option available to complainants and respondents who prefer to resolve the perfected complaint jointly prior to CRD completing the investigation and rendering a decision.

§819.45. Subpoena

The Commission proposes new §819.45 to establish CRD's authority to issue a subpoena to compel attendance or secure evidence relevant to the investigation of a perfected complaint and the rights and responsibilities of all parties involved in such an action.

§819.46. Dismissal of Complaint

The Commission proposes new §819.46 to set forth the conditions under which CRD may dismiss a complaint and CRD's responsibilities should such action be taken.

§819.47. Cause Determination

The Commission proposes new §819.47 to set forth the conditions under which CRD determines if there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice and CRD's responsibilities should such action be taken.

§819.48. No Cause Determination

The Commission proposes new §819.48 to set forth the conditions under which CRD determines if there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice and CRD's responsibilities should such action be taken.

§819.49. Conciliation

The Commission proposes new §819.49 to set forth CRD's intent to achieve a just resolution once a reasonable cause determination is made. Alternative courses of action are presented depending on whether CRD is successful in securing an agreement between the complainant and respondent to eliminate the unlawful practices and provide appropriate relief for the complainant.

§819.50. Right to File a Civil Action

The Commission proposes new §819.50 to specify the conditions under which CRD shall issue a notice of right to file a civil action permitting the complainant to sue in court.

§819.51. Failure to Issue Notice of Right to File a Civil Action

The Commission proposes new §819.51 to cite that CRD's failure to issue a notice of right to file a civil action within the specified time limit does not affect the complainant's right to file a civil action under the Texas Labor Code, Chapter 21.

§819.52. Judicial Enforcement

The Commission proposes new §819.52 to establish CRD's authority to file a civil action against a respondent or intervene in a civil action.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

§819.71. Equal Employment Opportunity Deferrals among Federal, State, and Local Agencies

The Commission proposes new §819.71 to set forth the ways in which complaints may be deferred from one level of government to another and to establish at what point the measure for timeliness is triggered.

§819.72. Requirements for a Local Commission

The Commission proposes new §819.72 to identify the procedures to be followed and the conditions to be met for a local commission, recognized by EEOC as a Fair Employment Practices Agency, to be eligible to receive and process complaints.

§819.73. Deferral to Local Commission

The Commission proposes new §819.73 to identify the authority under which a local commission exercises the exclusive right to act upon an employment discrimination complaint and the conditions under which CRD may assume jurisdiction over a complaint deferred to a local commission.

§819.74. Deferral Procedures

The Commission proposes new §819.74 to set forth the responsibilities of the local commission as well as CRD and the procedures involved in deferring an employment discrimination complaint to a local commission.

§819.75. Final Determination of a Local Commission

The Commission proposes new §819.75 to set forth the actions to be taken by a local commission based on the type of decision made regarding an employment discrimination complaint under its jurisdiction.

§819.76. Workshare Agreements

The Commission proposes new §819.76 to specify the means by which the Agency and a local commission shall officially coordinate efforts to process employment discrimination complaints.

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

§819.91. Preservation and Use

The Commission proposes new §819.91 to establish the requirement that any person under investigation shall retain records pursuant to the Texas Labor Code, Chapter 21.

§819.92. Access to CRD Records

The Commission proposes new §819.92 to specify the conditions under which the party to a perfected complaint may have access to CRD's records.

§819.93. Disposal of Files and Related Documents

The Commission proposes new §819.93 to set forth the conditions for the retention and disposal of CRD files.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

§819.111. Purpose

The Commission proposes new §819.111, which states that the purpose of Subchapters G–L is to establish procedures for CRD to execute its responsibilities in the administration and enforcement of the Texas Fair Housing Act.

§819.112. Definitions

The Commission proposes new §819.112 to define terms that pertain exclusively to those subchapters addressing fair housing practices including 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. Terms defined include accessible or readily accessible to and usable by; accessible building entrance; accessible route; building; common use areas; complaint; controlled substance; disability discriminatory housing practice; entrance; exterior; ground floor; interior; modification; premises; public use areas; site; Texas Fair Housing Act; and United States Fair Housing Act.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

§819.121. Discrimination Based on Familial Status

The Commission proposes new §819.121, which provides that it is an unlawful housing practice to discriminate based on familial status.

§819.122. Exemptions Based on Familial Status

The Commission proposes new §819.122 to set forth those conditions under which housing designated for the use of elderly residents may be exempted from the provisions of the Texas Fair Housing Act.

§819.123. Discrimination in Sale, Rental, Terms, Conditions, Privileges, Services, and Facilities

The Commission proposes new §819.123 to identify the types of discriminatory actions prohibited with regard to the terms, conditions, or privileges offered with the sale or rental of a dwelling.

§819.124. Other Prohibited Sale and Rental Conduct

The Commission proposes new §819.124 to identify the types of discriminatory actions prohibited that involve steering persons toward or away from property, as well as employing discriminatory practices that involve the sale or rental of property.

§819.125. Discriminatory Advertisements, Statements, and Notices

The Commission proposes new §819.125 to explain how print materials and statements are considered discriminatory if used to express a preference for or limitation on a potential buyer or renter.

§819.126. Discriminatory Representations on the Availability of Dwellings

The Commission proposes new §819.126 to identify the types of prohibited discriminatory actions that provide inaccurate or untrue information about the availability of dwellings.

§819.127. Discriminatory Practices Regarding Entry into a Neighborhood

The Commission proposes new §819.127 to define as unlawful the practice, motivated by profit, of inducing or attempting to induce, or persuading individuals to sell or rent their dwelling by representing that people of a certain race, color, disability, religion, sex, national origin, or familial status are entering the neighborhood.

§819.128. Discrimination in the Selling, Brokering, or Appraising of Residential Real Property

The Commission proposes new §819.128 to define as unlawful any attempt to deny access to or membership in any organization or service related to the selling or renting of dwellings based on race, color, disability, religion, sex, national origin, or familial status.

§819.129. Discrimination in Residential Real Estate Transactions

The Commission proposes new §819.129 to define as unlawful any effort to base the availability, terms, or conditions of a residential real estate transaction on race, color, disability, religion, sex, national origin, or familial status.

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

The Commission proposes new §819.130 to define as unlawful any failure or refusal to make loans, provide financial assistance, or make information available regarding such assistance based on race, color, disability, religion, sex, national origin, or familial status.

§819.131. Discrimination in Purchasing Loans

The Commission proposes new §819.131 to define as unlawful the refusal to purchase or the imposition of different terms on the purchase of loans, debts, or securities related to residential real estate dealings based on race, color, disability, religion, sex, national origin, or familial status.

§819.132. Discrimination Based on Disability

The Commission proposes new §819.132 to define as unlawful any attempt to deny or make unavailable the rental or sale of a dwelling based on the disability of the potential buyer or renter or someone associated with either. The rule further prohibits an inquiry as to the nature or severity of a disability excepted under certain stated conditions.

§819.133. Discrimination in Refusing Reasonable Modifications of Existing Premises

The Commission proposes new §819.133 to define as unlawful the denial of permission for an individual with a disability to make reasonable modifications to a dwelling and the rights and obligations of both parties in undertaking modifications.

§819.134. Discrimination in Refusing Reasonable Accommodations

The Commission proposes new §819.134 to define as unlawful the refusal to make reasonable accommodations in rules, policies, practices, or services for individuals with disabilities.

§819.135. Discrimination in Design and Construction Requirements

The Commission proposes new §819.135 to set forth the type of physical accommodations for individuals with disabilities that shall be made to a multifamily dwelling after a certain date.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

§819.151. Filing a Complaint

The Commission proposes new §819.151 to specify that a person or the CRD director may file a complaint within a year from the occurrence or termination of an alleged unlawful housing discrimination practice, whichever is later. The new rule also identifies both the steps to be taken and the requirements to be met to file a housing discrimination complaint.

§819.152. Legal Representation

The Commission proposes new §819.152 to notify respondents and complainants of their right to be represented by an attorney or a designated agent during the course of processing a complaint.

§819.153. Investigation of a Complaint

The Commission proposes new §819.153 to set forth the procedures to be followed by the complainant, respondent, and CRD in the investigation of a complaint.

§819.154. Pattern and Practice Complaints

The Commission proposes new §819.154 to identify the conditions under which a complaint shall be designated as a "patterns and practices complaint" signifying the presence of pervasive or institutional discriminatory practices or complex issues or the involvement of a large number of people.

§819.155. Conciliation

The Commission proposes new §819.155 to explain the role and purpose of conciliation in the housing complaint process. The conciliation process for housing complaints differs from employment complaints in the timing of the conciliation. As a term used in processing a housing complaint, conciliation refers to settlement of a dispute by mutual agreement occurring any time beginning with the filing of a complaint and ending with the filing of a charge or the dismissal of the complaint. In an employment complaint, the term conciliation refers to such efforts occurring after a determination of cause has been made.

§819.156. Reasonable Cause Determination and Issuance of a Charge

The Commission proposes new §819.156 to specify the actions to be taken by the CRD director if a conciliation agreement is not reached and the CRD director shall determine whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred. The new rule sets forth actions to be taken based on whether the determination made is a cause or no cause decision or whether the complaint involves the legality of local zoning or land use ordinances.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

§819.171. Deferral

The Commission proposes new §819.171 to set forth the requirements for a HUD-certified municipality to meet in order to receive and process complaints referred by CRD.

§819.172. Memoranda of Understanding

The Commission proposes new §819.172 to specify the means by which the Agency and a municipality shall officially arrange to coordinate efforts to process housing discrimination complaints.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

§819.191. Administrative Hearings

The Commission proposes new §819.191 to provide that administrative hearings shall be conducted by the Agency's Special Hearings Department.

§819.192. Ex Parte Communications

The Commission proposes new §819.192 to set forth the conditions under which a commissioner for the Commission on Human Rights or CRD employee may communicate information involving any issue of fact or law in a case covered by this subchapter.

§819.193. Proposal for Decision and Hearing Officer's Report

The Commission proposes new §819.193 to set forth the different requirements for a proposed decision to the Commission on Human Rights depending on whether the proposed decision is adverse to any party or not. The proposed new rule also specifies the content for the hearing officer's report.

§819.194. Countersignature by the CRD Director

The Commission proposes new §819.194 to require the CRD director to countersign every hearing officer's report and proposal for decision.

§819.195. Oral Argument before the Commission on Human Rights

The Commission proposes new §819.195 to authorize any party to a complaint to present an oral argument before the Commission on Human Rights before final determination.

§819.196. Pleading Before Order

The Commission proposes new §819.196 to authorize the CRD director to permit or request parties to submit briefs and proposed findings of fact after the hearing and before the final decision by the Commission on Human Rights.

§819.197. Form and Content of the Order

The Commission proposes new §819.197 to authorize the Commission on Human Rights to adopt, amend, or reject the hearing officer's proposal for decision and conditions under which the Commission on Human Rights shall vacate, modify, or change a finding of a proposed order.

§819.198. Final Order

The Commission proposes new §819.198 to specify the form that a final order shall take if it is adverse to any party, and the requirements for including findings of fact and conclusions of law.

§819.199. Rehearing

The Commission proposes new §819.199 to provide for a rehearing once a final order has been issued. The new rule details the deadlines to be met by all parties involved.

§819.200. Judicial Review

The Commission proposes new §819.200 to authorize a party involved in a complaint to file a petition for judicial review under the substantial evidence rule.

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

The Commission proposes new §819.201 to define what actions constitute unlawful conduct with regard to interfering with, coercing, intimidating, or retaliating against individuals involved with a housing discrimination issue.

SUBCHAPTER L. FAIR HOUSING FUND

§819.221. Fair Housing Fund

The Commission proposes new §819.221 to provide for the creation of a fund to receive gifts, grants, and assessments of financial penalties that may be used for the administration of the Texas Fair Housing Act.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Robert Gomez, Director of the Civil Rights Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be streamlined and clearly identified procedures for the processing of employment and housing discrimination complaints, reviewing state agencies' personnel policies and procedures and fire departments' test administration, and providing civil rights training to state agencies.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of the chair of the Commission on Human Rights and the CRD director.

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; fax 512-475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments no later than 30 days from the date this proposal is published in the *Texas Register*.

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides 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 repeal affects Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, relating to employment discrimination; Texas Property Code, Chapter 301, relating to housing discrimination; and Texas Government Code, Chapter 419, relating to firefighter test review.

SUBCHAPTER A. GENERAL PROVISIONS

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SUBCHAPTER B. COMMISSION

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 - §819.17. Review
 - §819.18. Merit Assessment
 - §819.19. Compliance Training for State Agencies
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SUBCHAPTER C. LOCAL COMMISSIONS

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SUBCHAPTER D. ADMINISTRATIVE REVIEW

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§819.83. Legal Representation
§819.84. Policy
§819.85. Office of Alternative Dispute Resolution
§819.86. Voluntary Settlement through Alternative Dispute Resolution
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The new rules are proposed 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 new rules affect Title 4, Texas Labor Code, and Texas Labor Code, Chapter 21, concerning employment discrimination; Texas Property Code, Chapter 301, concerning housing discrimination; and the portions of Texas Government Code, Chapter 419, concerning firefighter test review.

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 Civil Rights Division); Texas Property Code, Chapter 301, (relating to Texas Fair Housing Act); and Texas Government Code, Chapter 419, Subchapter F (relating to Review of Fire Department Tests).

§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 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 criminal 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 criminal 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
- (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

§819.10. Purpose

The purpose of Subchapters B–F of this chapter is to set forth the procedures for CRD to execute its responsibilities in the administration and enforcement of Texas Labor Code, Chapter 21. Texas provides, within constitutional limits, equal employment opportunities and provides rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory employment practices based on race, color, disability, religion, sex, national origin, or age.

§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 Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act, as amended; the Rehabilitation Act of 1973, as amended; and the Americans with Disabilities Act of 1990, as amended.
- (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 the Texas Labor Code §21.002(6).
- (6) Employer -- A person who is engaged in an industry affecting commerce 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 the U.S. Civil Rights Act, Title VII, §717(c), as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act, 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 the 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 based on race, color, disability, religion, sex, national origin, or age 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 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 Commission on Human Rights and CRD. An employer, employment agency, or labor organization commits an unlawful practice if it willfully interferes with the

performance of a duty or the exercise of a power by the Commission on Human Rights or 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**
 - (1) 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:
 - (A) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
 - (B) concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.
 - (2) A bona fide occupational qualification is an affirmative defense to discrimination.

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

§819.21. Civilian Workforce Composition Report

CRD shall prepare a civilian workforce composition report pursuant to Texas Labor Code §21.0035 using the best available data from all appropriate sources.

§819.22. Review of Firefighter Tests

- (a) CRD shall review the initial tests administered by a fire department, as provided in Texas Government Code, Chapter 419. 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.
- (b) 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.

- (c) CRD shall develop a list of preapproved tests for firefighter positions that it has reviewed, certified, and deemed to be nondiscriminatory. The tests will be available on the Agency's Web site.
- (d) Fire departments that use tests from CRD's list of preapproved tests are presumed to be in compliance with the law against unlawful discrimination. However, if CRD perceives the need to review a fire department that is using such preapproved tests, nothing shall prevent such review.
- (e) Fire departments that use a test not included on the preapproved list shall submit, upon request by CRD, documentation regarding the reliability and validity of the chosen test.
- (f) 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. 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 preapproved 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.
- (g) CRD shall evaluate the requested information set forth in subsection (f) 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.

§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 the 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 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) define 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 compliance training may be provided using a training program from CRD's preapproved list of training programs. If a state agency chooses to provide compliance training using a person or state agency not included on CRD's list of preapproved training programs, the training provider and the training program to be used by the person or state agency shall be reviewed and approved for compliance with CRD standards.
- (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.

§819.26. Standard and Compliance Employment Discrimination Training Delivery

- (a) The minimum standards for the delivery of standard and compliance employment discrimination training shall include, but not be limited to:
 - (1) a determination of the effectiveness of the training;
 - (2) the use of training that takes advantage of technological advances, such as videos, CDs, and Web-based delivery systems; and
 - (3) the documentation of training that shall be provided to CRD, including the date the training was provided, description of the training program used, names of participants, and the agency contact person. Web-based training records may be retained electronically.
- (b) In addition to the minimum standards set forth in subsection (a) of this section, the delivery of compliance employment discrimination training shall be highly interactive to ensure the engagement of the trainee.

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 counsel with the complainant about the facts and circumstances that 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 under oath, and may be filed with CRD by mail, 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 notified periodically by CRD of the status of their perfected complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

§819.42. Legal Representation

The complainant and respondent may be represented by an attorney or designated agent.

§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; or
 - (7) 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.
- (f) As part of a perfected complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the perfected complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21.

§819.44. Mediation

- (a) Between filing of a complaint and prior to the cause determination, CRD may invite both the complainant and the respondent to attempt to resolve their dispute through mediation. Either party to the perfected complaint may also request mediation to resolve the complaint during this period.
- (b) For mediation to occur, both the complainant and the respondent shall agree to the mediation. If there is no agreement, CRD shall continue with the investigation of the perfected complaint.

- (c) If the complainant and respondent reach a settlement and execute a written agreement disposing of the perfected complaint, the agreement is binding and enforceable in the same manner as any other written contract.
- (d) If mediation between the complainant and the respondent does not result in an agreement, CRD shall continue to investigate the perfected complaint.

§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 mail a copy of the final determination on the petition to 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 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 the 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 mailed 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 notify the complainant and respondent by mail of an unsuccessful conciliation agreement. 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.

§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 mailed 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 mail of:
 - (1) the dismissal of a complaint filed with CRD; or
 - (2) the expiration of 180 days after the date of filing of an unresolved complaint and the complainant's right to request from CRD a notice of right to file a civil action. 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) 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. CRD shall issue notice by mail no later than the fifth business day after receipt of the complainant's request.

§819.51. Failure to Issue Notice of Right to File a Civil Action

CRD's failure to issue a notice of right to file a civil action after 180 days from the date the complaint is received by CRD does not affect the complainant's right to bring a civil action against the respondent under Texas Labor Code §21.252(d).

§819.52. Judicial Enforcement

- (a) 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 CRD to bring a civil action, it shall notify the complainant by certified mail.
- (c) On a majority vote of the Commission on Human Rights, CRD may pursue intervention in a civil action pursuant to the requirements of Texas Labor Code §21.255.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

§819.71. Equal Employment Opportunity Deferrals among Federal, State, and Local Agencies

For the purpose of satisfying the filing requirements of the Texas Labor Code §21.201, the following shall apply:

- (1) For a complaint filed with CRD over which EEOC has deferred jurisdiction, timeliness of the complaint shall be determined by the date the complaint is received by CRD.
- (2) For a complaint filed with EEOC and deferred to CRD, timeliness of the complaint shall be determined by the date on which the complaint is received by EEOC.
- (3) For a complaint filed with a local commission and deferred to CRD, timeliness of the complaint shall be determined by the date on which the complaint is received by the local commission.

§819.72. Requirements for a Local Commission

- (a) To be a local commission eligible to receive deferrals from CRD, pursuant to Texas Labor Code §§21.151–21.156, and this chapter, the following materials and information shall be submitted to CRD:
 - (1) A letter from EEOC verifying the local commission's designation as a Fair Employment Practices Agency;
 - (2) A copy of the local ordinance that prohibits practices designated as unlawful under Texas Labor Code, Chapter 21;
 - (3) A copy of rules, policies, and procedures governing the operations of the local commission;

- (4) A copy of an organizational chart of the internal structure of the local commission and its relationship to the governing authorities of the political subdivision or subdivisions of which it is a part; and
 - (5) A copy of the local commission's budget and resources.
- (b) Upon examination of the materials and information provided by a local commission, the CRD director shall provide written notification to the local commission of its eligibility to receive deferrals.
 - (c) If CRD determines that the local commission is not eligible to receive deferrals, it shall identify in writing the reasons and provide the local commission the necessary assistance to comply with the requirements established by Texas Labor Code §§21.151–21.156, and this chapter.

§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.

§819.74. Deferral Procedures

- (a) CRD shall defer a complaint subject to Texas Labor Code §21.155(a) to a local commission within five working days of the date the complaint is received.
- (b) A local commission may waive its right to the period of exclusive processing of a complaint with respect to any complaint or category of complaint by deferring a matter under its jurisdiction to CRD, pursuant to Texas Labor Code §21.156.

- (c) All complaints received by CRD subject to deferral to a local commission shall be dated and time stamped upon receipt.
- (d) CRD shall transmit a copy of a complaint it receives that is subject to deferral to a local commission by certified mail to the appropriate local commission. Proceedings by the local commission are deemed to have commenced on the date such complaint is mailed.
- (e) A local commission shall transmit to CRD by certified mail, a copy of a complaint deferred to it by EEOC and over which CRD has deferral jurisdiction.
- (f) CRD shall notify the complainant and respondent in writing that it has forwarded the complaint to the local commission.

§819.75. Final Determination of a Local Commission

- (a) A local commission shall submit to CRD by mail, a copy of the document from the local commission stating the final determination as to the merits of a deferred complaint, or a copy of the document stating the appropriate action taken by the local commission to resolve the practice alleged as discriminatory in a deferred complaint.
- (b) For purposes of satisfying Texas Labor Code §21.208 and §§21.251–21.256, a local commission shall submit to CRD by mail notification of the dismissal of a deferred complaint, or shall submit, within 120 days of the date the complaint is deferred by CRD, written notification if the local commission has not filed a civil action or has not successfully negotiated a conciliation agreement between the complainant and respondent. A local commission shall notify CRD within five working days if the local commission does not intend to act on a complaint deferred by CRD.

§819.76. Workshare Agreements

The Agency shall enter into workshare agreements with EEOC and local commissions to ensure an effective and integrated administrative review procedure, share information, and provide technical assistance and training.

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

§819.91. Preservation and Use

CRD shall require a person under investigation to make and keep records pursuant to the requirements of Texas Labor Code §§21.301–21.303.

§819.92. Access to CRD Records

Pursuant to Texas Labor Code §21.304 and §21.305, CRD shall, on written request of a party to a perfected complaint filed under Texas Labor Code §21.201, allow the party access to CRD's records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement, if:

- (1) following the final action of CRD, a party to the perfected complaint or the party's attorney certifies in writing that a civil action is to be filed under Texas Labor Code, Chapter 21, within 60 days from the date of receipt of CRD's notice of right to file a civil action, or a civil action under Texas Labor Code, Chapter 21, is pending in state court; or
- (2) a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

§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 two 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 two-year 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, or 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). 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, §102, 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. As used in this definition, physical or mental impairment includes:
- (A) 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
 - (B) 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, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance);
 - (C) any major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;
 - (D) having a record of such an impairment such as a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity; and
 - (E) being regarded as having 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; having 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 having no physical or mental impairment 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

§819.121. Discrimination Based on Familial Status

It is an unlawful housing practice to discriminate based on familial status. Familial status includes:

- (1) pregnancy;
- (2) being domiciled with an individual younger than 18 years of age in regard to whom the person is the parent or legal custodian or has the written permission of the parent or legal custodian for domicile with that person; or

- (3) being in the process of obtaining legal custody of an individual younger than 18 years of age.

§819.122. Exemptions Based on Familial Status

- (a) The Texas Fair Housing Act regarding discrimination based on familial status does 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.

§819.123. Discrimination in Sale, Rental, Terms, Conditions, Privileges, Services, and Facilities

- (a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by imposing different terms, conditions, or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.
- (b) Prohibited actions under this section include, but are not limited to:
 - (1) using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, and the terms of a lease and those relating to down payment and closing requirements based on race, color, disability, religion, sex, national origin, or familial status;

- (2) failing to maintain or repair or delaying maintenance or repairs of sale or rental dwellings based on race, color, disability, religion, sex, national origin, or familial status;
- (3) failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately based on race, color, disability, religion, sex, national origin, or familial status;
- (4) limiting the use of privileges, services, or facilities associated with a dwelling based on race, color, disability, religion, sex, national origin, or familial status; and
- (5) denying or limiting services or facilities in connection with the sale or rental of a dwelling because a person failed or refused to provide sexual favors.

§819.124. Other Prohibited Sale and Rental Conduct

- (a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by restricting or attempting to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development. Prohibited practices under this section generally refer to unlawful steering practices that include, but are not limited to, discrimination by:
 - (1) discouraging any person from inspecting, purchasing, or renting a dwelling based on race, color, disability, religion, sex, national origin, or familial status in a community, neighborhood, or development;
 - (2) discouraging the purchase or rental of a dwelling based on race, color, disability, religion, sex, national origin, or familial status by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development;
 - (3) communicating to a potential buyer or renter that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development based on race, color, disability, religion, sex, national origin, or familial status; and
 - (4) assigning any person to a particular section of a community, neighborhood, or development or to a particular floor of a building based on race, color, disability, religion, sex, national origin, or familial status.
- (b) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by engaging in any conduct relating to the provision of housing or of services

and facilities in connection therewith that otherwise makes unavailable or denies dwellings to individuals. Prohibited sales and rental practices under this section include, but are not limited to, discrimination by:

- (1) discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice;
- (2) employing codes or other devices to segregate or reject potential buyers or renters; refusing to take or to show listings of dwellings in certain areas based on race, color, disability, religion, sex, national origin, or familial status; or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, disability, religion, sex, national origin, or familial status;
- (3) denying or delaying the processing of an application made by a potential buyer or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling based on race, color, disability, religion, sex, national origin, or familial status; and
- (4) refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently based on race, color, disability, religion, sex, national origin, or familial status.

§819.125. Discriminatory Advertisements, Statements, and Notices

- (a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination, or an intention to make any such preference, limitation, or discrimination.
- (b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, electronic communications, or any documents used with respect to the sale or rental of a dwelling.
- (c) Discriminatory notices, statements, and advertisements include, but are not limited to:
 - (1) using words, phrases, photographs, illustrations, symbols, or forms that convey that dwellings are available or not available to a particular group of individuals based on race, color, disability, religion, sex, national origin, or familial status;

- (2) expressing to agents, brokers, employees, prospective sellers or renters, or any other individuals a preference for or limitation on any potential buyer or renter based on race, color, disability, religion, sex, national origin, or familial status;
- (3) selecting media or locations for advertising the sale or rental of dwellings that deny particular segments of the housing market information about housing opportunities based on race, color, disability, religion, sex, national origin, or familial status; and
- (4) refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising based on race, color, disability, religion, sex, national origin, or familial status.

§819.126. Discriminatory Representations on the Availability of Dwellings

- (a) It is unlawful to discriminate, based on race, color, disability, religion, sex, national origin, or familial status, by providing inaccurate or untrue information about the availability of dwellings for sale or rent.
- (b) Prohibited actions under this section include, but are not limited to:
 - (1) indicating through words or conduct that a dwelling that is available for inspection, sale, or rent has been sold or rented based on race, color, disability, religion, sex, national origin, or familial status;
 - (2) representing that covenants or other deed, trust, or lease provisions that purport to restrict the sale or rental of dwellings based on race, color, disability, religion, sex, national origin, or familial status preclude the sale or rental of a dwelling to a person;
 - (3) enforcing covenants or other deed, trust, or lease provisions that preclude the sale or rental of a dwelling to any person based on race, color, disability, religion, sex, national origin, or familial status;
 - (4) limiting information, through words or conduct, regarding suitably priced dwellings available for inspection, sale, or rent based on race, color, disability, religion, sex, national origin, or familial status; and
 - (5) providing false or inaccurate information regarding the availability of a dwelling for sale or rent to any person, including testers, regardless of whether such person is actually seeking housing based on race, color, disability, religion, sex, national origin, or familial status.

§819.127. Discriminatory Practices Regarding Entry into a Neighborhood

- (a) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by inducing or attempting to induce for profit a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of an individual or group of individuals.
- (b) Prohibited actions under this section include, but are not limited to:
 - (1) engaging in conduct (including uninvited solicitations for listings) that conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, disability, religion, sex, national origin, or familial status of individuals residing in it or in order to encourage the person to offer a dwelling for sale or rent; and
 - (2) encouraging a person to sell or rent a dwelling through assertions that the entry or prospective entry of individuals of a particular race, color, disability, religion, sex, national origin, or familial status can or will result in undesirable consequences for the project, neighborhood, or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

§819.128. Discrimination in the Selling, Brokering, or Appraising of Residential Real Property

- (a) It is unlawful for a person whose business includes engaging in selling, brokering, or appraising of residential real property to discriminate based on race, color, disability, religion, sex, national origin, or familial status.
- (b) It is unlawful to discriminate based on race, color, disability, religion, sex, national origin, or familial status by denying any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation.
- (c) Prohibited actions under this section include, but are not limited to:
 - (1) setting different fees for access to or membership in a multiple listing service;
 - (2) denying or limiting benefits accruing to members in a real estate brokers' organization;
 - (3) imposing different standards or criteria for membership in a real estate sales or rental organization; and

- (4) establishing geographic boundaries or office location or residence requirements for access to, or membership or participation in, any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings.

- (d) For the purposes of this section, the term "appraisal" shall mean an estimate or opinion of the value of a residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

- (e) Practices that are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, disability, religion, sex, national origin, or familial status.

§819.129. Discrimination in Residential Real Estate Transactions

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 such a transaction available or in the terms or conditions of such a transaction.

§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 or 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.

§819.131. Discrimination in Purchasing Loans

- (a) It is unlawful for a person engaged in the purchasing of loans or other debts or securities that support the purchase, construction, improvement, repair, or maintenance of a dwelling, or that are secured by residential real estate, to discriminate based on race, color, disability, religion, sex, national origin, or familial status by refusing to purchase such loans, debts, or securities, or by imposing different terms or conditions for such purchases.
- (b) Unlawful conduct under this section includes, but is not limited to:
 - (1) purchasing loans or other debts or securities that relate to or are secured by dwellings in certain communities or neighborhoods but not in others based on race, color, disability, religion, sex, national origin, or familial status;
 - (2) pooling or packaging loans or other debts or securities differently that relate to or are secured by dwellings based on race, color, disability, religion, sex, national origin, or familial status; and
 - (3) imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities that relate to or are secured by dwellings based on race, color, disability, religion, sex, national origin, or familial status.

- (c) This section does not prevent consideration of factors justified by business necessity in the purchasing of loans, including requirements of state or federal law relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision does not preclude considerations employed in normal and prudent transactions provided that no such factor may in any way relate to race, color, disability, religion, sex, national origin, or familial status.

§819.132. Discrimination Based on Disability

- (a) It is unlawful to discriminate in the sale, rental, terms, conditions, or privileges of the sale or rental, or to 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.

§819.133. Discrimination in Refusing Reasonable Modifications of Existing Premises

- (a) It is unlawful for a person to refuse to allow, at the expense of an individual with a disability, reasonable modifications of existing premises, occupied or to be occupied by an individual with a disability, if the proposed modifications may be necessary to afford the individual with a disability full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase a customarily required security deposit for individuals with disabilities. However, where it is necessary to ensure with reasonable certainty that funds are available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.
- (b) As a condition for granting a renter permission for a modification, a landlord may require a reasonable description of the proposed modifications, reasonable assurances that the work will be done in a workmanlike manner, and assurances that required building permits will be obtained.

§819.134. Discrimination in Refusing Reasonable Accommodations

It is unlawful for a person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

§819.135. Discrimination in Design and Construction Requirements

- (a) It is unlawful to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, that do not have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.

For purposes of this section, covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date or if the last building permit or renewal for the covered multifamily dwellings is issued by a state, county, or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person who designed or constructed the housing facility.

- (b) It is unlawful to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route that do not provide:
 - (1) public and common use areas readily accessible to and usable by individuals with disabilities;
 - (2) doors that are sufficiently wide to allow passage into and within the entire premises by individuals in wheelchairs; or
 - (3) interior premises with the following features of adaptable design:
 - (A) accessible routes into and through the covered dwelling unit;
 - (B) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (C) reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall, and shower seat, where such facilities are provided; and
 - (D) usable kitchens and bathrooms to allow an individual in a wheelchair to maneuver.
- (c) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of subsection (b)(3) of this section.
- (d) Compliance with a duly enacted law of a state or unit of general local government that includes the requirements of subsections (a) and (b) of this section satisfies the requirements of subsections (a) and (b) of this section.
- (e) This section does not invalidate or limit the laws of a state or political subdivision of a state that require dwellings to be designed and constructed in a manner that affords individuals with disabilities greater access than is required by this section.

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 counsel with the complainant about the facts and circumstances that 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 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 claimant 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, 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.

§819.152. Legal Representation

The complainant and respondent may be represented by an attorney or designated agent.

§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. 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 answer shall be signed and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."
- (g) An answer may be reasonably and fairly amended at any time with the consent of the CRD director.
- (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 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; or
 - (7) 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) As part of a complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of the Texas Fair Housing Act.

- (l) CRD shall complete the initial investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint.
- (m) 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.
- (n) 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.
- (o) A final investigative report may be amended if additional evidence is discovered.
- (p) CRD shall provide a summary of the final determination and shall make available the full investigative report to the complainant and the respondent.

§819.154. Pattern and Practice Complaints

When the CRD director determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint may involve complex issues, questions of first impression, or may affect a large number of people, the CRD director may identify it as a pattern and practice complaint. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Pattern and practice investigations may focus not only on documenting facts involved in the complaint but also on review of other policies and procedures to ensure compliance with the nondiscrimination requirements of the Texas Fair Housing Act.

§819.155. Conciliation

- (a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the CRD director, CRD shall attempt to conciliate the complaint.
- (b) In conciliating a complaint, CRD shall attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the complainant, and take such action that will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.
- (c) The terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The conciliation agreement shall protect the interests of the complainant, other people similarly situated, and the public interest.
- (d) The agreement is subject to the approval of the CRD director, who shall indicate approval by signing the agreement. The CRD director shall approve an agreement and execute the agreement, only if:
 - (1) the complainant and the respondent agree to the relief; and
 - (2) the provisions of the agreement shall adequately protect the public interest.
- (e) CRD may issue a charge under the Texas Fair Housing Act and this chapter if the complainant and the respondent have executed an agreement that has not been approved by the CRD director.
- (f) CRD may terminate its efforts to conciliate the complaint if:
 - (1) the complainant or the respondent fails or refuses to confer with CRD;
 - (2) the complainant or the respondent fails to make a good faith effort to resolve any dispute; or
 - (3) the CRD director finds, for any reason, that voluntary agreement is not likely to result.
- (g) When the complainant has commenced a civil action under federal or state law seeking relief for the alleged discriminatory housing practice, the CRD director shall terminate conciliation.
- (h) The CRD director may review compliance with the terms of any conciliation agreement. If the CRD director has reasonable cause to believe that a complainant or a respondent has breached a conciliation agreement, the CRD director may refer the matter to the Office of the Attorney General with a recommendation for the filing of a civil action under the Texas

Fair Housing Act, Subchapter G, for the enforcement of the terms of the conciliation agreement.

§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 may 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 may not be 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(b), or an administrative hearing pursuant to §819.191 of this chapter.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

§819.171. Deferral

- (a) Pursuant to the Texas Fair Housing Act §301.068, CRD may defer proceedings and refer complaints to a municipality that has been certified by HUD.
- (b) A local municipality certified by HUD shall submit the following materials and information to CRD before a deferral or referral shall be made:
 - (1) A copy of the local ordinance that is determined to be substantially equivalent to federal law;
 - (2) A letter verifying that the ordinance of the municipality has been approved by HUD as substantially equivalent to federal law;
 - (3) A copy of rules, policies, and procedures governing the administration and enforcement of the local ordinance determined to be substantially equivalent to federal law and the Texas Fair Housing Act; and
 - (4) A copy of the organizational chart of the municipality's internal structure for enforcing the local ordinance determined to be substantially equivalent to federal law and the Texas Fair Housing Act.
- (c) Upon examination of the materials and information provided by the municipality, the CRD director shall notify the municipality in writing as to the determination of its eligibility.

§819.172. Memoranda of Understanding

The Agency shall enter into memoranda of understanding with local municipalities qualified under §819.171 of this subchapter to ensure effective and integrated administrative review procedures, share information, and provide technical assistance and training.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

§819.191. Administrative Hearings

Administrative hearings shall be conducted by the Agency's Special Hearings Department pursuant to the procedures set forth in Texas Government Code, Chapter 2001, Subchapters C-D, F-H, and Z.

§819.192. Ex Parte Communications

Except as provided in this chapter, and unless required for the disposition of ex parte matters authorized by law, no member of the Commission on Human Rights and no employee of the Agency assigned to propose a decision or assigned to propose or make findings of fact or conclusions of law in a case covered by this subchapter may communicate, directly or indirectly, in connection with any issue of fact or law with any person or party or any representative of either, except on notice and opportunity for all parties to participate.

§819.193. Proposal for Decision and Hearing Officer's Report

- (a) If the proposed decision is not adverse to any party to the hearing proceeding, the hearing officer may propose to the Commission on Human Rights a decision that need not contain findings of fact or conclusions of law.
- (b) The Commission on Human Rights shall not make a decision adverse to a party until a proposal for decision has been served on the parties, and an opportunity has been afforded each party adversely affected to file exceptions and present briefs to the Commission on Human Rights.
- (c) The proposal for decision shall be accompanied by a hearing officer's report. This report shall contain a statement of the nature of the case and a discussion of the issues, evidence, and applicable law.
- (d) Any penalty assessed by the hearing officer for an administrative violation shall be in accordance with Texas Fair Housing Act §301.112.

§819.194. Countersignature by the CRD Director

The CRD director shall countersign each hearing officer's report and proposal for decision.

§819.195. Oral Argument before the Commission on Human Rights

A party may request oral argument before the Commission on Human Rights before final determination. A request for oral argument may be incorporated in the exceptions, in a reply to the exceptions, or in a separate pleading.

§819.196. Pleading Before Order

The CRD director may permit or request parties to file briefs and proposed findings of fact at any time after the hearing and before final decision by the Commission on Human Rights. A party doing so shall file an original and 10 copies with the CRD director, certifying to the CRD director that each party has been served with a copy.

§819.197. Form and Content of the Order

- (a) After the time for filing exceptions and replies to exceptions has expired, the Commission on Human Rights shall consider the hearing officer's report and the proposal for decision. The Commission on Human Rights may adopt the proposal for decision; modify and adopt it; reject it and issue a Commission on Human Rights decision; or remand the matter to the hearing officer. The Commission on Human Rights shall render its decision or issue its final order within 60 days after the hearing closes. The hearing officer shall prepare the final order for the Commission on Human Rights.
- (b) It is the policy of the Commission on Human Rights to change a finding of fact or conclusion of law or to vacate or modify any proposed order from the hearing officer when the proposed order is:
 - (1) erroneous;
 - (2) against the weight of the evidence;
 - (3) based on insufficient review of the evidence;
 - (4) not sufficient to protect the public interest;
 - (5) an infringement on the Commission on Human Rights' discretion to determine its policies; or
 - (6) to correct a technical error.

- (c) If the Commission on Human Rights modifies, amends, or changes the hearing officer's proposal for decision, a final order reflecting the changes and the justification for the changes shall be prepared.

§819.198. Final Order

- (a) A final order of the Commission on Human Rights that is adverse to one or more parties shall be in writing and signed by a majority vote of the quorum of the Commission on Human Rights. Such a final order 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. If a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. The CRD director shall deliver a copy of the final order to each party or the party's authorized representative by certified mail or personal service.
- (b) A final order is effective on the date it is issued by the Commission on Human Rights, unless otherwise stated in the final order. The date of issuance shall be incorporated in the body of each decision or final order.
- (c) The Commission on Human Rights' issuance of a final order remains in effect unless a party to the proceeding files a motion for rehearing before the expiration of 21 calendar days.

§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' order is final when the Commission on Human Rights:
 - (1) denies a motion for rehearing on a final order, as set forth in §819.198 of this subchapter, either expressly or by operation of law; or
 - (2) renders or issues a final order that includes a statement that no motion for 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.

§819.200. 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 order of the Commission on Human Rights is entitled to judicial review under the substantial evidence rule as set forth in the Administrative Procedure Act, §§2001.001 et seq.
- (b) Proceedings for judicial review are instituted by filing a petition within 30 calendar days after a final order is issued.

§819.201. 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 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 Commission on Human Rights 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.

~~Chapter 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION~~

~~SUBCHAPTER A. GENERAL PROVISIONS~~

~~§819.1. Definitions~~

~~The following words and terms, when used in these chapters, shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~(1) Act—The Texas Commission on Human Rights Act, Texas Labor Code, §21.001 et seq., formerly Texas Revised Civil Statutes, Article 5221k, as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276 effective September 1, 1993. The 1995 codification of the Act in the Texas Government and Labor Codes now incorporates the 1993 legislative amendments to Article 5221k. Therefore, these rules refer to provisions of the amended Code.~~
- ~~(2) Age—"Because of" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older. Nothing in the Texas Labor Code prohibits the compulsory retirement of any employee who has attained 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least \$ 27,000. For purposes of the Texas Labor Code, §21.054(b), "because of age" refers only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.~~
- ~~(3) Alternative dispute resolution—Mediation in which an impartial person facilitates communications between parties to promote voluntary settlement of the dispute.~~
- ~~(4) 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 persons of the excluded group would be able to perform satisfactorily the duties of the job with safety and efficiency.~~~~
- ~~(5) Chairman—That member of the commission designated by the governor, pursuant to the Texas Government Code, §461.056.~~
- ~~(6) Commission—The Texas Commission on Human Rights.~~
- ~~(7) Commissioner—Any one of the duly appointed members of the commission, including the chairman, pursuant to the Texas Government Code, §461.051.~~
- ~~(8) Complainant—A person claiming to be aggrieved by an unlawful employment practice, or that person's agent who brings an action or proceeding under the Texas Labor Code.~~
- ~~(9) Complaint—A written statement made under oath or affirmation stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is~~

based, including the dates, places, and circumstances of the alleged unlawful employment practice, and setting forth facts sufficient to enable the commission to identify the person charged.

- (10) — ~~Court~~ — The district court in a county in which the alleged unlawful employment practice that is subject of the complaint occurred or in a county in which the respondent resides.
- (11) — ~~Deferral or referral~~ — The same meaning pursuant to the Texas Labor Code, §21.155.
- (12) ~~Demonstrates~~ — To meet the burdens of production and persuasion.
- (13) — ~~Designee~~ — An employee of the commission authorized to execute such duties, powers, and authority as may be conferred by the executive director subject to the provisions of the Texas Labor Code, the Texas Government Code, or these sections.
- (14) — ~~Disability~~ — With respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such a mental or physical impairment, or being regarded as having such an impairment.
- (A) — ~~The term does not include a person with a current condition of addiction to the use of alcohol or any drug or illegal or federally controlled substance.~~
- (B) — ~~The term does not include a person with a currently communicable disease or infection, including, but not limited to, acquired immune deficiency syndrome or infection with the human immunodeficiency virus, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.~~
- (C) — ~~"Because of disability" or "on the basis of disability" refers to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.~~
- (D) — ~~Disabled is a person having a disability.~~
- (15) — ~~Employee~~ — An individual employed by an employer, including an individual subject to the civil service laws of the state or a political subdivision of the state; except that the term employee does not include an individual elected to public office in the state or a political subdivision of the state.
- (16) — ~~Employer~~ — A person engaged in an industry affecting commerce 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 this state or a political subdivision of this state, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.
- (17) — ~~Employment agency~~ — A person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, including an agent of that person.

- ~~(18) — Executive director — The chief executive officer employed by the commission to execute such duties, powers, and authority as may be conferred by the commission subject to the provisions of the Act or these rules.~~
- ~~(19) — Federal government — The United States Equal Employment Opportunity Commission or any agency of the federal government enforcing the Rehabilitation Act of 1973.~~
- ~~(20) — Federal law — The Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972 and the Civil Rights Act of 1991, the Age Discrimination in Employment Act, as amended, the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act.~~
- ~~(21) — Government Code — The Texas Government Code, Title 4, Subtitle E, Chapter 461, §§461.001 — 461.101, as enacted by House Bill 752, Acts 1993, 73rd Legislature, Chapter 269, effective September 1, 1993, relating to the partial codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act.~~
- ~~(22) — Labor Code — The Texas Labor Code, Title 2, Subtitle A, Chapter 21, §§21.001–21.306, as enacted by House Bill 752, Acts 1993, 73rd Legislature, Chapter 269, effective September 1, 1993, relating to the partial codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act and as substantively amended by Senate Bill 959, Acts 1995, 74th Legislature, Chapter 76, effective September 1, 1995.~~
- ~~(23) — Labor organization — A labor organization engaged in an industry affecting commerce and includes:~~
- ~~(A) any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;~~
 - ~~(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and~~
 - ~~(C) an agent of a labor organization.~~
- ~~(24) — Local commission — Created by a political subdivision or two or more political subdivisions acting jointly pursuant to the Texas Labor Code, §21.152, and recognized as a deferral agency by the United States Equal Employment Opportunity Commission pursuant to the United States Civil Rights Act, Title VII, §706(c), as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act.~~
- ~~(25) — Local ordinance — An ordinance adopted and enforced by a local political subdivision that prohibits practices designated as unlawful under the Act or otherwise declared unlawful under federal or state law.~~
- ~~(26) — National origin — The national origin of an ancestor.~~

- ~~(27) — Person — One or more individuals or an association, corporation, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.~~
- ~~(28) — Political subdivision — A county or municipality.~~
- ~~(29) — Religion — All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship on the conduct of the employer's business.~~
- ~~(30) — Respondent — An employer, employment agency, labor organization, or joint labor-management committee that controls an apprenticeship or other training or retraining program, including on-the-job training programs, or other person who is alleged to have committed an unlawful employment practice in a complaint filed with the commission or deferred by the federal government or the federal government has deferral jurisdiction over the subject matter of the complaint.~~
- ~~(31) — Sex — "Because of" or "on the basis of sex" includes, but is not limited to, discrimination because of or on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other individuals not so affected but similar in their ability or inability to work. An employer is not required by this Act to pay for health insurance benefits for abortion, except if the life of the mother would be endangered were the fetus carried to term. The Act does not preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.~~

~~*The provisions of this §819.1 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective March 30, 1990, 15 TexReg 1516; amended to be effective July 5, 1994, 19 TexReg 4816; amended to be effective February 14, 1997, 22 TexReg 1330; amended to be effective June 28, 2001, 26 TexReg 4735; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.*~~

§819.2. Purpose

~~These sections set forth the procedures established by the commission for executing its responsibilities in the administration and enforcement of the Act. Based on its experience in the administration of the Act and upon its evaluation of suggestions for amendments submitted by interested persons, the commission may from time to time amend and rescind these rules in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, §§2001.021-.038.~~

~~*The provisions of this §819.2 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4816; amended to be effective February 14,*~~

~~1997, 22 TexReg 1330; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.3. General Construction~~

~~These sections shall be construed according to the fair import of their meaning so as to further policies and purposes of the Act. The commission does not intend that a failure to comply with these sections by the commission should constitute a jurisdictional or other bar to administrative or legal action unless otherwise required under these sections or the Act.~~

~~The provisions of this §819.3 adopted to be effective February 10, 1984, 9 TexReg 491; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.4. Authority~~

~~The commission shall have the power to adopt, issue, amend, and rescind procedural rules to carry out the purposes and policies of this Act.~~

~~The provisions of this §819.4 adopted to be effective February 10, 1984, 9 TexReg 491; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.5. Severability~~

~~If any rule of the commission or portion thereof is adjudged by a court to be invalid or if any rule of the commission, or portion thereof, is not in conformity with applicable state laws or administrative regulations of the state, that judgment does not affect the remainder of the rules.~~

~~The provisions of this §819.5 adopted to be effective February 10, 1984, 9 TexReg 491; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.6. Availability~~

~~The rules of the commission shall be available to the public at all offices of the commission and shall be on file with the offices of the attorney general, speaker of the house, and lieutenant governor as required by the Administrative Procedure Act, Texas Government Code §2001.004(2) and §2001.032.~~

~~The provisions of this §819.6 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4816; amended to be effective February 14, 1997, 22 TexReg 1330; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~SUBCHAPTER B. COMMISSION~~

~~§819.11. General Description~~

~~The appointment of the commissioners, the composition of the commission, and the designation of the chairman shall be in accordance with the Texas Government Code, §461.051 and §461.056.~~

~~The provisions of this §819.11 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4817; amended to be effective February 14, 1997, 22 TexReg 1330; amended to be effective June 27, 2001, 26 TexReg 4735; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.12. Term of Office~~

~~The term of office of commissioners, filling of vacancies on the commission, reappointment, and removal shall be in accordance with the Texas Government Code, Title 4, Subtitle E, Chapter 461, §§461.051–461.054.~~

~~The provisions of this §819.12 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4817; amended to be effective February 14, 1997, 22 TexReg 1330; amended to be effective June 27, 2001, 26 TexReg 4735; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.13. Meetings~~

- ~~(a) Four members of the commission constitute a quorum.~~
- ~~(b) Meetings of the commission shall be subject to the provisions of Texas Government Code, Chapter 551, §§551.001–551.146, unless otherwise restricted by these rules, Chapter 21 of the Texas Labor Code, Chapter 461 of the Texas Government Code, or federal law.~~
- ~~(c) A written meeting notice and agenda shall be mailed by regular mail to commissioners at least seven working days prior to the date of the meeting. Such notice requirements may be waived for emergency meetings; notwithstanding this exception, commissioners shall be notified of such emergency meetings by telephone or by telegram at least 36 hours prior to the meeting.~~
- ~~(d) Notices of the commission meetings may be sent by regular mail to newspapers of general circulation within the city in which the meeting is to take place. Such notices shall be posted in any location or furnished to any other person, organization, or publication as determined by the commission or required by these rules, and Texas Government Code, Chapter 551, Subchapter C, §§551.041–551.054.~~
- ~~(e) Meetings of the commission shall be governed by Robert's Rules of Order except as otherwise required by these rules, the Act, or other applicable state laws and state regulations.~~
- ~~(f) Minutes of the regular or emergency commission meetings shall be recorded and open to public inspection. Minutes of regular and emergency meetings need only reflect the general subject matter of discussions at such meetings.~~

~~The provisions of this §819.13 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4817; amended to be effective February 14,~~

~~1997, 22 TexReg 1330; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.14. Reimbursements~~

~~A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties pursuant to the Texas Government Code, Title 4, Subtitle E, Chapter 461, §461.055, and as authorized by the biennial legislative appropriations act.~~

~~The provisions of this §819.14 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4817; amended to be effective February 14, 1997, 22 TexReg 1330; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.15. General Powers~~

~~The commission may exercise those general powers as provided in the Texas Government Code, Title 4, Subtitle E, Chapter 461, §461.057 and Texas Labor Code, Title 2, Subtitle A, Chapter 21, §21.003.~~

~~The provisions of this §819.15 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective February 14, 1997, 22 TexReg 1330; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.16. Civilian Workforce Composition~~

~~(a) Based upon statistics issued by the U.S. Department of Labor, Bureau of Labor Statistics, regarding public and private employers, the commission shall biennially determine:~~

~~(1) the percentage of the statewide civilian workforce composed of:~~

- ~~(A) Caucasian Americans;~~
- ~~(B) African Americans;~~
- ~~(C) Hispanic Americans;~~
- ~~(D) females; and~~
- ~~(E) males; and~~

~~(2) the percentage of the statewide civilian workforce of the groups listed in Subdivision (1) according to the following job categories:~~

- ~~(A) state agency administration;~~
- ~~(B) professional;~~
- ~~(C) technical;~~
- ~~(D) protective services;~~
- ~~(E) paraprofessional;~~

- ~~(F) administrative support;~~
- ~~(G) skilled craft; and~~
- ~~(H) service and maintenance.~~

- ~~(b) The commission shall report the percentages of the statewide civilian workforce as determined under this section to the governor and the legislature not later than the fifth day of each regular session of the legislature.~~
- ~~(c) The commission shall publish, either on the commission website or upon request, the percentages of the statewide civilian workforce as determined under this section within thirty (30) days of the commission's receipt of the relevant Geographic Profile of Employment and Unemployment, U.S. Department of Labor, Bureau of Labor Statistics.~~

~~The provisions of this §819.16 adopted to be effective March 30, 2000, 25 TexReg 2657; amended to be effective December 5, 2000, 25 TexReg 11963; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.17. Review

- ~~(a) The commission shall review the personnel policy and procedural systems of each state agency on a six-year cycle, beginning fiscal year 2000, to determine whether the policy and procedural systems comply with the Texas Labor Code.~~
- ~~(b) The commission shall stagger the reviews for each state agency's personnel policy and procedural systems such that each state agency will be reviewed once during the six-year cycle. If, because of undue hardship or other extenuating circumstances, a state agency's policy and procedural system is not reviewed within the scheduled time, then the commission's executive director or his/her designee may recommend that those agencies be deferred to the following year so long as the state agency's six-year cycle for review is not exceeded.~~
- ~~(c) If a state agency's personnel policy and procedural systems are to be reviewed, said state agency shall receive notice, via first class mail and on the commission's website, at the beginning of the fiscal year in which the commission is to conduct its review of the agency's personnel policy and procedural systems. The review of each state agency shall be completed and recommendations issued on or before the one-year anniversary date in which the Commission issued its notification letter to the agency head and the review thereby commenced.~~

~~The provisions of this §819.17 adopted to be effective March 30, 2000, 25 TexReg 2658; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.18. Merit Assessment

- ~~(a) The Commission will make a determination if a complaint of employment discrimination is with or without merit by analyzing complaints filed by employees of state agencies or applicants for employment with state agencies, with either the Commission or the United States Equal Employment Opportunity Commission ("EEOC"), to ascertain whether the complainant has met~~

~~his or her burden of providing sufficient factual evidence to establish the elements of a prima facie case of employment discrimination as delineated by the United States Supreme Court ("Supreme Court"). If a complaint is determined to have met the elements of a prima facie case, then the complaint will be administratively processed through the Commission's or EEOC's investigation procedures. If the Commission makes a determination that a complaint has met both a Supreme Court test of prima facie and an administrative processing test of merit, a state agency will be determined to have a complaint of merit assessed against them.~~

- ~~(b) If a complainant in filing a complaint fails to meet his or her burden of establishing the elements of a prima facie case as outlined by the Supreme Court, is prevented from filing a complaint for jurisdictional reasons, or provides self-defeating evidence on the face of his or her complaint that shows that the complaint is defective, then the complaint will not be administratively processed nor determined to be with merit.~~
- ~~(c) If, within a fiscal year, a state agency receives three or more complaints of employment discrimination that have been determined by the Commission to have merit, then training shall be provided to supervisory and managerial employees. In attendance at this training should be all managers and supervisors of the state agency who has three or more such complaints. However, at a minimum, those managers and supervisors that had some level of involvement, either directly or indirectly, in making the personnel decision are to be present during the training session. Furthermore, all supervisors and managers who have not attended such a required training session within the last two years should be in attendance. Every effort should be made by state agencies to provide comprehensive equal employment opportunity training to all state agency employees with the authority to make personnel decisions that may adversely affect a subordinate.~~
- ~~(d) A state agency who has received three or more complaints of employment discrimination in a fiscal year that have been determined to be with merit shall be notified by the Commission in writing of such determination and notified as to how to proceed with scheduling a required compliance training.~~
- ~~(e) If a state agency is subject to having the Commission provide training to its managers and supervisors then the state agency shall then enter into an interagency contract with the Commission.~~
- ~~(f) In fulfillment of this rule, the Commission will furnish the training to the state agency in such a way that the training will be concentrated to focus on the types of claims being filed by complainants with the Commission and the EEOC. Accordingly, each agency will be able to critically analyze the types of decisions being made by their supervisors and managers and develop unique and varying perspective for preventing the same types of complaints from being filed in the future with the Commission or EEOC.~~

~~*The provisions of this §819.18 adopted to be effective September 12, 2000, 25 TexReg 9014; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.*~~

§819.19. Compliance Training for State Agencies

- (a) ~~The minimum content standards for the equal employment opportunity compliance training program for supervisors and managers shall include, but not be limited to:~~
- ~~(1) Course Objectives: These objectives shall provide an overview of the course, identify the statutory requirements for EEO compliance training, identify state personnel receiving the training, and identify the benefits and goals of such training.~~
 - ~~(2) Introductory Exercise: This exercise should be constructed around statements describing actual personnel transactions in the context of EEO law. The personnel transactions identified shall cover diverse application of EEO laws including Title VII of the Civil Rights Act of 1964, as amended (Title VII), the Age Discrimination in Employment Act, the Equal Pay, the Americans with Disabilities Act, and the Texas Commission on Human Rights Act with respect to basis and issues. Each participant is to determine whether or not the personnel transaction as stated violates EEO law. After the exercise is completed, the Trainer shall generate interactive discussion and dialogue between the Trainer and participants in terms of the answer to each statement. The Trainer should be prepared to provide comprehensive responses to participants' questions that are accurate interpretations of EEO law.~~
 - ~~(3) Federal and State Laws Prohibiting Employment Discrimination: This information should cover Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, Americans with Disabilities Act, and the Texas Commission on Human Rights Act. The discussion of these laws shall include enforcement authority, protected classes, personnel transactions covered (with examples), complainant's rights and remedies, and statutory time limitation requirements. The Trainer should have an accurate understanding of these laws and a working knowledge of transactions and examples.~~
 - ~~(4) Deferral Relationship Between the Texas Commission on Human Rights and the U.S. Equal Employment Opportunity Commission and Complaint Processing: The statutory basis that requires EEOC to defer federal jurisdiction over claims of employment discrimination to the Texas Commission on Human Rights should be explained in detail citing the provisions of Title VII and the Americans with Disabilities Act. Also, there should be a discussion of the procedural functions and tasks required during the processing of a complaint under the Texas Commission on Human Rights. The Trainer must be familiar with these procedures.~~
 - ~~(5) Primary Legal Theories Established by the United States Supreme Court: The primary legal theories for determining employment discrimination, specifically disparate treatment and disparate impact, should be identified. The discussion of these two legal theories should identify the central questions that must be considered under each theory in order to determine whether or not the personnel transaction is a violation of EEO law. One or more case examples must be discussed in plain language to illustrate the application of each theory based on actual case law. The Trainer must be prepared to answer accurately any questions by participants with respect to the application of these two theories.~~

- (A) ~~Investigative Stages—Disparate Treatment: The three investigative stages established by the United States Supreme Court for considering evidence under EEO law should be identified and defined. The application of each of these stages should be discussed in detail. The Trainer should have a thorough working knowledge of these three stages, including knowledge of the case law related to these three stages. The Trainer should also be able to provide examples to illustrate application of these stages and be able to respond accurately to participants' questions.~~
- ~~(i) Prima Facie: The discussion of this stage should identify the elements of a prima facie case of employment discrimination for a failure to hire, failure to promote, and disciplinary action up to and including discharge for disparate treatment. An exercise should be included that requires the participants to determine whether or not a complainant has met the elements of the prima facie case of employment discrimination under the theory of disparate treatment. This exercise should stimulate interactive discussion between participants and the Trainer. The Trainer must be prepared to answer accurately any questions by the participants with respect to the elements of a prima facie case of employment discrimination and the exercise.~~
 - ~~(ii) Employer Defenses: The discussion of this stage should identify the defenses available to an employer once a complaint alleging employment discrimination has been filed. The Trainer should be able to identify these defenses and specify which defenses are created by statutory language or court interpretations. The following, although not inclusive of all the defenses, should be discussed: articulating a non-discriminatory reason for a failure to hire, failure to promote, and disciplinary action up to and including discharge; bona fide occupational qualification and business necessity; and reasonable accommodation of sincere religious beliefs and reasonable workplace accommodation for persons with disabilities, unless such an accommodation creates an undue hardship. The Trainer should identify the types of information or evidence the employer should provide for each of these defenses in order to meet the employer's burden of production. The Trainer should facilitate interactive discussions about such information or evidence using examples based on actual cases or case law.~~
 - ~~(iii) Pretextual Stage: The discussion of this stage should identify that if the employer is able to articulate a defense, the burden of proof is on the Plaintiff to show that he or she was in fact discriminated against and that the reasons put forth by the employer are a mere pretext for accomplishing the discriminatory act. A discussion of this stage shall be provided which includes plain language examples that illustrate pretext based on court interpretations.~~
- (B) ~~Investigative Stages—Disparate Impact Cases: The three investigative stages established by the United States Supreme Court for considering evidence under EEO law should be identified and defined. The application of each of these stages should be discussed in detail. The Trainer should have a thorough working knowledge of~~

these three stages, including knowledge of the case law related to these three stages. The Trainer should also be able to provide examples to illustrate application of these stages and be able to respond accurately to participants questions.

(i) ~~Prima Facie: The discussion of this stage should identify the elements of a prima facie case of employment discrimination by disparate impact. To establish a prima facie case, Plaintiff bears the burden of demonstrating that the challenged facially neutral employment practice causes a significantly discriminatory impact on a protected group. An exercise should be included that requires the participants to determine whether or not a complainant has met the elements of a prima facie case of employment discrimination under the theory of disparate impact. This exercise should stimulate interactive discussion between participants and the Trainer. The Trainer must be prepared to answer accurately any questions by the participants with respect to the elements of a prima facie case of employment discrimination and the exercise.~~

(ii) ~~Employer Defenses: The discussion of this stage should identify that the burden shifts to the Defendant employer to demonstrate that the challenged practice is job related for the position in question and consistent with a business necessity. The Trainer should identify the types of information or evidence the employer should provide for each of these defenses in order to meet the employer's burden of production. The Trainer should facilitate interactive discussions about such information or evidence using examples based on actual cases or case law.~~

(iii) ~~Pretextual Stage: The discussion of this stage should identify that if the employer demonstrates a business necessity for the practice, the burden is on the Plaintiff to prove that the employer could have used some other nondiscriminatory practice to satisfy the same business necessity. A discussion of this stage shall be provided which includes plain language examples that illustrate pretext based on court interpretations.~~

(C) ~~At the conclusion of the discussion of the disparate treatment and disparate impact theories, a role play exercise shall be designed and conducted that illustrates the application of these theories. Participants in these role plays shall be divided to represent complainants, employers, and investigators. The Trainer will lead a discussion after the presentation of each stage to insure accurate understanding regarding each theory.~~

(6) ~~EEO Compliance Criteria: Criteria for accurately measuring compliance with EEO laws with respect to all personnel transactions shall be identified and defined. An exercise shall be included to illustrate the correct application of the compliance criteria. The exercise should include personnel transactions in which the compliance criteria are applied. Based on the personnel transactions, the participants shall determine whether or not the identified personnel transaction complies with each of the stated criteria. The Trainer should lead an interactive discussion of each of the criteria as they apply to each personnel transaction and~~

accurately understand and explain the correct answer giving plain language examples based on actual cases or case law.

- ~~(7) Sexual Harassment: Sexual harassment should be defined in accordance with EEOC guidelines and court decisions. This discussion should identify that illegal discrimination based on sex occurs when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or when unwelcome sexual conduct unreasonably interferes with an individual's job performance or creates an intimidating, hostile, or offensive working environment. An exercise shall be included that gives examples of sexual harassment and explains sexual harassment in the context of EEO law. The Trainer should lead an interactive discussion of this exercise using actual case examples including court cases. The Trainer should have a thorough knowledge of sexual harassment covered under EEO law.~~
- ~~(b) The minimum standards for delivery of the equal employment opportunity compliance training program for supervisors and managers shall include, but not be limited to, the following requirements:
 - ~~(1) This training program in its entirety should require approximately eight hours by a qualified Trainer who has a thorough knowledge of EEO law. The Trainer should have demonstrated competency in conducting face to face interactive training programs. Training program materials must at least include Trainee's Workbook and an Instructor's Manual.~~
 - ~~(2) The training material must accurately cover all applicable Federal and State EEO laws and include relevant examples including, but not limited to, actual cases and court decisions. The State agency or entity must ensure materials are updated as new laws and court decisions occur.~~
 - ~~(3) The training program must be developed so that it ensures that the delivery of the material is interactive with the maximum dialogue and discussion between Trainer and participants. Trainers shall have sufficient knowledge of EEO laws in order to provide participants with correct answers, responses, and explanations of all aspects of the training program including exercises. The training program must be developed in a manner that the material presented is user friendly and in plain language but appropriate for managerial and supervisory personnel at all levels.~~
 - ~~(4) The number of participants in a training session should not exceed forty (40) managers and supervisors in order to maximize interactive discussion and dialogue. Managers and supervisors include any personnel that have responsibilities or authority for making personnel decisions that can affect the employment opportunities of subordinates employees.~~
 - ~~(5) The State agency or entity must define methodology and responsibilities for:
 - ~~(A) Trainee's evaluation of the effectiveness of the program;~~
 - ~~(B) Contact person who can answer follow up technical assistance questions;~~~~~~

- ~~(C) Schedule of training sessions and verification of participants; and~~
- ~~(D) Documentation of the dates the training was provided, names of the persons attending training, agenda for the training program, and name of entity or person providing training.~~
- ~~(6) The training program must be approved by the Texas Commission on Human Rights.~~
- ~~(7) The trainer providing the training program must be certified by the Texas Commission on Human Rights through the Texas Commission on Human Rights' Training Academy.~~

~~The provisions of this §819.19 adopted to be effective December 5, 2000, 25 TexReg 11964; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.20. Employee Training and Education~~

- ~~(a) The Commission may use state funds to provide training and education for its employees in accordance with the State Employees Training Act (Texas Government Code, §§656.044-656.049).~~
- ~~(b) The training or education shall be related to the duties or prospective duties of the employee.~~
- ~~(c) The Commission's training and education program will be designed to benefit both the Commission and the employees participating by:
 - ~~(1) preparing for technological and legal developments;~~
 - ~~(2) increasing work capabilities; and~~
 - ~~(3) increasing the competence of Commission employees.~~~~
- ~~(d) A Commission employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.~~
- ~~(e) Approval to participate in a training or education program is not automatic and is subject to the availability of funds within the Commission's budget.~~
- ~~(f) The employee training and education program for the Commission shall include:
 - ~~(1) agency sponsored training provided in house or by contract;~~
 - ~~(2) seminars and conferences;~~
 - ~~(3) technical or professional certifications and licenses; and~~~~
- ~~(g) The executive director shall develop policies for administering each of the components of the employee training and education program. These policies shall include:
 - ~~(1) eligibility requirements for participation;~~
 - ~~(2) designation of appropriate level of approval for participation; and~~
 - ~~(3) obligations of program participants.~~~~

- (h) ~~The commission may pay for the salary, tuition, registration, and other fees, travel expenses, expense of training materials, and other expenses of an instructor, student, or other participant in a training or education program.~~

~~The provisions of this §819.20 adopted to be effective January 8, 2004, 29 TexReg 225; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.21. Historically Underutilized Business Program~~

- (a) ~~The commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 Texas Administrative Code, Part 5, Chapter 111, Subchapter B (relating to Historically Underutilized Business Program). Certification of a business as a historically underutilized business remains the responsibility of the Texas Building and Procurement Commission.~~
- (b) ~~The adoption of this rule is required by Texas Government Code, §2161.003 (as added by the 76th Legislature, effective September 1, 1999).~~

~~The provisions of this §819.21 adopted to be effective January 8, 2004, 29 TexReg 225; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~Subchapter C. Local Commissions~~

~~§819.51. Deferral Authority~~

~~The commission shall defer a complaint filed with it to a local commission within five working days pursuant to the Texas Labor Code, §21.155(a).~~

~~The provisions of this §819.51 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective February 14, 1997, 22 TexReg 1331; amended to be effective June 27, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.52. Deferral Procedures~~

- (a) ~~For a complaint filed with the commission over which the federal government has deferred jurisdiction, timeliness of the complaint shall be measured by the date on which the complaint is received by the commission for the purpose of satisfying the filing requirements of the Texas Labor Code, §21.201.~~
- (b) ~~For a complaint deferred to the commission by the federal government, timeliness of the complaint shall be measured by the date on which the complaint is received by the federal government for the purpose of satisfying the filing requirements of the Texas Labor Code, §21.201.~~
- (c) ~~For a complaint deferred to the commission by a local commission, timeliness of the complaint shall be measured by the date on which the complaint is received by the local commission for the purpose of satisfying the filing requirements of the Texas Labor Code, §21.201.~~

- ~~(d) To encourage the maximum degree of effectiveness by local commissions, the commission shall endeavor to maintain close communication with respect to all matters forwarded to them and shall provide such assistance to local commissions as permitted by law and as is practicable.~~
- ~~(e) The Act grants a local commission the exclusive right to take appropriate action within the scope of its powers and jurisdiction to process a complaint deferred by the commission pursuant to the requirements of the Texas Labor Code, §21.155, and this chapter.~~
- ~~(f) A local commission may waive its right to the period of exclusive processing of a complaint provided by the Act with respect to any complaint or category of complaints by deferring a matter under its jurisdiction to the commission pursuant to the Texas Labor Code, §21.156.~~
- ~~(g) All complaints received by the commission subject to deferral to a local commission shall be dated and time stamped upon receipt.~~
- ~~(h) The original complaint shall be retained in a suspense file by the commission until the local commission has submitted a copy of its final determination to the commission; the commission has reassumed responsibility for the complaint after affording the local commission a reasonable time, but not less than 60 days, to remedy the practice alleged to be discriminatory in the deferred complaint; or the local commission has deferred the matter under its jurisdiction to the commission.~~
- ~~(i) A copy of a complaint received by the commission subject to deferral to a local commission shall be transmitted by registered or certified mail, return receipt requested, to the appropriate local commission. Proceedings by the local commission are deemed to have commenced on the date such complaint is mailed.~~
- ~~(j) A copy of a complaint deferred to a local commission by the federal government over which the commission has deferral jurisdiction shall be transmitted by registered or certified mail, return receipt requested, to the commission by the local commission.~~
- ~~(k) The complainant and respondent shall be notified in writing that the complaint received by the commission has been forwarded to the local commission.~~
- ~~(l) For purposes of satisfying the requirements of the Texas Labor Code, §21.155, the commission shall not assume jurisdiction over a complaint deferred to a local commission, except as follows:
 - ~~(1) where the local commission may defer a complaint under its jurisdiction to the commission;~~
 - ~~(2) where the complaint is received by the commission within 180 days of the alleged violation but beyond the period of limitation of the appropriate local commission;~~
 - ~~(3) where the local commission has not acted on the complaint pursuant to the requirements of the Texas Labor Code, §21.155(c), and this chapter.~~~~

The provisions of this §819.52 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4817; amended to be effective February 14, 1997, 22 TexReg 1331; amended to be effective June 27, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.53. Final Determination of a Local Commission~~

- ~~(a) A local commission shall submit to the commission by registered or certified mail, return receipt requested, a copy of the document stating the final finding of the local commission as to the merits of a deferred complaint or a copy of the document stating the appropriate action taken by the local commission to resolve the practice alleged as discriminatory in a deferred complaint.~~
- ~~(b) For purposes of satisfying the Texas Labor Code, §§21.208 and 21.251—21.256, a local commission shall submit to the commission by registered or certified mail, return receipt requested, notification if a deferred complaint is dismissed, or shall submit, within 120 days of the date the complaint is deferred by the commission, written notification if the local commission has not filed a civil action or not successfully negotiated a conciliation agreement between the complainant and respondent. A local commission shall notify the commission within five working days if the local commission does not intend to act on a complaint deferred by the commission or if it receives a complaint over which the commission has deferral jurisdiction.~~

~~*The provisions of this §819.53 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4817; amended to be effective February 14, 1997, 22 TexReg 1331; amended to be effective June 27, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.*~~

~~§819.54. Cooperative Agreements~~

~~The commission shall endeavor to enter into cooperative agreements with local commissions to ensure an effective and integrated administrative review procedure, to share information, and to provide technical assistance and training.~~

~~*The provisions of this §819.54 adopted to be effective February 10, 1984, 9 TexReg 491; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.*~~

~~§819.55. Eligibility~~

- ~~(a) Notwithstanding any other rules of the commission, the commission shall defer complaints pursuant to the Texas Labor Code, §21.155, to local commissions which are in compliance with the following requirements:
 - ~~(1) a political subdivision adopts and enforces an ordinance pursuant to the Texas Labor Code, §21.151;~~
 - ~~(2) a political subdivision or two or more political subdivisions acting jointly creates a local commission pursuant to the Texas Labor Code, §21.152;~~
 - ~~(3) the local commission can exercise the powers pursuant to the Texas Labor Code, §§21.153—21.154; and~~
 - ~~(4) the local commission is designated as a 706 deferral agency by the United States Equal Employment Opportunity Commission and maintains 706 designation by complying with the~~~~

performance standards established by the United States Equal Employment Opportunity Commission for 706 deferral agencies.

- (b) ~~To be certified by the commission as a local commission pursuant to this chapter and the Texas Labor Code, Subchapter D, §§21.151—21.156, the following materials and information shall be submitted to the commission:~~
- ~~(1) a letter of intent showing approval by the local commission and the governing authority of the political subdivision or subdivisions;~~
 - ~~(2) a copy of the local ordinance that prohibits practices designated as unlawful under the Act;~~
 - ~~(3) a copy of rules, policies, and procedures governing the operations of the local commission;~~
 - ~~(4) a copy of an organizational chart of the internal structure of the local commission and its relationship to the governing authorities of the political subdivision or subdivisions of which it is a part;~~
 - ~~(5) a copy of the local commission budget and resources;~~
 - ~~(6) a letter from the United States Equal Employment Opportunity Commission verifying designation as a 706 agency.~~
- (c) ~~Upon examination of the materials and information provided by a local commission, the executive director shall on behalf of the commission notify in writing the local commission as to determination of its eligibility.~~
- (d) ~~If the commission does not certify the local commission as subject to this chapter and the Texas Labor Code, Subchapter D, §§21.151—21.156, it shall identify in writing the reasons for noncertification and endeavor to provide the local commission the necessary assistance to comply with the requirements established by this chapter and the Texas Labor Code, Subchapter D, §§21.151—21.156.~~

~~The provisions of this §819.55 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4817; amended to be effective February 14, 1997, 22 TexReg 1331; amended to be effective June 27, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~Subchapter D. Administrative Review~~

~~§819.71. Filing a Complaint~~

- (a) ~~A complainant may telephone, write, or visit the commission office or a local commission office to obtain information about filing a complaint with the commission.~~
- (b) ~~The executive director or his or her designee may counsel with the complainant about the facts and circumstances which constitute the alleged unlawful employment practice. If the facts and circumstances do not constitute an unlawful employment practice, the executive director or his or her designee shall so advise the complainant. If the facts and circumstances constitute an alleged~~

~~unlawful employment practice, the executive director or his or her designee shall assist the complainant in perfecting the complaint.~~

- ~~(c) The complaint shall be filed at the commission office in writing or in person with the executive director or his or her designee on a form provided by the commission, or filed in writing at an office of a local commission, or at an office of the federal government.~~
- ~~(d) Notwithstanding any other rule of the commission, the complaint shall identify personal harm, respondent's reasons for the actions taken, and a discrimination statement.~~
- ~~(e) A complaint shall be filed within 180 days after the date the alleged unlawful employment practice occurred.~~
- ~~(f) A complaint may be withdrawn by a complainant only with the consent of the commission. The commission hereby delegates authority to the executive director or his or her designee to grant consent to a request to withdraw a complaint where the withdrawal of the complaint shall not defeat the purposes of the Texas Labor Code.~~
- ~~(g) A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint and to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts which 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 received. The respondent shall receive a copy of the amended complaint. An amended complaint shall be subject to the procedures set forth in these rules.~~
- ~~(h) Upon receipt of a complaint to be processed by the commission, the complaint shall be docketed to include all pertinent information, assigned a complaint number, and assigned for processing to a commission employee.~~
- ~~(i) Within ten days after the receipt of the perfected complaint, the executive director or his or her designee shall serve the respondent with a copy of the complaint by regular mail. If a perfected complaint is not received by the commission within 180 days of the alleged unlawful employment practice, the commission shall notify the respondent that a complaint has been filed and that the process of perfecting the complaint is in progress.~~
- ~~(j) On behalf of the commission, the executive director or his or her designee shall notify the parties to a complaint of the status of the complaint at least quarterly and until the final disposition of the complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.~~
- ~~(k) If a complaint as referenced in the subsection (e) of this section is filed within 180 days after the date the alleged unlawful employment practice occurred, it may be amended in accordance with subsection (g) of this section to comply with the definition of a complaint as referenced in §321.1 of this title (relating to Definitions). If the complaint is not amended within 180 days after the date the alleged unlawful employment practice occurred, the amended complaint shall relate back to the date the original complaint was filed as required by subsection (e) of this section.~~

~~The provisions of this §819.71 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective March 30, 1990, 15 TexReg 1516; amended to be effective July 22,~~

~~1991, 16 TexReg 3872; amended to be effective July 5, 1994, 19 TexReg 4818; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 17, 2003, 28 TexReg 4568; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.72. Investigation of a Complaint~~

- ~~(a) After attempting alternative dispute resolution pursuant to §§819.21-819.31 of this title (relating to Alternative Dispute Resolution), the executive director or his or her designee shall promptly investigate a complaint filed with the commission.~~
- ~~(b) The executive director or his or her designee shall promptly investigate the allegations set forth in a complaint if the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission.~~
- ~~(c) During the course of such investigation, the commission may utilize the services of local commissions or the federal government and may utilize the information gathered by such authorities or agencies.~~
- ~~(d) As part of each investigation, the commission may accept any statement of position or evidence with respect to the allegations of the complaint which the complainant or the respondent wishes to submit.~~
- ~~(e) As part of each investigation, the commission may require a fact finding conference with the complainant and the respondent prior to a determination on a complaint.~~
- ~~(f) A fact finding conference is primarily an investigative forum intended to define the issues, to determine which elements are undisputed, and to solicit information and evidence with respect to the allegations in the complaint.~~
- ~~(g) The executive director or his or her designee shall conduct the fact finding conference and determine who shall present information and evidence for the respondent and the complainant during the conference.~~
- ~~(h) In connection with the investigation of a complaint, the executive director or his or her designee may request from any person evidence relevant to the investigation of alleged violations of the Texas Labor Code. Requests for evidence may be made in the following manner:
 - ~~(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 on affidavits; or~~
 - ~~(7) other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code, §§2001.081-.2001.103, or the Texas Rules of Civil Procedure.~~~~

- ~~(i) In connection with a request for evidence relevant to an investigation of alleged violations of the Texas Labor Code, the commission may establish time requirements for any person responding to such request for evidence. For good cause shown, the executive director or his or her designee may extend such time requirements for a reasonable time.~~
- ~~(j) The executive director or his or her designee shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint or amended complaint.~~
- ~~(k) In connection with the investigation of a complaint, the executive director or his or her designee shall at all reasonable times have access to necessary witnesses for examination under oath or affirmation, and the production of records, documents, and other evidence relevant to the investigation of alleged violations of the Texas Labor Code, for inspection and copying.~~
- ~~(l) In connection with an investigation of a complaint, any written statement of position submitted by the respondent to the commission setting forth the facts and circumstances relevant to an investigation of alleged violations of the Texas Labor Code shall be under oath or affirmation.~~

~~The provisions of this §819.72 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.73. Subpoena

- ~~(a) To effect the purposes of this Act pursuant to the Texas Labor Code, §21.003(4), any commissioner, the executive director, or his or her designee, shall have the authority to sign and issue a subpoena to compel attendance of necessary witnesses for examination or testimony under oath or affirmation, and the production of records, documents, and other evidence relevant to the investigation of alleged violations of the Texas Labor Code, for inspection and copying. The issuance of subpoenas shall be governed by the Administrative Procedure Act, Texas Government Code, Chapter 268, §2001.089 and §2001.103. The commission authorizes the executive director, or his or her designee or a commissioner to exercise this power on behalf of the commission.~~
- ~~(b) Notwithstanding the requirements pursuant to any other state law, the subpoena shall state the name and address of its issuer, identify the person or evidence subpoenaed, the person to whom and the place, date, and the time at which it is returnable, or the nature of the evidence to be examined or copied and the date and time when access is requested. A subpoena shall be returnable to the executive director. Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued.~~
- ~~(c) Notwithstanding the requirements of any other state law, any person served with a subpoena issued by the commission who intends not to comply therewith shall petition in writing the commission to revoke or modify the subpoena within five working days after receipt of the subpoena. Such petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply, and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached. The commission or its designee shall review the petition and make a final determination on revoking~~

or modifying the subpoena. The commission or its designee shall serve a copy of the final determination of the petition upon the petitioner by regular mail.

- (d) ~~On a failure to comply with a subpoena, the commission shall 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 the Texas Labor Code, §21.306(b).~~

~~The provisions of this §819.73 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 25, 2001, 26 TexReg 4736; amended to be effective June 17, 2003, 28 TexReg 4568; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.74. Dismissal of Complaint

- (a) ~~Where a complaint, on its face or as amplified by statements of the complainant, discloses, or where the investigation reveals that the complaint and every portion thereof is not timely filed or otherwise fails to state a claim under the Texas Labor Code, the commission shall dismiss the complaint. This authority shall be delegated to the executive director or his or her designee by the commission.~~
- (b) ~~Where the executive director or his or her designee after an investigation has determined that there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the complaint, the executive director or his or her designee shall dismiss the complaint. The executive director or his or her designee shall issue a written determination in the form of a letter of determination incorporating the finding that the evidence does not support the complaint and shall serve a copy of the letter of determination on the complainant, the respondent, and other agencies as required by law and by regular mail.~~
- (c) ~~Where complainant fails to provide requested necessary information, fails or refuses to appear or to be available for interviews or conferences as necessary, or fails or refuses to provide requested necessary information for completing the complaint, the executive director or his or her designee may dismiss the complaint. Prior to dismissing the complaint, the complainant shall be notified and be given a reasonable time to respond.~~
- (d) ~~Where the complainant fails or refuses to cooperate to the extent that the commission is unable to resolve the complaint, and after due notice to which the complainant has had a reasonable time to respond, the executive director or his or her designee may dismiss the complaint.~~
- (e) ~~Where reasonable efforts have been made to locate the complainant, and the complainant has not responded in a reasonable time, the executive director or his or her designee may dismiss the complaint.~~
- (f) ~~Where a respondent has made a resolution offer which is in writing and specific in its terms, the executive director may dismiss the complaint if the complainant refuses to accept the offer, provided that the offer would afford full relief for the harm alleged by the complainant and the complainant fails to accept such an offer within a reasonable time after actual notice of the offer.~~

- ~~(g) Where the commission dismisses a complaint filed with it, the commission shall so notify in writing the complainant and the respondent by regular mail. Such notification shall inform the complainant, via certified mail, of his or her right to file a civil action against the respondent named in the complaint pursuant to the Texas Labor Code, §21.208 and §21.252. The commission shall delegate authority to issue such notifications to the executive director or his or her designee.~~

~~The provisions of this §819.74 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 25, 2001, 26 TexReg 4736; amended to be effective June 17, 2003, 28 TexReg 4568; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.75. Reasonable Cause Determination~~

- ~~(a) Upon completion of the investigation, if a complaint has not been dismissed or voluntarily resolved, through mediation, the commission employee conducting the investigation shall prepare a record of the evidence, including an investigative report with recommendations in the form of a complaint file for review by the executive director.~~
- ~~(b) If, after review, the executive director determines that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the complaint, the executive director shall review the complaint file with a panel of three commissioners.~~
- ~~(c) If, after review, at least two of the three commissioners determine that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, the executive director shall issue a written determination in the form of a letter of determination. This letter of determination shall incorporate the executive director's finding that the evidence supports the complaint and include an invitation to participate in conciliation.~~
- ~~(d) The Executive Director shall serve a copy of the letter of determination to the complainant and respondent and other agencies as required by law by regular mail.~~

~~The provisions of this §819.75 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 17, 2003, 28 TexReg 4568; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.76. Conciliation~~

- ~~(a) Where the commission determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring, it shall endeavor to eliminate such unlawful employment practice by informal methods of conference, conciliation, and persuasion. This authority shall be delegated to the executive director or his or her designee by the commission.~~
- ~~(b) Where a determination of reasonable cause has been made, the commission shall attempt to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief to the complainant.~~

- ~~(c) The executive director or his or her designee shall prepare a written draft of a conciliation agreement that incorporates provisions eliminating the unlawful employment practices and providing appropriate relief for the complainant. The commission shall provide a copy of the draft conciliation agreement to the complainant and respondent.~~
- ~~(d) Where practical, the executive director or his or her designee shall conduct the conciliation conference in person with the respondent, but this does not preclude conducting such conciliation conferences by telephone with the respondent or complainant.~~
- ~~(e) Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and signed by the respondent, complainant, and the executive director on behalf of the commission.~~
- ~~(f) The executive director shall report to the commission the results of successful and unsuccessful conciliation attempts.~~
- ~~(g) Where the commission has not successfully negotiated a conciliation agreement between the respondent and complainant, the commission shall so notify in writing the complainant and respondent by regular mail. Such notification shall inform the complainant, via certified mail, of his or her right to file a civil action against the respondent named in the complaint pursuant to the Texas Labor Code, §§21.208—21.252. The executive director is authorized to issue this notification on behalf of the commission.~~
- ~~(h) Proof of compliance with the terms of the conciliation agreement by the respondent shall be obtained by the executive director before the case is closed.~~

~~The provisions of this §819.76 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 25, 2001, 26 TexReg 4736; amended to be effective June 17, 2003, 28 TexReg 4568; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.77. Notice to Complainant~~

- ~~(a) If the complaint filed with the commission pursuant to the Texas Labor Code, §21.201, is dismissed by the commission or is not resolved before the expiration of the 180th day after the date of filing of the complaint, the commission shall so inform the complainant in writing by registered or certified mail, return receipt requested. Any complainant who is so informed may request the commission's notice of right to file a civil action. The complainant shall request the notice in writing and identify the respondent, the commission's complaint number, and the United States Equal Employment Opportunity Commission's complaint number, if the complaint has been deferred by the federal government.~~
- ~~(b) On receipt of a written request by a complainant, the commission shall issue within five business days the notice of right to file a civil action before the expiration of the 180th day after the date the complaint was filed under the following conditions:~~

- ~~(1) the complainant has a life threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state; or~~
 - ~~(2) The executive director certifies that the administrative processing of the complaint cannot be completed before the expiration of the 180th day after the complaint was filed. The executive director's certification shall take into account the exigent circumstances of the complainant. The complainant's written request shall include the name of the respondent, the commission's complaint number, and the United States Equal Employment Opportunity Commission's complaint number, if the complaint has been deferred by the federal government. The commission shall issue an expedited notice by registered or certified mail not less than the fifth business day after receipt of the complainant's request.~~
- ~~(c) The commission shall delegate authority to issue notices of right to file civil actions to the executive director or his or her designee.~~

~~The provisions of this §819.77 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 25, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.78. Failure to Issue Notice

~~The commission's failure to issue a notice of right to file civil action after 180 days from the date the complaint is received by the commission does not affect the complainant's right under the Texas Labor Code, §21.252(d), to bring a civil action against the respondent.~~

~~The provisions of this §819.78 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 25, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.79. Access to Commission Records

~~Pursuant to the limitations established by the Texas Labor Code, §§21.304—21.305, the executive director shall, on written request of a party to a complaint filed under the Texas Labor Code, §21.201, allow the party access to the commission's records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:~~

- ~~(1) following the final action of the commission a party to the complaint or the party's attorney certifies in writing that a civil action is to be filed under the Act within 60 days from the date of receipt of the commission's notice of right to file a civil action or a civil action under the Act is pending in state court; or~~
- ~~(2) a party to the complaint or the party's attorney certifies in writing that a civil action relating to the complaint is pending in federal court alleging a violation of federal law.~~

~~The provisions of this §819.79 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June~~

~~25, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.80. Confidentiality~~

- ~~(a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the Texas Labor Code, §§21.201—21.207, except as necessary to the conduct of a proceeding under this Act.~~
- ~~(b) No commissioner or employee of the commission may make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, alternative dispute resolution, conciliation, or persuasion, whether or not there is a determination of reasonable cause.~~

~~The provisions of this §819.80 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 25, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.81. Disposal of Files and Related Documents~~

~~The commission shall retain case files and related documents which have not been forwarded to EEOC for a period of two years after the administrative review procedures have been completed, except when a civil action has been filed in state court under the Texas Commission on Human Rights Act. At the conclusion of the two years, the case file and related documents shall be disposed of by the commission. 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. Prior to disposing of case files and related documents, authorization shall be obtained from the state auditor's office and the state librarian. In a private cause of action under the Texas Commission on Human Rights Act, the commission shall be held harmless for disposing of case files and related documents when the parties to the lawsuit or their attorneys of record fail to notify the commission by certified letter that a lawsuit has been filed in state court.~~

~~The provisions of this §819.81 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 22, 1995, 20 TexReg 963; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.82. Temporary Injunctive Relief~~

~~Based on a preliminary investigation of a complaint, the commission may seek temporary injunctive relief pursuant to the Texas Labor Code, §21.210.~~

~~The provisions of this §819.82 adopted to be effective July 5, 1994, 19 TexReg 4819; amended to be effective February 14, 1997, 22 TexReg 1333; amended to be effective June 25, 2001, 26 TexReg 4736; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.83. Legal Representation~~

~~The respondent and the complainant may be represented by an attorney or designated agent.~~

~~The provisions of this §819.83 adopted to be effective July 5, 1994, 19 TexReg 4819; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.84. Policy~~

~~It is the policy of this state to encourage the peaceable resolution of alleged unlawful employment practices, including alternative dispute resolution of issues and the early settlement of complaints through voluntary settlement procedures.~~

~~The provisions of this §819.84 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.85. Office of Alternative Dispute Resolution~~

~~It is the responsibility of the commission to carry out the policy under §819.21 of this title (relating to Policy) by establishing an office of alternative dispute resolution.~~

~~The provisions of this §819.85 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.86. Voluntary Settlement through Alternative Dispute Resolution~~

- ~~(a) Within ten days of the commission's receiving a perfected complaint and prior to the completion of an investigation, the Executive Director or his or her designee may invite both the complainant and the respondent to attempt voluntarily to resolve their dispute through alternative dispute resolution. If alternative dispute resolution efforts are not successful within 45 days of the complaint being referred to the office of alternative dispute resolution, the case will be forwarded to appropriate commission personnel for completion of an investigation.~~
- ~~(b) The executive director or his or her designee shall have the authority to sign on behalf of the commission any voluntary agreement to resolve the dispute which is agreeable to both the complainant and the respondent.~~
- ~~(c) Any voluntary agreement to resolve the dispute to which the commission is a party shall contain a provision that the commission has made no judgment on the merits of the complaint and that such agreement shall not affect the processing of any other complaint, including, but not limited to, allegations which are like or related to the individual allegations resolved.~~
- ~~(d) The commission shall limit its undertaking in such voluntary agreement to an agreement not to process that complaint further.~~

The provisions of this §819.86 adopted to be effective July 5, 1994, 19 TexReg 4820; amended to be effective February 14, 1997, 22 TexReg 1336; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.87. Referral of Pending Complaints for Alternative Dispute Resolution~~

~~The commission or its designee may, on its own motion or the motion of a party to the complaint, refer a pending complaint to the office of alternative dispute resolution for mediation within ten days of receiving a perfected complaint.~~

The provisions of this §819.87 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.88. Notification and Objection~~

~~(a) If the commission or its designee determines that a pending complaint is appropriate for mediation under §819.24 of this title (relating to Referral of Pending Complaints for Alternative Dispute Resolution), the commission or its designee shall mail notice to the parties of its determination within ten days of receiving a perfected complaint.~~

~~(b) Any party may, within five days after receiving the notice under subsection (a) of this section, file a written objection to the referral.~~

~~(c) If the commission or its designee finds that there is a reasonable basis for an objection filed under subsection (b) of this section, the commission or its designee shall withdraw the dispute from mediation.~~

The provisions of this §819.88 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.89. Appointment of Mediators~~

~~The commission or its designee shall assign such impartial commission personnel to the office of alternative dispute resolution as are necessary to mediate the complaints referred to that unit. Commission personnel assigned to serve as mediators shall not otherwise be involved with investigating complaints filed with the commission. Commission personnel assigned as mediators shall have the qualifications prescribed in Texas Civil Practice and Remedies Code, Chapter 154.~~

The provisions of this §819.89 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.90. Standards and Duties of Mediators~~

- ~~(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement. Mediators shall:~~
- ~~(1) utilize the mediation process voluntarily to resolve complaints of employment discrimination filed with the commission;~~
 - ~~(2) conduct on-site mediation of complaints pursuant to appropriate procedures, including phone and mail contact with the respondent and complainant regarding the dispute resolution process within 45 days from the date of referral to the office of alternative dispute resolution; and~~
 - ~~(3) issue and maintain all appropriate documents during the 45-day period in accordance with all statutory and procedural requirements.~~
- ~~(b) Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.~~
- ~~(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the alternative dispute resolution process are confidential and may never be disclosed to anyone. Any evidence received by the commission from the complainant or respondent shall not be provided to the mediators assigned to the office of alternative dispute resolution.~~

~~The provisions of this §819.90 adopted to be effective July 5, 1994, 19 TexReg 4820; amended to be effective March 30, 2000, 25 TexReg 2660; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.91. Compensation of Mediators~~

~~Commission employees appointed as mediators for the office of alternative dispute resolution shall be compensated only by the commission. No party or representative of a party to a complaint shall offer or agree to offer a duly appointed commission mediator any compensation or other thing of value which would impair or substantially limit the mediator's independence, neutrality, or impartiality.~~

~~The provisions of this §819.91 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.92. Conduct and Decorum~~

- ~~(a) Whenever the parties have agreed to mediation they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement to mediate.~~
- ~~(b) The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator~~

~~shall disclose to the executive director and the parties any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. In such an event, the executive director shall immediately appoint another mediator to the case.~~

- ~~(c) The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties.~~
- ~~(d) Party representatives must have authority to settle and all persons necessary to the decision to settle shall be present. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.~~
- ~~(e) The mediator shall fix the time of each mediation session. The mediation shall be held at the office of the commission, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.~~
- ~~(f) Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.~~
- ~~(g) There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.~~
- ~~(h) No subpoenas, summons, complaints, citations, writs, or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending, or leaving the session.~~
- ~~(i) The mediation shall be terminated:
 - ~~(1) by the execution of a settlement agreement by the parties;~~
 - ~~(2) by declaration of the mediator to effect that further efforts at mediation are no longer worthwhile; or~~
 - ~~(3) after the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.~~~~
- ~~(j) The mediator is not a necessary or proper party in judicial proceedings relating to the mediation. Neither the mediator nor the commission or its designees shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.~~
- ~~(k) Commission mediators shall not be subjected to requests for discovery, deposition or live testimony, in any subsequent administrative or legal proceeding arising from the subject matter of the mediation.~~
- ~~(l) The mediator shall interpret and apply these rules.~~

~~The provisions of this §819.92 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.93. Effect of Written Settlement Agreement~~

- ~~(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is binding and enforceable in the same manner as any other written contract.~~
- ~~(b) The commission, or its designee in its discretion, or the parties by agreement, may incorporate the terms of the agreement in its final decree, order, or agreement disposing of the case.~~
- ~~(c) A settlement agreement does not affect an outstanding commission or court order or agreement unless the terms of the agreement are incorporated into a subsequent decree, order, or agreement.~~

~~The provisions of this §819.93 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.94. Confidentiality of Communications during Alternative Dispute Resolution Procedures~~

- ~~(a) Except as provided by subsections (d) and (e) of this section, a communication relating to the subject matter of any complaint made by a participant in an alternative dispute resolution procedure under this subchapter is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.~~
- ~~(b) The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:
 - ~~(1) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;~~
 - ~~(2) admissions made by another party in the course of the mediation proceedings;~~
 - ~~(3) proposals made or views expressed by the mediator; or~~
 - ~~(4) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.~~~~
- ~~(c) Any record made during a mediation procedure is confidential, and the participants or the mediator facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter or complaint in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter or complaint in dispute.~~
- ~~(d) An oral communication or written material used in or made a part of a mediation procedure is admissible or discoverable in a subsequent administrative or judicial proceeding if it is admissible or discoverable independent of the procedure.~~
- ~~(e) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or material sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.~~

The provisions of this §819.94 adopted to be effective July 5, 1994, 19 TexReg 4820; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter E. Judicial Action

§819.101. Enforcement

- (a) ~~The commission may bring a civil action against the respondent named in a complaint to effect the purposes of the Act pursuant to the requirements of the Texas Labor Code, §21.251.~~
- (b) ~~Upon a determination by the commission to bring a civil action, it shall notify the complainant by registered or certified mail, return receipt requested.~~
- (c) ~~The commission, on a majority vote of the commissioners, may intervene in any civil action pursuant to the requirements of the Texas Labor Code, §21.255.~~

The provisions of this §819.101 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4823; amended to be effective February 14, 1997, 22 TexReg 1336; amended to be effective June 25, 2001, 26 TexReg 4737; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter F. Reports and Recordkeeping

§819.111. Preservation and Use

~~The commission shall require a person under investigation in connection with a complaint filed under this Act or subject to this Act to make and keep records pursuant to the requirements of the Texas Labor Code, §§21.301—21.303.~~

The provisions of this §819.111 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4823; amended to be effective February 14, 1997, 22 TexReg 1337; amended to be effective June 25, 2001, 26 TexReg 4737; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter G. Conformity

§819.121. Conformity

~~Pursuant to the Texas Labor Code, §21.006, the commission is authorized to administer the provisions of this Act in a manner necessary to qualify for 706 deferral agency designation and the receipt of funds from the federal government.~~

The provisions of this §819.121 adopted to be effective February 10, 1984, 9 TexReg 491; amended to be effective July 5, 1994, 19 TexReg 4823; amended to be effective February 14, 1997, 22 TexReg 1337; amended to be effective June 25, 2001, 26 TexReg 4737; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter H. Review of Fire Fighter Tests

~~§819.131. Review of Fire Department Tests~~

- ~~(a) The Texas Commission on Human Rights shall review the administration of tests by paid or combination local fire departments to determine whether the tests are administered in a manner that complies with the Texas Labor Code. The initial tests, which are defined as; written tests, physical tests, and assessment center tests for a beginning firefighter position, are used to measure the ability of a person to perform the essential functions of a job as a paid or combination local fire protection personnel.~~
- ~~(b) The Texas Commission on Human Rights shall exercise those general powers as provided in the TEX. GOVT. CODE, Chapter 419, §§419.103–419.105.~~
- ~~(c) The Texas Commission on Human Rights shall adopt the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, to conduct the administration of initial tests by paid or combination local fire departments.~~
- ~~(d) The Texas Commission on Human Rights will review no less than three percent (3%) of the total number of paid or combination local fire departments each fiscal year. The Texas Commission on Human Rights will divide the number of paid or combination local fire departments into the five major regions of the state. Within each region, the Texas Commission on Human Rights shall determine the paid or combination local fire departments to review by random selection with a predetermined parameter based on geography. The selections will be made by the twentieth day of each September for the fiscal year.~~
- ~~(e) If a paid or combination local fire department's initial tests are to be reviewed, said fire department shall receive notice via certified mail and on the commission's website. The review of each fire department's initial tests shall be completed and recommendations issued on or before the one year anniversary date in which the Texas Commission on Human Rights issued its notification letter to the head of the fire department and the review thereby commenced.~~

~~*The provisions of this §819.131 adopted to be effective September 12, 2002, 27 TexReg 8612; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.*~~

~~Subchapter I. General Provisions~~

~~§819.151. Definitions~~

~~The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~(1) Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings. The public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1 or another standard that affords disabled persons access comparable to or greater than that required by ANSI A117.1.~~

- ~~(2) Accessible route—A continuous unobstructed path connecting accessible elements and spaces in a building or with a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking space aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ANSI A117.1 is an accessible route.~~
- ~~(3) Act—The Texas Fair Housing Act, Texas Property Code, Chapter 301.~~
- ~~(4) Aggrieved persons—Any person who claims to have been injured by a discriminatory housing practice; or believes that he or she will be injured by a discriminatory housing practice that is about to occur.~~
- ~~(5) Attorney general—The attorney general of Texas.~~
- ~~(6) Building—A structure, facility, or the portion thereof that contains or serves one or more dwelling units.~~
- ~~(7) Building entrance on an accessible route—An accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1.~~
- ~~(8) Charge—The statement of facts issued under the Act, §301.088, upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.~~
- ~~(9) Commission—The Texas Commission on Human Rights.~~
- ~~(10) Common use areas—Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.~~
- ~~(11) Complainant—A person, including the commission, who files a complaint under the Act, §301.081.~~
- ~~(12) Complaint—A complaint filed with the commission under §301.081, or filed with the federal government as referenced under the Act, §301.083(a).~~
- ~~(13) Conciliation—The attempted resolution of issues raised by a complaint or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.~~
- ~~(14) Conciliation agreement—A written agreement setting forth the resolution of the issues in conciliation.~~
- ~~(15) Controlled substance—Any drug or other substance, or immediate precursor included in the definition in the Controlled Substances Act (21 United States Code 802), §102.~~

- ~~(16) — Court — A district court in the county in which the alleged discriminatory housing practice occurred.~~
- ~~(17) — Designee — An employee of the commission authorized to execute such duties, powers, and authority as may be conferred by the executive director subject to the provisions of the Act or these rules.~~
- ~~(18) — 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. In this Act, 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 because of that individual's sexual orientation or because that individual is a transvestite. As used in this definition physical or mental impairment means:~~
- ~~(A) 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, genito-urinary, hemic and lymphatic, skin, and endocrine; or~~
 - ~~(B) 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, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance);~~
 - ~~(C) any major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;~~
 - ~~(D) having a record of such an impairment such as a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activities;~~
 - ~~(E) regarded as having a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation; having a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or having no physical or mental impairment but is treated by another person as having such an impairment.~~
- ~~(19) — Discriminatory housing practice — An act prohibited by Subchapter B, or conduct that is an offense under Subchapter I.~~
- ~~(20) — Dwelling — Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one or more families; or any~~

~~vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one or more families.~~

- ~~(21) — Entrance — Any access point to a building or portion of a building used by residents for the purpose of entering.~~
- ~~(22) — Examiner — A person designated by the commission to conduct a hearing.~~
- ~~(23) — Executive director — The executive director of the Texas Commission on Human Rights.~~
- ~~(24) — Exterior — All areas of the premises outside of an individual dwelling unit.~~
- ~~(25) — Familial status — A person who is subject to a discriminatory housing practice because of pregnancy; domiciled with an individual younger than 18 years of age in regard to whom the person is the parent or legal custodian or has the written permission of the parent or legal custodian for domicile with that person; or in the process of obtaining legal custody of an individual younger than 18 years of age.~~
- ~~(26) — Family — Includes a single individual.~~
- ~~(27) — Federal government — United States Department of Housing and Urban Development.~~
- ~~(28) — Federal law — Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (Public Law 100-430).~~
- ~~(29) — First occupancy — A building that has never before been used for any purpose.~~
- ~~(30) — Ground floor — A floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.~~
- ~~(31) — Hearing — A proceeding conducted to receive evidence or argument on a matter before the commission.~~
- ~~(32) — Hearing examiner — An examiner who is not a member of the commission.~~
- ~~(33) — Interior — The spaces, parts, components, or elements of an individual dwelling unit.~~
- ~~(34) — Intervenor — A person other than a complainant or respondent who, upon showing a justiciable interest in a matter before the commission, is permitted to become a party to a proceeding.~~
- ~~(35) — Modification — Any change to the public or common use areas of a building or any change to a dwelling unit.~~
- ~~(36) — Multifamily dwellings — Buildings consisting of four or more dwelling units if the buildings have one or more elevators; and the ground floor of the dwelling units in other buildings consists of four or more dwelling units.~~
- ~~(37) — Municipality — A local political subdivision that enforces a local ordinance prohibiting discriminatory housing practices which has been determined to be substantially equivalent to federal law by the federal government.~~

- ~~(38) — Nonparty participant — A person other than a party who is admitted to participant status and who according to commission procedure supports or opposes, in part or whole, an application submitted to the commission.~~
- ~~(39) — Party — A person who, having a justiciable interest in a matter before the commission, is admitted to full participation in a proceeding concerning that matter.~~
- ~~(40) — Person — One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.~~
- ~~(41) — Pleading — A written allegation by a party or complainant of his claims in the form of a complaint, exception, reply, motion, or answer.~~
- ~~(42) — 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.~~
- ~~(43) — Proceeding — A conference, meeting, hearing, investigation, inquiry, or other fact finding or decision making procedure, including the dismissal of a complaint. It may be rulemaking or adjudicative.~~
- ~~(44) — 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.~~
- ~~(45) — Register — The Texas Register.~~
- ~~(46) — Residential real estate related transaction — Making or purchasing loans or providing other financial assistance to purchase, construct, improve, repair, or maintain a dwelling; or to secure residential real estate; or the selling, brokering, or appraising residential real estate property.~~
- ~~(47) — Respondent — The person accused of violation of the Act in a complaint of a discriminatory housing practice; or any person identified as an additional or substitute respondent under the Act, §301.081, or any agent of an additional or substitute respondent.~~
- ~~(48) — Site — A parcel of land bounded by a property line or a designated portion of a public right of way.~~
- ~~(49) — Standards for accessibility and usability for physically disabled people — Compliance with the appropriate requirements of the American National Standard for buildings and facilities commonly cited as "ANSI A117.1" or another standard that affords handicap persons accessibility and usability comparable to or greater than that required by ANSI A117.1.~~
- ~~(50) — Substitute respondent — A person not named in the complaint if in the course of the investigation the commission determines a person should be accused of a discriminatory practice.~~

~~(51) To rent To lease, to sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.~~

~~The provisions of this §819.151 adopted to be effective April 13, 1990, 15 TexReg 1842; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.152. Purpose~~

~~These procedural and substantive rules are established by the commission for executing its responsibilities in the administration and enforcement of the Texas Fair Housing Act. Based on its experience in the administration of the Act and upon its evaluation of suggestions for amendments submitted by interested persons, the commission from time to time may amend and rescind these rules in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.~~

~~The provisions of this §819.152 adopted to be effective April 13, 1990, 15 TexReg 1842; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.153. General Construction~~

~~These rules shall be construed according to the fair import of their meaning so as to further policies and purposes of the Texas Fair Housing Act. The commission does not intend that a failure to comply with these rules by the commission should constitute a jurisdictional or other bar to administrative or legal action unless otherwise required under these rules or the Act. The commission intends that substantive rules shall impose obligations, rights, and remedies, which are the same as provided by federal law and regulations of the federal government.~~

~~The provisions of this §819.153 adopted to be effective April 13, 1990, 15 TexReg 1842; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.154. Authority~~

~~These rules are issued under the commission's authority to administer and enforce the Texas Fair Housing Act pursuant to Subchapter D.~~

~~The provisions of this §819.154 adopted to be effective April 13, 1990, 15 TexReg 1842; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.155. Severability~~

~~If any rule of the commission or portion thereof is adjudged by a court to be invalid or if any rule of the commission, or portion thereof, is not in conformity with applicable state laws or administrative regulations of the state, that judgment does not affect the remainder of the rules.~~

The provisions of this §819.155 adopted to be effective April 13, 1990, 15 TexReg 1842; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.156. Availability

The rules of the commission shall be available to the public at all offices of the commission and shall be on file with the offices of the attorney general, speaker of the house, and lieutenant governor and as required by the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The provisions of this §819.156 adopted to be effective April 13, 1990, 15 TexReg 1842; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.157. Scope

It is the policy of Texas to provide, within constitutional limitations, for fair housing throughout the state and to provide rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices because of race, color, religion, sex, disability, familial status, or national origin in the sale, rental, advertising of dwellings, inspection of dwellings or entry into a neighborhood, in the provision of brokerage services, or in the availability of residential real estate related transactions.

The provisions of this §819.157 adopted to be effective April 13, 1990, 15 TexReg 1842; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter J. Commission

§819.161. Powers of the Commission

The commission may exercise those general powers as provided under the Texas Fair Housing Act, Subchapters D, E, and G.

The provisions of this §819.161 adopted to be effective April 13, 1990, 15 TexReg 1842; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter K. Referral to Municipalities

§819.171. Referral Authority

Pursuant to the Texas Fair Housing Act, §301.068, the commission may defer proceedings under this Act and refer a complaint to a municipality that has been approved by the federal government as having adopted an ordinance that is substantially equivalent to federal law.

The provisions of this §819.171 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.172. Eligibility~~

- ~~(a) Pursuant to the Texas Fair Housing Act, §301.068, the commission may defer proceedings under this Act and refer complaints to a municipality that is in compliance with the following requirements:
 - ~~(1) a municipality adopts and enforces an ordinance that has been approved by the federal government as substantially equivalent to federal law;~~
 - ~~(2) a municipality adopts and enforces an ordinance that has been approved by the commission as substantially equivalent to the Act;~~
 - ~~(3) a municipality certifies that it shall exercise the same powers and enforcement authority under federal law and the Act.~~~~
- ~~(b) To certify a local municipality for purposes of deferring proceedings under the Act and referring complaints under this chapter and the Act, §301.068, the following materials and information shall be submitted to the commission:
 - ~~(1) a copy of the local ordinance which is determined to be substantially equivalent to federal law;~~
 - ~~(2) a letter verifying that the ordinance of the municipality has been approved by the federal government as substantially equivalent to federal law;~~
 - ~~(3) a copy of rules, policies, and procedures governing the administration and enforcement of the local ordinance determined to be substantially equivalent to federal law and the Act;~~
 - ~~(4) a copy of the organizational chart of the municipality's internal structure for enforcing the local ordinance determined to be substantially equivalent to federal law and the Act.~~~~
- ~~(c) Upon examination of the materials and information provided by the municipality, the executive director on behalf of the commission shall notify the municipality in writing as to the determination of its eligibility.~~
- ~~(d) If the commission does not certify the municipality in accordance with this chapter and the Act, §301.068, the executive director on behalf of the commission shall identify in writing the reasons for noncertification and endeavor to provide the municipality with the necessary assistance to comply with the requirements established by this chapter.~~

~~The provisions of this §819.172 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7123; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.173. Cooperative Agreements~~

~~The commission shall endeavor to enter into cooperative agreements with local municipalities certified under §819.2 of this title (relating to Eligibility) to ensure effective and integrated administrative review procedure, to share information, and to provide technical assistance and training.~~

The provisions of this §819.173 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter L. Exempted Residential Real Estate-Related Transactions

§819.181. Sale or Rental of a Single-Family House by an Owner

- (a) Nothing in the Texas Fair Housing Act, other than the prohibitions against discriminatory advertising, applies to the sale or rental of a single family house by an owner, provided the following conditions are met:
- (1) the owner does not own, have any interest in, or have reserved on his behalf, under an express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single family houses at any one time. This exemption applies to only one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental;
 - (2) the house is sold or rented without the use of sales or rental facilities or services of a real estate broker, agent, or salesman licensed under the Real Estate License Act (Texas Civil Statutes, Article 6573a) or of an employee or agent of a licensed broker, agent, or salesman, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families. This exemption applies to only one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental.
- (b) Nothing in the Texas Fair Housing Act, other than the prohibitions against discriminatory advertising applies to the sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residency.

The provisions of this §819.181 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.182. Sale, Rental, or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not for Profit Institution

The Texas Fair Housing Act does not prohibit a religious organization, association, or society, or a not for profit institution, or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.

The provisions of this §819.182 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.183. Housing Owned or Operated by a Private Club~~

~~The Texas Fair Housing Act does not prohibit a private club not open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.~~

~~The provisions of this §819.183 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.184. Local or State Restrictions on Maximum Number of Occupants of a Dwelling~~

~~The Texas Fair Housing Act does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or restriction relating to health or safety standards or a requirement of nondiscrimination in any other state or federal law.~~

~~The provisions of this §819.184 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.185. Appraisals of Real Property~~

~~The Texas Fair Housing Act does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, disability, familial status, or national origin.~~

~~The provisions of this §819.185 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.186. Familial Status~~

~~(a) Nothing in the Texas Fair Housing Act regarding discrimination based on familial status applies to housing for older person, if the commission determines that the housing is specifically designed and operated to assist elderly persons under a federal or state program; the housing is intended for, and solely occupied by, persons 62 years of age or older; or the housing is intended and operated for occupancy by at least one person 55 years of age or older per unit as determined by commission rules.~~

~~(b) The exemption related to housing for persons 62 years or older, satisfies the requirements of this section even though:~~

~~(1) there are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;~~

~~(2) there are unoccupied units, provided that such units are reserved for occupancy for persons 62 years of age or older;~~

- ~~(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 exemption related to housing intended and operated for occupancy by persons who are 55 years of age or older, shall satisfy the following requirements:~~
- ~~(1) at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit:~~
- ~~(A) a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this paragraph until 25% of the units in the facility are occupied;~~
- ~~(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 which demonstrate an intent by the owner or manager to provide housing for persons 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;~~
- ~~(G) public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.~~
- ~~(3) housing satisfies the requirements of this section even though:~~
- ~~(A) on September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988, are 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;~~
- ~~(C) there are units occupied by employees of the housing (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.~~

~~(d) The owner or manager of a housing facility may not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility qualified for a housing for older persons exemption:~~

~~(1) The person claiming the good faith belief defense must have actual knowledge that the housing facility has asserted in writing that it qualifies for a housing for older persons exemption;~~

~~(2) A housing facility must certify before the date on which discrimination is claimed to have occurred, to the person claiming the defense that it complies with the requirements of such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.~~

~~The provisions of this §819.186 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective June 13, 2001, 26 TexReg 4220; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.187. Illegal Manufacture or Distribution of a Controlled Substance~~

~~The Texas Fair Housing Act does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.~~

~~The provisions of this §819.187 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.188. Health or Safety of Individuals or Damage to Property~~

~~Nothing in the Texas Fair Housing Act requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.~~

~~The provisions of this §819.188 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~Subchapter M. Discriminatory Housing Practices~~

~~§819.191. Real Estate Practices Prohibited~~

~~In accordance with the commission's interpretation of discriminatory housing practices it shall be unlawful for a person to:~~

~~(1) refuse to sell or rent a dwelling after the making of a bona fide offer, refuse to negotiate for the sale or rental of a dwelling, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin; or discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with the sale or rental, because of race, color, religion, sex, disability, familial status, or national origin;~~

- ~~(2) make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination;~~
- ~~(3) represent to any person because of race, color, religion, sex, disability, familial status, or national origin that a dwelling is not available for sale or rental when the dwelling is in fact available;~~
- ~~(4) induce or attempt to induce for profit a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, disability, familial status, or national origin;~~
- ~~(5) discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, disability, familial status, or national origin by a person whose business includes engaging in a residential real estate related transaction;~~
- ~~(6) deny any person access to, or membership or participation in, a multi listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, or service, or facility because of race, color, religion, sex, disability, familial status, or national origin;~~
- ~~(7) intimidate or interfere with or attempt to intimidate or interfere with a person intentionally, whether or not acting under color of law, by force, or threat of force:
 - ~~(A) because of the person's race, color, religion, sex, disability, familial status, or national origin and because the person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of a dwelling or for applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings;~~
 - ~~(B) because the person is or has been, or to intimidate the person from participating without discrimination because of race, color, religion, sex, disability, familial status, or national origin in an activity, service, or facility related to the business of selling or renting dwellings, affording another person opportunity or protection to so participate, or unlawfully aiding or encouraging other persons to participate without discrimination because of race, color, religion, sex, disability, familial status, or national origin in an activity, service, organization, or facility relating to the business of selling or renting dwellings;~~
 - ~~(C) because a person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Texas Fair Housing Act.~~~~

The provisions of this §819.191 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.192. Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental~~

- ~~(a) It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of disability.~~
- ~~(b) Prohibited actions under this section include, but are not limited to:
 - ~~(1) failing to accept or consider a bona fide offer because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(2) refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(3) imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(4) using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements, because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(5) evicting tenants because of their race, color, religion, sex, disability, familial status, or national origin or because of the race, color, religion, sex, disability, familial status, or national origin of a tenant's guest.~~~~

~~The provisions of this §819.192 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.193. Discrimination in Terms, Conditions, and Privileges and in Services and Facilities~~

- ~~(a) It shall be unlawful, because of race, color, religion, sex, disability, familial status, or national origin to impose different terms, conditions, or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.~~
- ~~(b) Prohibited actions under this section include, but are not limited to:
 - ~~(1) using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(2) failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(3) failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, disability, familial status, or national origin;~~~~

- ~~(4) limiting the use of privileges, services, or facilities associated with a dwelling because of race, color, religion, sex, disability, familial status, or national origin of an owner, tenant, or a person associated with him or her;~~
- ~~(5) denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.~~

~~The provisions of this §819.193 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.194. ~~Other Prohibited Sale and Rental Conduct~~

- ~~(a) It shall be unlawful, because of race, color, religion, sex, disability, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development. Prohibited practices under this section generally refer to unlawful steering practices that include, but are not limited to:
 - ~~(1) discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, disability, familial status, or national origin or because of race, color, religion, sex, handicap, familial status, or national origin of persons in a community, neighborhood, or development;~~
 - ~~(2) discouraging the purchase or rental of a dwelling because of race, color, religion, sex, disability, familial status, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development;~~
 - ~~(3) communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(4) assigning any person to a particular section of a community, neighborhood, or development or to a particular floor of a building because of race, color, religion, sex, disability, familial status, or national origin.~~~~
- ~~(b) It shall be unlawful because of race, color, religion, sex, disability, familial status, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons. Prohibited sales and rental practices under this section include, but are not limited to:
 - ~~(1) discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice;~~
 - ~~(2) employing codes or other devices to segregate or reject applicants, purchasers, or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, disability, familial status, or national origin, or refusing to deal with certain~~~~

brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, disability, familial status, or national origin;

- (3) denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, disability, familial status, or national origin;
- (4) refusing to provide municipal services or property or hazard insurance for dwelling or providing such services or insurance differently because of race, color, religion, sex, disability, familial status, or national origin.

The provisions of this §819.194 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.195. Discriminatory Advertisements, Statements, and Notices

- (a) It shall be unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (b) The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.
- (c) Discriminatory notices, statements, and advertisements include, but are not limited to:
 - (1) using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin;
 - (2) expressing to agents, brokers, employees, prospective sellers or renters, or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, or national origin of such persons;
 - (3) selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin;
 - (4) refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin.

The provisions of this §819.195 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.196. Discriminatory Representations on the Availability of Dwellings~~

- ~~(a) It shall be unlawful, because of race, color, religion, sex, disability, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.~~
- ~~(b) Prohibited actions under this section include, but are not limited to:
 - ~~(1) indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(2) representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, disability, familial status, or national origin preclude the sale or rental of a dwelling to a person;~~
 - ~~(3) enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race color, religion, sex, disability, familial status, or national origin;~~
 - ~~(4) limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental, because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(5) providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, disability, familial status, or national origin.~~~~

The provisions of this §819.196 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.197. Blockbusting~~

- ~~(a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a disability.~~
- ~~(b) In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.~~
- ~~(c) Prohibited actions under this section include, but are not limited to:
 - ~~(1) engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, disability, familial status, or national origin of persons residing in it or in order to encourage the person to offer a dwelling for sale or rental;~~
 - ~~(2) encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or~~~~

~~national origin, or with disabilities, can or will result in undesirable consequences for the project, neighborhood, or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.~~

~~The provisions of this §819.197 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.198. Discrimination in the Provision of Brokerage Services~~

- ~~(a) It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership, or participation, because of race, color, religion, sex, disability, familial status, or national origin.~~
- ~~(b) Prohibited actions under this section include, but are not limited to:~~
- ~~(1) setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(2) denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(3) imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(4) establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, disability, familial status, or national origin.~~

~~The provisions of this §819.198 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.199. Discriminatory Practices in Residential Real-Estate Transactions~~

- ~~(a) This section provides the commission's interpretation of the conduct that is unlawful housing discrimination under the Texas Fair Housing Act, §301.026.~~
- ~~(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction because of race, color, religion, sex, disability, familial status, or national origin.~~

The provisions of this §819.199 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.210. Discrimination in the Making of Loans and in the Provision of other Financial Assistance~~

- ~~(a) It shall be unlawful for any person or entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, disability, familial status, or national origin.~~
- ~~(b) Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any 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 which is inaccurate or different from that provided others, because of race, color, religion, sex, disability, familial status, or national origin.~~

The provisions of this §819.210 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.211. Discrimination in the Purchasing of Loans~~

- ~~(a) It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair, or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, disability, familial status, or national origin.~~
- ~~(b) Unlawful conduct under this section includes, but is not limited to:~~
 - ~~(1) purchasing loans or other debts or securities which relate to, or which are secured by, dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, disability, familial status, or national origin of persons in such neighborhoods or communities;~~
 - ~~(2) pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(3) imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, disability, familial status, or national origin.~~
- ~~(c) This section does not prevent consideration in the purchasing of loans of factors justified by business necessity, including requirements of state or federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus,~~

~~this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, disability, familial status, or national origin.~~

~~The provisions of this §819.211 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.212. Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance~~

- ~~(a) It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, disability, familial status, or national origin.~~
- ~~(b) Unlawful conduct under this section includes, but is not limited to:
 - ~~(1) using different policies, practices, or procedures in evaluating or in determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, disability, familial status, or national origin;~~
 - ~~(2) 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 for a loan or other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, disability, familial status, or national origin.~~~~

~~The provisions of this §819.212 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.213. Unlawful Practices in the Selling, Brokering, or Appraising of Residential Real Property~~

- ~~(a) It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering, or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, disability, familial status, or national origin.~~
- ~~(b) For the purposes of this section, the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.~~

- (c) ~~Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, disability, familial status, or national origin.~~
- (d) ~~Practices which are unlawful under this section include, but are not limited to: using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, disability, familial status, or national origin.~~

The provisions of this §819.213 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.214. General Prohibitions Against Discrimination Because of Disability~~

- (a) ~~It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter 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.~~
- (b) ~~It shall be 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 shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented, or made available, or any person associated with that person, has a disability or to make inquiry as to the nature or severity of a disability of such a person. However, this section does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have disabilities:~~
 - (1) ~~inquiry into an applicant's ability to meet the requirements of ownership or tenancy;~~
 - (2) ~~inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;~~
 - (3) ~~inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;~~
 - (4) ~~inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;~~

- (5) ~~inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.~~

The provisions of this §819.214 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.215. Reasonable Modifications of Existing Premises~~

- (a) ~~It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a disabled person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for disabled persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.~~
- (b) ~~A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workman-like manner and that any required building permits will be obtained.~~

The provisions of this §819.215 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.216. Reasonable Accommodations~~

~~It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.~~

The provisions of this §819.216 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.217. Design and Construction Requirements~~

- (a) ~~Covered multifamily dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date or if the last building~~

~~permit or renewal thereof for the covered multifamily dwellings is issued by a state, county, or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.~~

- ~~(b) All covered multifamily dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall be designed and constructed in such a manner that:~~
- ~~(1) the public and common use areas are readily accessible to and usable by handicapped persons;~~
 - ~~(2) all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by disabled persons in wheelchairs;~~
 - ~~(3) all premises within covered multifamily dwelling units contain the following features of adaptable design:~~
 - ~~(A) an accessible route into and through the covered dwelling unit;~~
 - ~~(B) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;~~
 - ~~(C) reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall, and shower seat, where such facilities are provided;~~
 - ~~(D) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.~~
- ~~(c) Compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the requirements of subsection (b)(3) of this section.~~
- ~~(d) Compliance with a duly enacted law of a state or unit of general local government that includes the requirements of subsections (a) and (b) of this section satisfies the requirements of subsections (a) and (c) of this section.~~
- ~~(e) This section does not invalidate or limit any law of a state or political subdivision of a state that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this section.~~

~~*The provisions of this §819.217 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.*~~

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

- ~~(a) Interference, coercion, intimidation, or retaliation shall be interpreted by the commission to be conduct that is unlawful housing discrimination under the Texas Fair Housing Act (the Act).~~
- ~~(b) It shall be unlawful housing discrimination to coerce, intimidate, threaten, or interfere with 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 Act.

(c) 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 because of race, color, religion, sex, disability, familial status, or national origin;~~
- (2) ~~threatening, intimidating, or interfering with persons in their enjoyment of a dwelling because of race, color, religion, sex, disability, familial status, or national origin of such persons, or of visitors or associates of such persons;~~
- (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, because of the race, color, religion, sex, disability, familial status, or national origin of that person or of any person associated with that person;~~
- (4) ~~intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise rights granted or protected by this part;~~
- (5) ~~retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act.~~

The provisions of this §819.218 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7124; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter N. Administrative Enforcement

§819.301. Submission of Information To File a Complaint

- (a) ~~The executive director or his or her designee may receive information concerning alleged discriminatory housing practices from any person. Where the information constitutes a complaint within the meaning of the Act and this chapter and is furnished by an aggrieved person, a complaint will be considered filed in accordance with §819.6 of this title (relating to the Date of Filing a Complaint). Where additional information is required for the purpose of perfecting a complaint under the Act, the executive director or his or her designee will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.~~
- (b) ~~The information may also be made available to the federal government. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant.~~
- (c) ~~The executive director or his or her designee may counsel with an aggrieved party about the facts and circumstances which constitute the alleged discriminatory housing practices. If the facts and circumstances do not constitute discriminatory housing practices, the executive director~~

or his or her designee shall so advise the aggrieved party. If the facts and circumstances constitute alleged discriminatory housing practices, the executive director or his or her designee shall assist the aggrieved party in perfecting a complaint.

The provisions of this §819.301 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.302. Who May File Complaints

- (a) Any aggrieved person or the commission may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated whichever is later. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including an organization acting on behalf of an aggrieved person.
- (b) Should the executive director receive information from credible sources that one or more persons or entities may have violated the rights of one or more persons protected by the Act, the executive director shall forward such information to the chairman of the commission, who shall appoint two commissioners to consider whether or not the commission should initiate a complaint.
 - (1) If both commissioners agree that a potential violation of the Act may exist, the commission may initiate a formal complaint of housing discrimination against the person(s) or entities alleged to have violated the Act.
 - (2) Once both commissioners have approved the initiation of a complaint, the processing and the investigation of the complaint shall be handled in the same manner as any other complaint.

The provisions of this §819.302 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective June 14, 1999, 24 TexReg 4472; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.303. Persons against Whom Complaints May Be Filed

- (a) A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.
- (b) A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of dwellings or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

The provisions of this §819.303 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.304. Where To File Complaints~~

~~Aggrieved persons may file complaints in person, by telephone, or in writing with the executive director or his or her designee on a form furnished by the commission or at an office of the federal government.~~

~~The provisions of this §819.304 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.305. Form and Content of a Complaint~~

- ~~(a) Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or if the complaint is signed by the executive director on behalf of the commission it must be signed and affirmed by the executive director. The signature and affirmation may be made at any time during the investigation. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."~~
- ~~(b) The executive director may require complaints to be made on prescribed forms. The complaint forms will be available at the commission office or at any office of the federal government.~~
- ~~(c) Each complaint shall include, but not be limited to, the following information:
 - ~~(1) the name and address of the aggrieved person;~~
 - ~~(2) the name and address of the respondent;~~
 - ~~(3) a description and address of the dwelling which is involved, if appropriate;~~
 - ~~(4) the basis for the alleged discriminatory housing practices which may include any of the following: race, color, religion, sex, familial status, national origin, disability, or retaliation;~~
 - ~~(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, respondent's reason for the action taken, and a discriminatory statement.~~~~

~~The provisions of this §819.305 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.306. The Date of Filing of a Complaint~~

- ~~(a) Except as provided in subsection (b) of this section, a complaint is filed when it is received by the commission or dual filed with the federal government.~~
- ~~(b) The executive director may determine that a complaint is filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone and reduced to writing by an employee of the commission) which is substantially equivalent to the information identified in §819.5(c) of this title (relating to Form and Content of a Complaint).~~

~~(c) Where a complaint alleging a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.~~

~~The provisions of this §819.306 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.307. Amendment of Complaint~~

~~A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint and to clarify and amplify allegations made therein or to add additional or substitute respondents. Such amendment or amendments alleging additional acts which constitute an alleged discriminatory housing practice related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first received. The respondent shall receive a copy of the amended complaint. An amended complaint shall be subject to the procedures set forth in this chapter.~~

~~The provisions of this §819.307 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.308. Service of Notice on Aggrieved Person~~

~~Upon the filing of a complaint, the executive director or his or her designee will notify, by regular mail, each aggrieved person on whose behalf the complaint was filed. The notice will:~~

- ~~(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 aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under the Texas Fair Housing Act and this chapter;~~
- ~~(4) advise the aggrieved person of his or her right to commence a civil action under the Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter and Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under the Act, Subchapter G, is pending;~~
- ~~(5) advise the aggrieved person 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 Act and the rules.~~

The provisions of this §819.308 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; amended to be effective June 17, 2003, 28 TexReg 4569; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.309. Notification of Respondent and Joinder of Additional or Substitute Respondents~~

- ~~(a) Within 20 days of the filing of a complaint or the filing of an amended complaint under this chapter, the executive director or his or her designee will serve a notice on each respondent by regular mail. 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, to have engaged, or to be about to engage 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 the identification.~~
- ~~(b) The notice will include, but not be limited to, the following:~~
- ~~(1) the notice will identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint;~~
 - ~~(2) the notice will state the date that the complaint was accepted for filing;~~
 - ~~(3) the notice will advise the respondent of the time limits applicable to complaint processing under this chapter and of the procedural rights and obligations of the respondent under the Act, and this chapter, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice;~~
 - ~~(4) the notice will advise the respondent of the aggrieved person's right to commence a civil action under the Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two year period excludes any time during which an administrative hearing is pending under this chapter or the Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state that the time period includes the time during which an action arising from a breach of a conciliation agreement under the Act, Subchapter H, is pending;~~
 - ~~(5) if the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the executive director's belief that the joined person is properly joined as a respondent;~~
 - ~~(6) the notice will advise the respondent 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 Act and these rules;~~
 - ~~(7) the notice will invite the respondent to enter into a conciliation agreement for the purpose of resolving the complaint;~~

- ~~(8) the notice will include an initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.~~

~~The provisions of this §819.309 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; amended to be effective June 17, 2003, 28 TexReg 4569; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.310. Answer to Complaint~~

- ~~(a) The respondent may file an answer not later than 10 days after receipt of the notice described in §819.9 of this title (relating to Notification of Respondent and Joinder of Additional or Substitute Respondents). The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."~~
- ~~(b) An answer may be reasonably and fairly amended at any time with the consent of the executive director.~~

~~The provisions of this §819.310 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.311. Investigations~~

- ~~(a) Upon the filing of a complaint under this chapter, the executive director will initiate an investigation. The purposes of an investigation are:~~
- ~~(1) to obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint;~~
 - ~~(2) to document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint;~~
 - ~~(3) to develop factual data necessary for the executive director on behalf of the commission to make a determination under this chapter and the Texas Fair Housing Act, Subchapter E, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this chapter and the Act, Subchapter E.~~
- ~~(b) To initiate an investigation of housing practices by the executive director on behalf of the commission to determine whether a complaint should be filed under this chapter and the Act, Subchapter E. Such investigations will be conducted in accordance with the procedures described under this chapter.~~

The provisions of this §819.311 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.312. Systemic Processing

Where the executive director determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the executive director may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the Act.

The provisions of this §819.312 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.313. Conduct of Investigation

(a) In conducting investigations under this chapter, the executive director will seek the voluntary cooperation of all persons to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

(b) The executive director and the respondent 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, except that the executive director on behalf of the commission shall have the power to issue subpoenas described under the Act, Subchapter D, in support of the investigation.

The provisions of this §819.313 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.314. Cooperation with Federal Agencies

The executive director, in processing complaints under the Texas Fair Housing Act, (the Act), may seek the cooperation and utilize the services of federal agencies, including any agency having regulatory or supervisory authority over financial institutions.

The provisions of this §819.314 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.315. Completion of Investigation~~

- ~~(a) The investigation will remain open until a reasonable cause determination is made, a conciliation agreement is executed and approved, or a no reasonable cause determination is made under this chapter and the Texas Fair Housing Act, Subchapter E.~~
- ~~(b) Unless it is impracticable to do so, the executive director will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint.~~
- ~~(c) If the executive director is unable to complete the investigation within the 100-day period or dispose of all administrative proceedings related to the investigation within one year after the date the complaint is filed, the executive director will notify the aggrieved person and the respondent, by regular mail, of the reasons for the delay.~~

The provisions of this §819.315 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; amended to be effective June 17, 2003, 28 TexReg 4569; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.316. Final Investigative Report~~

- ~~(a) At the end of each investigation under this chapter, the executive director or his or her designee will prepare a final investigative report. The investigative report will contain:
 - ~~(1) the names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. The commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action under the Act;~~
 - ~~(2) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;~~
 - ~~(3) a summary description of other pertinent records;~~
 - ~~(4) a summary of witness statements; and~~
 - ~~(5) answers to interrogatories.~~~~
- ~~(b) A final investigative report may be amended at any time, if additional evidence is discovered.~~
- ~~(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in this chapter, the executive director will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the executive director shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request.~~

The provisions of this §819.316 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.317. Conciliation Process~~

- ~~(a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the executive director, the executive director or his or her designee shall, to the extent feasible, attempt to conciliate the complaint.~~
- ~~(b) In conciliating a complaint, the executive director will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.~~

~~The provisions of this §819.317 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.318. Conciliation Agreement~~

- ~~(a) The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in this chapter and the Texas Fair Housing Act (the Act).~~
- ~~(b) The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the executive director, who will indicate approval by signing the agreement. The executive director shall approve an agreement and, if the executive director is the complainant, will execute the agreement, only if:
 - ~~(1) the complainant and the respondent agree to the relief accorded the aggrieved person;~~
 - ~~(2) the provisions of the agreement will adequately vindicate the public interest;~~
 - ~~(3) the executive director is the complainant, all aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests.~~~~
- ~~(c) The commission may issue a charge under this chapter, and the Act, if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the executive director.~~

~~The provisions of this §819.318 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.319. Relief Sought for Aggrieved Persons during Conciliation~~

- ~~(a) The following types of relief may be sought for aggrieved persons in conciliation:
 - ~~(1) monetary relief in the form of actual damages, including damages caused by humiliation or embarrassment and attorney fees;~~~~

- ~~(2) other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or~~
- ~~(3) injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.~~

~~(b) The conciliation agreement may provide for binding arbitration or other methods of resolving a dispute arising from the complaint. Arbitration may award appropriate relief as described in subsection (a) of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration or other methods of dispute resolution.~~

The provisions of this §819.319 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective March 28, 1991, 16 TexReg 1566; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.320. Conciliation Provisions Relating to Public Interest

The following are types of provisions that may be sought for the vindication of the public interest:

- ~~(1) elimination of discriminatory housing practices;~~
- ~~(2) prevention of future discriminatory housing practices;~~
- ~~(3) remedial affirmative activities to overcome discriminatory housing practices;~~
- ~~(4) reporting requirements;~~
- ~~(5) monitoring and enforcement activities.~~

The provisions of this §819.320 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.321. Termination of Conciliation Process

- ~~(a) The executive director may terminate its efforts to conciliate the complaint if the respondent fails or refuses to confer with the executive director or his or her designee; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or the executive director finds, for any reason, that voluntary agreement is not likely to result.~~
- ~~(b) Where the aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the executive director will terminate conciliation unless the court specifically requests assistance from the commission.~~

The provisions of this §819.321 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.322. Prohibitions and Requirements for Disclosure of Information Obtained during Conciliation~~

- ~~(a) Nothing that is said or done in the course of conciliation under this chapter may be made public or used as evidence in subsequent administrative hearings or in civil actions under the Texas Fair Housing Act (the Act) or this chapter without the written consent of the persons concerned.~~
- ~~(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the executive director determines that disclosure is not required to further the purposes of the Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the executive director may publish tabulated descriptions of the results of all conciliation efforts.~~

~~The provisions of this §819.322 adopted to be effective April 13, 1990, 15 TexReg 1843; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.323. Review of Compliance with Conciliation Agreements~~

~~The executive director may, from time to time, review compliance with the terms of any conciliation agreement. Whenever the executive director has reasonable cause to believe that a respondent has breached a conciliation agreement, the executive director shall refer the matter to the attorney general with a recommendation for the filing of a civil action under the Texas Fair Housing Act, Subchapter G, for the enforcement of the terms of the conciliation agreement.~~

~~The provisions of this §819.323 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.324. Reasonable Cause Determination~~

- ~~(a) If a conciliation agreement under this chapter and the Texas Fair Housing Act, Subchapter E, have not been executed by the complainant and the respondent, and approved by the executive director, the executive director on behalf of the commission, 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 or is about to occur. The reasonable cause determination will 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 executive 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 executive director determines that reasonable cause exists, the executive director will immediately issue a charge under the Act, Subchapter E, and this chapter on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination~~

by certified mail or personal service, except in all cases not involving the legality of local zoning or land use laws or ordinances.

- (c) ~~If the executive director determines that no reasonable cause exists, the executive director shall issue a short and plain written statement of the facts upon which the executive director has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person 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, except in all cases not involving the legality of local zoning or land use laws or ordinances. Public disclosure of the dismissal shall be by issuance of a press release, except that the respondent may request that no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.~~
- (d) ~~If the executive director determines that the matter involves the legality of local zoning or land use laws or ordinances, the executive director, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the attorney general for appropriate action under the Act, Subchapter G, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.~~
- (e) ~~The executive director may not issue a charge under this chapter and the Act, Subchapter E regarding an alleged discriminatory housing practice if an aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the executive director will so notify the aggrieved person and the respondent by certified mail or personal service.~~
- (f) ~~The executive director shall make a reasonable cause determination within 100 days after filing of the complaint, unless it is impracticable to do so.~~
- (g) ~~If the executive director is unable to make the determination within the 100 day period, the executive director will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.~~

The provisions of this §819.324 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.325. Issuance of Charge

- (a) ~~A charge:~~
 - (1) ~~shall consist of a short and plain written statement of the facts upon which the executive director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;~~
 - (2) ~~shall be based on the final investigative report;~~
 - (3) ~~need not be limited to facts or grounds that are alleged in the complaint filed under this chapter and the Texas Fair Housing Act, Subchapter E. If the charge is based on grounds~~

~~that are alleged in the complaint, the executive director on behalf of the commission, will not issue a charge with regard to the grounds unless the record of the investigation demonstrates that the respondent has been given notice and an opportunity to respond to the allegation.~~

- ~~(b) Not later than the 20th day after the executive director on behalf of the commission issues a charge, the executive director shall send a copy of the charge with information concerning the election of judicial determination under this chapter and the Act, Subchapter E, to each respondent and each aggrieved person identified in the charge by certified mail or personal service.~~

~~The provisions of this §819.325 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.326. Election of Civil Action or Provision of Administrative Hearing Procedure

- ~~(a) If a charge is issued under this chapter and the Texas Fair Housing Act, Subchapter E, a complainant (including the executive director if the commission filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative hearing, to have the claim asserted in the charge decided in a civil action under the Act, Subchapter E.~~
- ~~(b) The election must be made not later than the 20th day after the receipt of service of the charge, or in the case of the executive director not later than the 20th day after the charge is issued. The person making the election shall give notice to the commission and all other complainants and respondents to whom the charge relates. The notification will be filed and served in accordance with the procedures established under the Texas Procedure Act, Texas Government Code, Chapter 2001.~~
- ~~(c) If a timely election is not made in accordance with this section and the Act, Subchapter E, the commission will provide an administrative hearing based on the charge.~~
- ~~(d) A hearing under this section may not continue regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal law or state law seeking relief with respect to that discriminatory housing practice.~~
- ~~(e) Except as provided by subsection (d) of this section, the Texas Procedure Act, Texas Government Code, Chapter 2001 and as provided under Chapter 341 of this title (relating to Administrative Hearing Proceedings) governs a hearing and appeal of a hearing under the Act.~~
- ~~(f) If a timely election is made under the Act, Subchapter E, and this section, the commission shall authorize, and not later than the 30th day after the election is made, the attorney general shall file a civil action on behalf of the aggrieved person in a district court seeking relief under this section. Venue for an action under this section is in the county in which the alleged discriminatory housing practice occurred. An aggrieved person may intervene in the action.~~

- ~~(g) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under this Act, Subchapter H.~~
- ~~(h) If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court.~~
- ~~(i) The executive director shall be available for consultation concerning any legal issues raised by the attorney general as to how best to proceed in the event that a new court decision or newly discovered evidence is regarded as relevant to the reasonable cause determination.~~

~~The provisions of this §819.326 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

§819.327. Administrative Penalties

- ~~(a) If the commission determines at an administrative hearing under the Texas Fair Housing Act, Subchapter H, and this chapter, that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.~~
- ~~(b) To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:
 - ~~(1) \$10,000, if the respondent has been adjudged by order of the federal government or a court to have committed a prior discriminatory housing practice;~~
 - ~~(2) except as provided in subsection (c) of this section, \$25,000 if the respondent has been adjudged by order of the federal government or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;~~
 - ~~(3) except as provided in subsection (c) of this section, \$50,000 if the respondent has been adjudged by order of the federal government or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.~~~~
- ~~(c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in subsection (b)(2) and (3) of this section may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.~~
- ~~(d) At the request of the commission, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section shall be paid to the state treasurer for deposit in the state treasury to the credit of the fair housing fund.~~

The provisions of this §819.327 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.328. Effect of Commission Order~~

~~A commission order under the Texas Fair Housing Act, Subchapter H, and this chapter does not affect a contract, sale, encumbrance, or lease that was consummated before the commission issued the order, and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under the Act or this chapter.~~

The provisions of this §819.328 adopted to be effective April 13, 1990, 15 TexReg 1843; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~Subchapter O. Administrative Hearing Proceedings~~

~~§819.401. State Office of Administrative Hearings~~

~~Unless otherwise provided, the commission shall utilize the uniform procedures for administrative hearings found in 1 TAC, §§155.1-155.55. The provisions will govern the process followed by the State Office of Administrative Hearings (SOAH) in handling all adjudicative matters referred to SOAH, including contested cases under the Administrative Procedure Act, Texas Government Code, Chapter 2001.~~

The provisions of this §819.401 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.402. Proposal for Decision and Hearing Officer's Report~~

- ~~(a) If the proposed decision is not adverse to any party to the hearing proceeding, the hearing officer may propose to the commission a decision which need not contain findings of fact or conclusions of law.~~
- ~~(b) The commission may not make a decision adverse to a party until a proposal for decision has been served on the parties, and an opportunity has been given each party adversely affected to file exceptions and present briefs to the commission.
 - ~~(1) The proposal for decision, if adverse to a party, must be prepared by the hearing officer or by one who has read the record, and must contain a statement of the reasons for the proposed decision and a statement of each finding of fact and conclusion of a law necessary to the proposed decision. The hearing officer may request that any party draft and submit a proposal for decision including proposed findings of fact and conclusions of law separately stated. In making such a request, the hearing officer will indicate to all parties the general nature of the intended proposal for final decision to be drafted. When the hearing officer wishes to use the special skills of the executive director or his or her designee in evaluating the evidence received or record made, he may request in writing to the executive director the assignment of appropriate personnel who have not participated in the review or~~~~

~~processing of the matter. The hearing officer may communicate with the executive director or his or her designee assigned under this section.~~

~~(2) The proposal for decision shall be circulated among the parties. If any party files an exception or presents a brief, an opportunity must be afforded to all other parties to file replies to the exception or brief. The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties.~~

~~(c) Any penalty assessed by the hearing officer for an administrative violation shall be in accordance with the Texas Property Code, §310.112.~~

~~(d) Regardless of whether subsections (a) or (b) of this section are followed, the proposal for decision must be accompanied by a hearing officer's report. This report must contain a statement of the nature of the case and a discussion of the issues, the evidence and the applicable law.~~

~~The provisions of this §819.402 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.403. Countersignature by Executive Director or His or Her Designee~~

~~The executive director or his or her designee shall countersign every hearing officer's report and proposal for decision.~~

~~The provisions of this §819.403 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.404. Filing of Exceptions and Replies~~

~~(a) Unless the hearing officer has set a different period of time, a party may file exceptions to the hearing officer's report or the proposal for decision or both within 15 days after the hearing officer's report and proposal for decision are served.~~

~~(b) A party may file replies to these exceptions within 15 days after the exceptions are filed unless the hearing officer has set a different period of time.~~

~~(c) Any request to enlarge or shorten the time for filing exceptions or replies must be filed with the hearing officer and a copy served on all parties by the requesting party. The hearing officer shall promptly notify the parties of his decision on the request. Additional time may be allowed only when the interests of justice require.~~

~~The provisions of this §819.404 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.405. Form of Exceptions and Replies~~

~~Exceptions and replies to exception shall conform as nearly as practicable to the rules for pleadings. Specific exception shall be concisely stated. The evidence relied on shall be pointed out with particularity, and that evidence and any arguments relied on shall be grouped under the exceptions to which they relate.~~

~~The provisions of this §819.405 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.406. Oral Argument before the Commission~~

~~A party may request and the commission may allow oral argument before the commission before final commission determination. A request for oral argument may be incorporated in the exceptions, in a reply to exceptions, or in a separate pleading.~~

~~The provisions of this §819.406 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.407. Pleading before Final Decision~~

~~The executive director may permit or request parties to file briefs and proposed findings of fact within such time after the hearing and before final decision as the executive director may specify. A party doing so shall file an original and 10 copies with the executive director and serve a copy on each other party, certifying to the executive director that such service has been made.~~

~~The provisions of this §819.407 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.408. Final Decision or Order~~

~~After the time for filing exceptions and replies to exceptions has expired, or when all timely exceptions and replies to exceptions have actually been filed, 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 officer. The commission shall render its final decision or issue its final order within 60 days after the hearing closes. The final order for the commission shall be prepared by the hearing officer.~~

~~The provisions of this §819.408 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.409. Form, Content, and Service~~

~~A final decision or order of the commission adverse to one or more parties must be written and signed by at least four commission members. Such final decision must include findings of fact and~~

~~conclusions of law separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact must be based exclusively on the evidence and on matters officially noticed. If a party submits proposed findings of fact, the decision must include a ruling on each proposed finding. The executive director or his or her designee shall mail or deliver a copy of the decision or order to each party or his authorized representative.~~

~~The provisions of this §819.409 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.410. Effective Date of Decision or Order~~

~~A final decision or final order is effective on the date of commission action, unless otherwise stated in the decision or order. The date of commission action must be incorporated in the body of each final decision and order.~~

~~The provisions of this §819.410 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.411. Administrative Finality~~

~~(a) Commission action is final and not appealable on the 21st day after the final order is issued when the complainant or respondent fail to file a motion for rehearing within 20 days after the order is issued.~~

~~(b) Commission action is final and appealable when:~~

- ~~(1) the commission denies a motion for rehearing on a final decision or order, either expressly or by operation of law; or~~
- ~~(2) the commission renders a final decision or issues a final order which includes a statement that no motion for rehearing will be necessary because an imminent peril to the public health, safety, or welfare requires immediate effect be given to the decision or order.~~

~~The provisions of this §819.411 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.412. Rehearing~~

~~(a) A motion for rehearing is prerequisite to appeal, except as provided in §819.11 of this title (relating to Administrative Finality). A motion for rehearing must be made within 20 days after the mailing of a final decision or order. Any reply to a motion for rehearing must be filed with the commission within 30 days after the mailing of a final decision or order. A party filing a motion for rehearing or a reply to a motion for rehearing shall serve a copy on each party concurrently with the filing.~~

~~(b) The commission shall act on the motion within 45 days after the final decision or order. If the commission does not act within this 45 day period, the motion for rehearing is overruled by operation of law 45 days after the final decision or order.~~

~~(c) The commission may by written order extend the time for filing motions and replies and for taking commission action, except that this extension may not extend the period for commission action beyond 90 days after the date of the final decision or order. In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days from the date of the final decision or order.~~

~~The provisions of this §819.412 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.413. Emergency Orders~~

~~If the commission finds that an imminent peril to the public health, safety, or welfare requires the immediate finality of a decision or order in a contested case, it shall recite that finding in the decision or order in addition to reciting that the decision or order is final from the date rendered, in which event the decision or order is final and appealable from the date rendered and a motion for rehearing is not prerequisite to appeal.~~

~~The provisions of this §819.413 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.414. Show Cause Orders and Complaints~~

~~The commission, either upon its own motion or upon receipt of written charge, may, at any time after notice of all interested persons, cite any person within its jurisdiction to appear before it in a public hearing and require that person to show cause why he should not comply with a rule, regulation, agreement, general order, or statute committed to the commission's administration which that person is allegedly violating.~~

~~The provisions of this §819.414 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.415. Ex Parte Communications~~

~~Except as provided in the SOAH rules, and unless required for the disposition of ex parte matter authorized by law, no member of the commission and no employee of the commission assigned to propose a decision or assigned to propose or make findings of fact or conclusions of law in a case covered by these sections may communicate, directly or indirectly, in connection with any issue of fact or law with any person or party or any representative of either, except on notice and opportunity for all parties to participate.~~

The provisions of this §819.415 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.416. Appeals~~

- ~~(a) A person who has exhausted all administrative remedies available under the Texas Property Code and who is aggrieved by a final decision in a contested case is entitled to judicial review under the substantial evidence rule as set forth in the Administrative Procedure Act, §§2001.001, et seq.~~
- ~~(b) Proceedings for judicial review are instituted by filing a petition within 30 days after the decision complained of is final and appealable.~~
- ~~(c) The party seeking judicial review shall offer, and the reviewing court shall admit, the agency records as an exhibit. The review is conducted by the court sitting without a jury and is confined to the agency record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.~~

The provisions of this §819.416 adopted to be effective March 30, 2000, 25 TexReg 2661; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~Subchapter P. Prompt Judicial Action~~

~~§819.421. Temporary and Preliminary Relief~~

- ~~(a) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of the Texas Fair Housing Act, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.~~
- ~~(b) On receipt of the commission's authorization, the attorney general shall promptly file the action.~~
- ~~(c) A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Texas Rules of Civil Procedure.~~
- ~~(d) The filing of a civil action under this section does not affect the initiation or continuation of administrative proceeding under the Act.~~

The provisions of this §819.421 adopted to be effective April 13, 1990, 15 TexReg 1844; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.422. Enforcement by Attorney General~~

- ~~(a) On request of the commission the attorney general may file a civil action in district court for appropriate relief if the commission has reasonable cause to believe that:
 - ~~(1) a person is engaged in a pattern or practice of resistance to the full enjoyment of any right granted by the Texas Fair Housing Act (the Act);~~~~

~~(2) a person has been denied any right granted by this Act and that denial raises an issue of general public importance.~~

~~(b) In an action under this section the court may:~~

~~(1) award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this Act as necessary to assure the full enjoyment of the rights granted by the Act;~~

~~(2) award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs;~~

~~(3) to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed:~~

~~(A) \$50,000 for a first violation;~~

~~(B) \$100,000 for a second or subsequent violation.~~

~~(c) A person may intervene in an action under this section if the person is:~~

~~(1) an aggrieved person to the discriminatory housing practice; or~~

~~(2) a party to a conciliation agreement concerning the discriminatory housing practice.~~

The provisions of this §819.422 adopted to be effective April 13, 1990, 15 TexReg 1844; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.423. Subpoena Enforcement Power~~

~~The attorney general, on behalf of the commission, or other party at whose request a subpoena is issued under the Texas Fair Housing Act, may enforce the subpoena in appropriate proceedings in district court.~~

The provisions in this §819.423 adopted to be effective April 13, 1990, 15 TexReg 1844; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~Subchapter Q. Enforcement by Private Person~~

~~§819.431. Civil Action~~

~~(a) An aggrieved person may file a civil action in district court not later than the second year after the occurrence of the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under the Texas Fair Housing Act (the Act), Subchapter E, and Chapter 819 of this title (relating to Administrative Enforcement), whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.~~

~~(b) The two year period does not include any time during which an administrative hearing under the Act, Subchapter E, and Chapter 819 of this title (relating to Administrative Enforcement) is pending with respect to a complaint or charge under this Act based on the discriminatory~~

~~housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement.~~

- ~~(c) An aggrieved person may file an action under this chapter and the Act, Article V, whether or not a complaint has been filed under the Act, Subchapter E, and Chapter 819 of this title (relating to Administrative Enforcement) and without regard to the status of any complaint filed under Subchapter E and Chapter 819 of this title (relating to Administrative Enforcement).~~
- ~~(d) If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action under the Act, Subchapter H, on this chapter with respect to the alleged discriminatory housing practice that forms the basis for the complaint except to enforce the terms of the agreement.~~
- ~~(e) An aggrieved person may not file an action under the Act, Subchapter E, and this chapter with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the commission if the commission has begun an administrative hearing on the record under the Act, Subchapter E, and Chapter 819 of this title (relating to Administrative Enforcement) with respect to the charge.~~

~~The provisions of this §819.431 adopted to be effective April 13, 1990, 15 TexReg 1844; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.432. Court Appointed Attorney~~

~~On application by a person alleging a discriminatory housing practice or by a person against whom such a practice is alleged, the court may appoint an attorney for the person.~~

~~The provisions of this §819.432 adopted to be effective April 13, 1990, 15 TexReg 1844; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~§819.433. Relief Granted~~

~~In an action under the Texas Fair Housing Act (the Act), §301.153, and this chapter, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff:~~

- ~~(1) actual and punitive damages;~~
- ~~(2) reasonable attorney's fees;~~
- ~~(3) court costs; and~~
- ~~(4) subject to the Act, and this chapter, any permanent or temporary injunction, temporary restraining order, or other order including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.~~

The provisions of this §819.433 adopted to be effective April 13, 1990, 15 TexReg 1844; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.434. Effect of Relief Granted

Relief granted under the Texas Fair Housing Act (the Act), §301.154, and this chapter, does not affect a contract, sale, encumbrance, or lease that:

- (1) was consummated before the granting of the relief; and
- (2) involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under the Act, Subchapter E, or a civil action under the Act, Subchapter H.

The provisions of this §819.434 adopted to be effective April 13, 1990, 15 TexReg 1844; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.435. Intervention by Attorney General

- (a) On request of the commission the attorney general may intervene in an action under the Texas Fair Housing Act (the Act), Article V, and this chapter, if the commission certifies that the case is of general public importance.
- (b) The attorney general may obtain the same relief available to the attorney general under the Act, Article VI.

The provisions of this §819.435 adopted to be effective April 13, 1990, 15 TexReg 1844; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

Subchapter R. Other Action by the Commission

§819.441. Licensed or Regulated Businesses

If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission shall not later than the 30th day after the issuing of the order send copies of the findings and the order to the governmental agency and recommend the governmental agency take appropriate disciplinary action.

The provisions of this §819.441 adopted to be effective April 13, 1990, 15 TexReg 1845; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

§819.442. Order in Preceding Five Years

If the commission issues an order against a respondent against whom another order was issued within the preceding five years under the Texas Fair Housing Act, Subchapter E, the commission shall send a copy of each order issued under this section to the attorney general.

The provisions of this §819.442 adopted to be effective April 13, 1990, 15 TexReg 1845; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~§819.443. Criminal Penalties~~

- (a) ~~The commission shall refer an offense under the Texas Fair Housing Act (the Act), Subchapter I, to appropriate law enforcement agencies, including, but not limited to, the attorney general.~~
- (b) ~~The commission shall treat any offense under the Act, Subchapter I, as an alleged discriminatory housing practice as interpreted under Chapter 819 of this title (relating to Discriminatory Housing Practices), and subject to the proceedings set forth under Chapter 819 of this title (relating to Administrative Enforcement).~~

The provisions of this §819.443 adopted to be effective April 13, 1990, 15 TexReg 1845; amended to be effective September 17, 2001, 26 TexReg 7125; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~Subchapter S. Prevailing Party~~

~~§819.451. Prevailing Party~~

~~A court in a civil action brought under the Texas Fair Housing Act (the Act) or the commission in an administrative hearing under the Act, Subchapter E, may award reasonable attorney fees to the prevailing party and assess court costs against the nonprevailing party.~~

The provisions of this §819.451 adopted to be effective April 13, 1990, 15 TexReg 1845; amended to be effective September 17, 2001, 26 TexReg 7126; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~Subchapter T. Fair Housing Fund~~

~~§819.461. Fair Housing Fund~~

- (a) ~~A fair housing fund is to be created in the state treasury.~~
- (b) ~~Monies deposited to the credit of the fair housing fund may be used by the commission for the administration of the Texas Fair Housing Act (the Act).~~
- (c) ~~Gifts and grants received as authorized by the Act, Subchapter D, shall be deposited to the credit of the fair housing fund.~~
- (d) ~~Civil penalties assessed against a respondent under the Act, Subchapter E and Subchapter G, shall be deposited to the credit of the fair housing fund.~~

The provisions of this §819.461 adopted to be effective April 13, 1990, 15 TexReg 1845; amended to be effective September 17, 2001, 26 TexReg 7126; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.

~~Subchapter U. Statutory Authority~~

~~§819.471. Statutory Authority~~

~~The statutory civil remedies or theories of recovery created by a statute continued in effect under the Texas Fair Housing Act or created by a statute added or amended by the Texas Fair Housing Act may not be expanded beyond their express statutory terms.~~

~~The provisions of this §819.471 adopted to be effective April 13, 1990, 15 TexReg 1845; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~

~~Subchapter V. Effective Date~~

~~§819.481. Effective Date~~

- ~~(a) The Texas Fair Housing Act (the Act) takes effect January 1, 1990.~~
- ~~(b) On or after January 1, 1990, the enforcement of the Act by the commission will be determined by the date on which the federal government determines the Act to be substantially equivalent to federal law, and the Rules and Regulations of the Federal Government, §115.11, issued January 23, 1989.~~

~~The provisions of this §819.481 adopted to be effective April 13, 1990, 15 TexReg 1846; transferred effective March 1, 2004, as published in the Texas Register April 9, 2004, 29 TexReg 3653.~~