

1 **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

2  
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***  
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**  
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**  
6

7 **ON *APRIL 19, 2016*, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**  
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**  
9

10 Estimated Publication Date of the Proposal in the *Texas Register*: **May 6, 2016**  
11 Estimated End of Comment Period: **June 6, 2016**  
12

13 The Texas Workforce Commission (Commission) proposes the following new section to Chapter  
14 819, relating to the Texas Workforce Commission Civil Rights Division:  
15

16 Subchapter H. Discriminatory Housing Practices, §819.136  
17

18 The Commission proposes amendments to the following sections of Chapter 819, relating to the  
19 Texas Workforce Commission Civil Rights Division:  
20

21 Subchapter A. General Provisions, §§819.1 - 819.3

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

23 Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §§819.23 -  
24 819.25

25 Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §§819.46,  
26 819.47, 819.50, and 819.52

27 Subchapter E. Equal Employment Opportunity Deferrals, §819.72

28 Subchapter G. Texas Fair Housing Act Provisions, §819.112

29 Subchapter H. Discriminatory Housing Practices, §819.122

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

32 Subchapter J. Fair Housing Deferral to Municipalities, §819.171

33 Subchapter L. Fair Housing Fund, §819.221  
34

35 The Commission proposes the repeal of the following sections of Chapter 819, relating to the  
36 Texas Workforce Commission Civil Rights Division:  
37

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

39 Subchapter J. Fair Housing Deferral to Municipalities, §819.172  
40

41 The Commission proposes the repeal of the following subchapter of Chapter 819, relating to the  
42 Texas Workforce Commission Civil Rights Division, in its entirety:  
43

44 Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 -  
45 819.201  
46

1 The Commission proposes the following new subchapter to Chapter 819, relating to the Texas  
2 Workforce Commission Civil Rights Division:

3  
4 Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 -  
5 819.201

- 6  
7 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**  
8 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**  
9 **PART III. IMPACT STATEMENTS**  
10 **PART IV. COORDINATION ACTIVITIES**

11  
12 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

15  
16 --Senate Bill (SB) 208, relating to the continuing functions of the Texas Workforce Commission  
17 (Agency), which abolishes the Commission on Human Rights and transfers its duties to the  
18 Agency, in addition to streamlining and clarifying several CRD functions, including review of  
19 other state agencies and reporting requirements to the legislature.

20  
21 --SB 1267, relating to contested cases conducted under the Administrative Procedure Act (APA);

22  
23 --House Bill (HB) 2154, relating to the functions and operation of the State Office of  
24 Administrative Hearings, resulting in changes to Texas Government Code, Chapter 2001, APA;

25  
26 --HB 577, relating to pay, benefits, and requirements for state active duty service members; and

27  
28 --SB 652, relating to excluding a franchisor as an employer of a franchisee or a franchisee's  
29 employees, which impacts the definition of "Employer" in §819.11.

30  
31 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

34  
35 **SUBCHAPTER A. GENERAL PROVISIONS**

36 **The Commission proposes the following amendments to Subchapter A:**

37  
38 **§819.1. Purpose**

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

1 **§819.2. Definitions**

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

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

8  
9 Certain paragraphs have been renumbered to reflect additions.

10  
11 **§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD**

12 **Director**

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

15  
16 Section 819.3(a) is amended by replacing "Commission on Human Rights" with "Agency" to  
17 implement SB 208.

18  
19 Section 819.3(a)(2) is amended by adding that the Agency's executive director will appoint the  
20 CRD director in order to implement SB 208.

21  
22 Section 819.3(a)(3) is amended to add that the Agency's executive director will supervise its  
23 CRD director in administering the activities of CRD.

24  
25 Section 819.3(b)(1) is amended to add the reference to Texas Government Code §437.204 and  
26 Subchapter I and remove the reference to Texas Government Code, Chapter 419, Subchapter F  
27 (relating to the review of fire department tests) and Chapter 437 to clarify that the Agency  
28 enforces discrimination claims by state military members against employers other than the Texas  
29 Military Forces due to deployment for training or active duty, and to implement SB 208 and HB  
30 577.

31  
32 Section 819.3(c), Agency Personnel Policies Applicable to CRD Director, is removed to  
33 implement SB 208.

34  
35 **SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

36 **The Commission proposes the following amendments to Subchapter B:**

37  
38 **§819.11. Definitions**

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

42  
43 Section 819.11(8) is amended by clarifying that "Mediation" is an "alternative dispute  
44 resolution" process intended to "resolve" a dispute and removing "prior to reasonable cause  
45 determination or dismissal of a perfected complaint." This change aligns the definition with  
46 Agency practice.

1  
2 **§819.12. Unlawful Employment Practices**

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

5  
6 Certain paragraphs and subparagraphs have been renumbered and relettered to reflect revisions.

7  
8 **SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING,**  
9 **AND REVIEWS**

10 **The Commission proposes the following amendments to Subchapter C:**

11  
12 **§819.22. Review of Firefighter Tests**

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

14  
15 **§819.23. Review of State Agency Policies and Procedures**

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

19  
20 Certain subsections have been relettered to reflect additions.

21  
22 **§819.24. Standard Employment Discrimination Training**

23 Section 819.24(a) is amended to:

24 --remove the requirement that a preapproved list of standard and compliance training be  
25 maintained; and

26 --add that the Agency shall develop materials for use by state agencies in providing standard  
27 employment discrimination training.

28  
29 **§819.25. Compliance Employment Discrimination Training**

30 Section 819.25(b):

31 --removes the requirement that preapproved list of standard and compliance training be  
32 maintained by CRD; and

33 --adds that compliance training may be provided by the Agency or by another entity or person  
34 approved by the Agency.

35  
36 **SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND**  
37 **APPEALS PROCESS**

38 **The Commission proposes the following amendments to Subchapter D:**

39  
40 **§819.46. Dismissal of Complaint**

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

44  
45 **§819.47. Cause Determination**

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

3  
4 **§819.50. Right to File a Civil Action**

5 Section 819.50(a)(2) is amended to replace "shall" with "may" to align with Texas Labor Code  
6 §21.252(c).

7  
8  
9 **§819.52. Judicial Enforcement**

10 Section 819.52(a) is amended to add "On a majority vote of the Commission" to implement SB  
11 208.

12  
13 Section 819.52(b) is amended to specify that the Commission makes the determination to bring a  
14 civil action and that CRD shall notify the complainant by certified mail to implement SB 208.

15  
16 Section 819.52(c) is amended to replace "Commission on Human Rights" with "Commission" to  
17 implement SB 208.

18  
19 **SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS**

20 **The Commission proposes the following amendments to Subchapter E:**

21  
22 **§819.72. Requirements for a Local Commission**

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

25  
26 Certain paragraphs in this section have been renumbered to accommodate revisions.

27 **SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS**

28 **The Commission proposes the following amendments to Subchapter G:**

29  
30 **§819.112. Definitions**

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

33  
34 **SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES**

35 **The Commission proposes the following amendments to Subchapter H:**

36  
37 **§819.122. Exemptions Based on Familial Status**

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

40  
41 Section 819.122(a) is amended by adding language in reference to a federal or state program for  
42 clarification.

43  
44 Section 819.122(b) is amended to add language clarifying that discrimination prohibitions under  
45 the Texas Fair Housing Act based on familial status do not apply to housing intended for and  
46 solely occupied by individuals 62 years of age or older.

1  
2 Section 819.122(c) is amended to add language clarifying that discrimination prohibitions under  
3 the Texas Fair Housing Act based on familial status do not apply to housing intended and  
4 operated for occupancy by individuals 55 years of age or older, given specific criteria.

5  
6 **New §819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation**

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

9  
10 **SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS**  
11 **PROCESS**

12 **The Commission proposes the following amendments to Subchapter I:**

13  
14 **§819.151. Filing a Complaint**

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

18  
19 **§819.153. Investigation of a Complaint**

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

21  
22 Section 819.153(d) is amended to remove the phrase "within 10 days of identification" to align  
23 with Texas Property Code §301.084 and §301.081(f)(3).

24  
25 Section 819.153(k) is amended to add "unless it is impracticable to do so" to align with federal  
26 Fair Housing Act §810(a)(1)(C).

27  
28 **§819.156. Reasonable Cause Determination and Issuance of a Charge**

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

34  
35 Section 819.156(e) is amended to add "trial of" to align with Texas Property Code §301.092 and  
36 federal Fair Housing Act §810(g)(4) and to reflect that a charge may not be issued upon  
37 commencement of a trial of a civil action rather than commencement of the civil action itself.

38  
39 **SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES**

40 **The Commission proposes the following amendments to Subchapter J:**

41  
42 **§819.171. Deferral**

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

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

3  
4 **§819.172. Memoranda of Understanding**

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

7  
8  
9 **SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL**  
10 **REVIEW**

11 **The Commission proposes the repeal of Subchapter K in its entirety:**

- 12  
13 §819.191. Administrative Hearings  
14 §819.192. Ex Parte Communications  
15 §819.193. Proposal for Decision and Hearing Officer's Report  
16 §819.194. Countersignature by the CRD Director  
17 §819.195. Oral Argument before the Commission on Human Rights  
18 §819.196. Pleading Before Order  
19 §819.197. Form and Content of the Order  
20 §819.198. Final Order  
21 §819.199. Rehearing  
22 §819.200. Judicial Review  
23 §819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation

24  
25 **SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL**  
26 **REVIEW**

27 **The Commission proposes new Subchapter K:**

28  
29 Subchapter K is being repealed and replaced to streamline, update, and clarify the rules  
30 governing administrative proceedings for adjudication of fair housing complaints as required in  
31 Texas Property Code, Chapter 301.

32  
33 New Subchapter K aligns with APA, as amended by SB 1267 and HB 2154, regarding notices of  
34 hearing, proposals for decision, motions for rehearing, and suits for judicial review.

35  
36 **§819.191. Administrative Hearings**

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

39  
40 **§819.192. Parties**

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

1  
2 **§819.193. Evidence and Prehearing Conference**

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

4  
5 **§819.194. Notice of Hearing**

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

7  
8 **§819.195. Postponement and Continuance**

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

10  
11 **§819.196. Default**

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

13  
14 **§819.197. Ex Parte Communications**

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

17  
18 **§819.198. Proposal for Decision**

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

21  
22 **§819.199. Commission Decision**

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

25  
26 **§819.200. Motion for Rehearing**

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

28  
29 **§819.201. Judicial Review**

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

32  
33 **SUBCHAPTER L. FAIR HOUSING FUND**

34 **The Commission proposes the following amendments to Subchapter L:**

35  
36 **§819.221. Fair Housing Fund**

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

39  
40 **PART III. IMPACT STATEMENTS**

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

43  
44 There are no additional estimated costs to the state and to local governments expected as a result  
45 of enforcing or administering the rules.



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

3  
4 There are no estimated losses or increases in revenue to the state or to local governments as a  
5 result of enforcing or administering the rules.

6  
7 There are no foreseeable implications relating to costs or revenue of the state or local  
8 governments as a result of enforcing or administering the rules.

9  
10 There are no anticipated economic costs to persons required to comply with the rules.

11  
12 There is no anticipated adverse economic impact on small businesses or microbusinesses as a  
13 result of enforcing or administering the rules.

14  
15 Economic Impact Statement and Regulatory Flexibility Analysis

16 The Agency has determined that the proposed rules will not have an adverse economic impact on  
17 small businesses as these proposed rules place no requirements on small businesses.

18  
19 Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no  
20 significant negative impact upon employment conditions in the state as a result of the rules.

21  
22 Lowell Keig, Director, Civil Rights Division, has determined that for each year of the first five  
23 years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed  
24 rules will be to gain further efficiencies in the investigation of complaints, reviews of policies  
25 and procedural systems of state agencies and reporting of data to elected state leadership and the  
26 public.

27  
28 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
29 be within the Agency's legal authority to adopt.

30  
31 **PART IV. COORDINATION ACTIVITIES**

32 In the development of these rules for publication and public comment, the Commission sought  
33 the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding  
34 these rule amendments to the Boards for consideration and review on September 8, 2015. The  
35 Commission also conducted a conference call with Board executive directors and Board staff on  
36 September 11, 2015, to discuss the concept paper. During the rulemaking process, the  
37 Commission considered all information gathered in order to develop rules that provide clear and  
38 concise direction to all parties involved.

39  
40 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce  
41 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,  
42 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.  
43 Comments must be received or postmarked no later than 30 days from the date this proposal is  
44 published in the *Texas Register*.

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

4  
5 The proposed rules affect Texas Government Code, Chapter 552.

6  
7

1           **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

2  
3           **SUBCHAPTER A. GENERAL PROVISIONS**

4  
5           **§819.1. Purpose.**

6  
7           The purpose of this chapter is to implement the following statutory provisions: Texas  
8           Labor Code, Chapter 21 (relating to employment discrimination ~~Employment~~  
9           ~~Discrimination~~) and Chapter 301, Subchapter I (relating to the Civil Rights Division);  
10          Texas Property Code, Chapter 301, (relating to the Texas Fair Housing Act); and Texas  
11          Government Code, Chapter 437, §437.204 and Subchapter I (relating to unlawful  
12          termination of state military members ordered to training or duty) ~~Chapter 419,~~  
13          ~~Subchapter F (relating to Review of Fire Department Tests).~~

14  
15          **§819.2. Definitions.**

16  
17          In addition to the definitions contained in §800.2 of this title, the following words and  
18          terms, when used in this chapter, shall have the following meanings, unless the context  
19          clearly indicates otherwise.

20  
21                 (1) Agency--The unit of state government established under Texas Labor Code,  
22                 Chapter 301, that is presided over by the Commission.

23  
24                 (2) ~~(1)~~ Commission--The body of governance established under Texas Labor  
25                 Code, Chapter 301. ~~Commission on Human Rights--The body of governance~~  
26                 ~~of the Texas Workforce Commission Civil Rights Division composed of seven~~  
27                 ~~members appointed by the Governor, as established under Texas Labor Code~~  
28                 ~~§301.153.~~

29  
30                 (3) ~~(2)~~ Complainant--A person claiming to be aggrieved by a violation of Texas  
31                 Labor Code, Chapter 21, or Texas Property Code, Chapter 301, and who files a  
32                 complaint under one of these chapters.

33  
34                 (4) ~~(3)~~ CRD--Texas Workforce Commission Civil Rights Division.

35  
36                 (5) ~~(4)~~ CRD director--The director, or the director's authorized designee, of the  
37                 Texas Workforce Commission Civil Rights Division, as established under  
38                 Texas Labor Code §301.009(a) ~~§301.154.~~ The CRD director is the authorized  
39                 designee of the Agency's executive director for purposes of enforcing the  
40                 statutes referenced in §819.1 of this subchapter.

41  
42                 (6) ~~(5)~~ Fair Employment Practices Agency--A state or local government agency  
43                 designated by the U.S. Equal Employment Opportunity Commission (EEOC)  
44                 to investigate perfected employment discrimination complaints in the state or  
45                 local government agency's jurisdiction.

1           (7) ~~(6)~~ Fair Housing Assistance Program Agency--A state or local government  
2           agency designated by the U.S. Department of Housing and Urban  
3           Development (HUD) to investigate Fair Housing Act complaints in the state or  
4           local government agency's jurisdiction.  
5

6           (8) ~~(7)~~ Party--A person who, having a justiciable interest in a matter before CRD,  
7           is admitted to full participation in a proceeding concerning that matter.  
8

9           (9) ~~(8)~~ Person--One or more individuals or an association, corporation, joint stock  
10          company, labor organization, legal representative, mutual company,  
11          partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated  
12          organization, the state, or a political subdivision or agency of the state.  
13

14          (10) ~~(9)~~ Respondent--A person against whom a complaint has been filed in  
15          accordance with Texas Labor Code, Chapter 21, or Texas Property Code,  
16          Chapter 301.  
17

18       **§819.3. Roles and Responsibilities of the Texas Workforce Commission ~~and on Human~~**  
19       **~~Rights, CRD, and CRD Director.~~**  
20

21       (a) Responsibilities of the Agency ~~Commission on Human Rights~~:

22           (1) Establish policies for CRD;  
23

24           (2) Appoint CRD director by and through the Agency's executive director;  
25

26           (3) Supervise CRD director by and through the Agency's executive director in  
27           administering the activities of CRD;  
28

29           (4) Serve as the state Fair Employment Practices Agency (FEPA), ~~which~~ ~~that~~ is  
30           authorized, with respect to unlawful employment practices, to:  
31

32                   (A) seek relief;  
33

34                   (B) grant relief; and  
35

36                   (C) institute civil proceedings; and  
37

38           (5) Serve as the state Fair Housing Assistance Program (FHAP) ~~Agency~~, which is  
39           authorized, with respect to unlawful housing practices, to:  
40

41                   (A) seek relief;  
42

43                   (B) grant relief; and  
44

45                   (C) institute civil proceedings.  
46

1  
2 (b) Responsibilities of CRD:  
3

- 4 (1) Administer Texas Labor Code, Chapter 21; Texas Property Code, Chapter 301;  
5 and [Texas Government Code §437.204 and Subchapter I](#)~~Texas Government~~  
6 ~~Code, Chapter 419, Subchapter F, and Chapter 437~~; and  
7  
8 (2) Collect, analyze, and report statewide information regarding employment and  
9 housing discrimination complaints filed with CRD, EEOC, HUD, local  
10 commissions, and municipalities in Texas to be included in CRD's annual  
11 report to the Governor and the Texas [legislature](#)~~Legislature~~.

12  
13 ~~(c) Agency Personnel Policies Applicable to CRD Director:~~

- 14  
15 ~~(1) The CRD director is an appointee of the Commission on Human Rights and an~~  
16 ~~employee of the Agency, and therefore accountable to both.~~  
17  
18 ~~(2) The Agency executive director and the chair of the Commission on Human~~  
19 ~~Rights shall consult on all personnel matters impacting the employment status~~  
20 ~~of the CRD director.~~  
21  
22 ~~(3) The Commission on Human Rights has the authority to appoint, supervise, and~~  
23 ~~terminate the CRD director.~~  
24  
25 ~~(4) The Agency executive director, in consultation with the chair of the~~  
26 ~~Commission on Human Rights, has the authority to take any personnel action~~  
27 ~~pursuant to Agency personnel policy, excluding termination.~~

28  
29  
30 **SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS**

31  
32 **§819.11. Definitions.**

33  
34 The following words and terms, when used in Subchapter B, Equal Employment  
35 Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports,  
36 Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and  
37 Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and  
38 Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the  
39 following meanings, unless the context clearly indicates otherwise.

- 40  
41 (1) Bona fide occupational qualification--A qualification:  
42  
43 (A) that is reasonably related to the satisfactory performance of the duties of  
44 a job; and  
45

1 (B) for which there is a factual basis for believing that no members of the  
2 excluded group would be able to satisfactorily perform the duties of the  
3 job with safety and efficiency.  
4

5 (2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal  
6 Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the  
7 Age Discrimination in Employment Act of 1976, as amended; the  
8 Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act  
9 of 1990, as amended; and Texas Labor Code, Chapter 21, regarding  
10 Employment Discrimination.  
11

12 (3) Complaint--A written statement made under oath stating that an unlawful  
13 employment practice has been committed, setting forth the facts on which the  
14 complaint is based, and received within 180 days of the alleged unlawful  
15 employment practice.  
16

17 (4) Conciliation--The settlement of a dispute by mutual written agreement in order  
18 to avoid litigation where a determination has been made that there is  
19 reasonable cause to believe an unlawful employment practice has occurred.  
20

21 (5) Disability--A mental or physical impairment that substantially limits at least  
22 one major life activity of an individual, a record of such mental or physical  
23 impairment, or being regarded as having such an impairment as set forth in  
24 §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas  
25 Labor Code §21.002(6).  
26

27 (6) Employer--A person who is engaged in an industry affecting commerce and  
28 who has 15 or more employees for each working day in each of 20 or more  
29 calendar weeks in the current or preceding calendar year and any agent of that  
30 person. The term includes an individual elected to public office in Texas or a  
31 political subdivision of Texas, or a political subdivision and any state agency  
32 or instrumentality, including public institutions of higher education, regardless  
33 of the number of individuals employed. [The term excludes a franchisor from](#)  
34 [being considered an employer of a franchisee or a franchisee's employees. The](#)  
35 [term also exempts the Texas Military Forces from being an employer, as](#)  
36 [claims of discrimination against the Texas Military Forces by service members](#)  
37 [on state active duty shall be processed in accordance with military regulations](#)  
38 [and procedures as authorized by Texas Government Code §437.212.](#)  
39

40 (7) Local commission--Created by one or more political subdivisions acting  
41 jointly, pursuant to Texas Labor Code §21.152, and recognized as a Fair  
42 Employment Practices Agency by EEOC pursuant to U.S. Civil Rights Act,  
43 Title VII, §706, as amended by the Equal Employment Opportunity Act of  
44 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act of  
45 1990, as amended.  
46

- 1 (8) Mediation--~~An alternative dispute resolution~~A process to resolve ~~settle~~ a  
2 dispute by mutual written agreement among the complainant, respondent, and  
3 CRD ~~prior to reasonable cause determination or dismissal of a perfected~~  
4 ~~complaint~~.
- 5
- 6 (9) Perfected complaint--An employment discrimination complaint that CRD has  
7 determined meets all of the requirements of Texas Labor Code, Chapter 21,  
8 and for which CRD will initiate an investigation.  
9

10 **§819.12. Unlawful Employment Practices.**

- 11
- 12 (a) Discrimination by Employer. An employer commits an unlawful employment  
13 practice if based on race, color, disability, religion, sex, national origin, or age, the  
14 employer:
- 15
- 16 (1) fails or refuses to hire an individual, discharges an individual, or discriminates  
17 in any other manner against an individual in connection with compensation or  
18 the terms, conditions, or privileges of employment; or  
19
- 20 (2) limits, segregates, or classifies an employee or applicant for employment in a  
21 manner that deprives or tends to deprive an individual of an employment  
22 opportunity or adversely affects in any other manner the status of an employee.  
23
- 24 (b) Discrimination by Employment Agency. An employment agency commits an  
25 unlawful employment practice if based on race, color, disability, religion, sex,  
26 national origin, or age, it:
- 27
- 28 (1) fails or refuses to refer for employment or discriminates in any other manner  
29 against an individual; or  
30
- 31 (2) classifies or refers an individual for employment on that basis.  
32
- 33 (c) Discrimination by Labor Organization. A labor organization commits an unlawful  
34 employment practice if based on race, color, disability, religion, sex, national origin,  
35 or age, it:
- 36
- 37 (1) excludes or expels from membership or discriminates in any other manner  
38 against an individual; or  
39
- 40 (2) limits, segregates, or classifies a member or an applicant for membership, or  
41 classifies or fails or refuses to refer for employment an individual in a manner  
42 that:
- 43
- 44 (A) deprives or tends to deprive an individual of any employment  
45 opportunity;  
46

1 (B) limits an employment opportunity or adversely affects in any other  
2 manner the status of an employee or of an applicant for employment; or  
3

4 (C) causes or attempts to cause an employer to violate this subchapter.  
5

6 (d) Admission or Participation in Training Program. An employer, labor organization, or  
7 joint labor management committee controlling an apprenticeship, on-the-job training,  
8 or other training or retraining program commits an unlawful employment practice if  
9 based on race, color, disability, religion, sex, national origin, or age, it discriminates  
10 against an individual in admission to or participation in the program, unless a  
11 training or retraining opportunity or program is provided under an affirmative action  
12 plan approved by federal or state law, rule, or court order. The prohibition against  
13 discrimination based on age applies only to individuals who are at least 40 years of  
14 age but younger than 56 years of age.  
15

16 (e) Retaliation. An employer, employment agency, or labor organization, commits an  
17 unlawful employment practice based on race, color, disability, religion, sex, national  
18 origin, or age if the employer, employment agency, or labor organization retaliates or  
19 discriminates against a person who:  
20

21 (1) opposes a discriminatory practice;

22 (2) makes or files a charge;

23 (3) files a complaint; or  
24

25 (4) testifies, assists, or participates in any manner in an investigation, proceeding,  
26 or hearing.  
27

28 (f) Aiding or Abetting Discrimination. An employer, employment agency, or labor  
29 organization commits an unlawful employment practice if it aids, abets, incites, or  
30 coerces a person to engage in an unlawful discriminatory practice based on race,  
31 color, disability, religion, sex, national origin, or age.  
32

33 (g) Interference with the Agency or ~~Commission on Human Rights and~~ CRD. An  
34 employer, employment agency, or labor organization commits an unlawful  
35 employment practice if it willfully interferes with the performance of a duty or the  
36 exercise of a power by CRD or by the Agency in relation to ~~Commission on Human~~  
37 Rights or ~~CRD~~.  
38  
39

40 (h) Prevention of Compliance. An employer, employment agency, or labor organization,  
41 commits an unlawful employment practice if it willfully obstructs or prevents a  
42 person from complying with Texas Labor Code, Chapter 21, or a rule adopted or  
43 order issued under Texas Labor Code, Chapter 21.  
44

45 (i) Discriminatory Notice or Advertisement.  
46



1  
2 ~~(1)~~—An employer, employment agency, labor organization, or joint labor-management  
3 committee controlling an apprenticeship, on-the-job training, or other training or  
4 retraining program commits an unlawful employment practice if it prints or publishes  
5 or causes to be printed or published a notice or advertisement relating to employment  
6 that:

7  
8 (A1) indicates a preference, limitation, specification, or discrimination based  
9 on race, color, disability, religion, sex, national origin, or age; and

10  
11 (B2) concerns an employee's status, employment, or admission to or  
12 membership or participation in a labor organization or training or  
13 retraining program.

14  
15 ~~(2)(i)~~ A bona fide occupational qualification is an affirmative defense to  
16 discrimination.

17  
18 **SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING,**  
19 **AND REVIEWS**

20  
21 ~~§819.22. Review of Firefighter Tests.~~

22  
23 ~~(a) CRD shall:~~

24  
25 ~~(1) consult resources of the Texas Commission on Fire Protection and other~~  
26 ~~appropriate entities to determine the departments to be reviewed; and~~

27  
28 ~~(2) notify each fire department of its review at the beginning of the fiscal year in~~  
29 ~~which CRD conducts the review.~~

30  
31 ~~(b) CRD shall review the initial tests administered by a fire department, as provided in~~  
32 ~~Texas Government Code, Chapter 419, Subchapter F, at least every six years. The~~  
33 ~~initial tests, defined as written tests, physical tests, and assessment center tests for~~  
34 ~~firefighter positions, are used to measure the ability of a person to perform the~~  
35 ~~essential functions of the position.~~

36  
37 ~~(c) CRD shall use the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R.~~  
38 ~~1607, to conduct the review of the administration of initial tests by fire departments.~~

39  
40 ~~(d) CRD shall develop a list of recommended tests for firefighter positions that are~~  
41 ~~nationally recognized tests by independent authorities. The tests will be available on~~  
42 ~~the Agency's Web site.~~

43  
44 ~~(e) Fire departments that use tests from CRD's list of recommended tests are presumed~~  
45 ~~to be in compliance with the law. However, if CRD perceives the need to review a~~

1 ~~fire department that is using such recommended tests, nothing shall prevent such~~  
2 ~~review.~~

3  
4 ~~(f) Fire departments that use a test not included on the recommended list shall submit,~~  
5 ~~upon request by CRD, documentation regarding the reliability and validity of the~~  
6 ~~chosen test.~~

7  
8 ~~(g) Each fire department shall submit documentation concerning the administration of~~  
9 ~~its initial tests, as required in this section. CRD shall perform a desk audit by~~  
10 ~~reviewing these documents using risk assessment criteria. Fire departments selected~~  
11 ~~for a desk audit shall receive notice by mail, or electronic communication upon~~  
12 ~~agreement of the department. Documents to be submitted for a desk audit include,~~  
13 ~~but are not limited to:~~

14  
15 ~~(1) a copy of the initial test used. If it is not from CRD's recommended list of tests,~~  
16 ~~then documentation regarding the reliability and validity of the test used;~~

17  
18 ~~(2) a description of how such test is administered and a copy of applicable policies~~  
19 ~~and procedures governing the administration of such test; and~~

20  
21 ~~(3) information and documentation of prior complaints lodged against the fire~~  
22 ~~department concerning discrimination in selection of personnel for a firefighter~~  
23 ~~position.~~

24  
25 ~~(h) CRD shall evaluate the requested information set forth in subsection (g) of this~~  
26 ~~section as part of its risk assessment analysis. Based on the analysis, fire departments~~  
27 ~~may be selected for expanded review, including on-site investigation. CRD shall~~  
28 ~~notify a fire department selected for expanded review by mail, or electronic~~  
29 ~~communication upon agreement of the department.~~

30  
31 **§819.23. Review of State Agency Policies and Procedures.**

32  
33 (a) Except as provided by subsection (b) of this section, CRD shall review the personnel  
34 policies and procedures system (PPPS) of each state agency once every six years on  
35 a staggered schedule to determine compliance with Texas Labor Code, Chapter 21.

36  
37 (b) CRD may conduct a review of the PPPS of a state agency more frequently than  
38 required by subsection (a) when such review is indicated by a risk assessment based  
39 on the following criteria:

40  
41 (1) Data on complaints against a state agency;

42  
43 (2) Previous review findings;

44  
45 (3) Changes in leadership of a state agency;

1           (4) The date of the last on-site review;

2  
3           (5) Compliance by the state agency with submission of a self-assessment to CRD;  
4           and

5  
6           (6) Any other related information collected and maintained by the Agency.

7  
8           (c)(b) CRD shall notify a state agency of its review of the agency's personnel policies  
9           and procedures by mail, or electronic communication upon agreement of the agency,  
10           at the beginning of the fiscal year in which CRD is to conduct the review. The  
11           review of each state agency shall be completed and recommendations issued on or  
12           before the one-year anniversary date on which CRD issued its notification letter to  
13           the agency head.

14  
15       **§819.24. Standard Employment Discrimination Training.**

16  
17           (a) Each state agency shall provide its employees with standard employment  
18           discrimination training no later than the 30th day after the date the employee is hired  
19           by the agency, with supplemental training every two years thereafter. The Agency  
20           shall develop or approve the materials for use by state agencies in providing standard  
21           employment discrimination training. ~~Each state agency shall provide the standard~~  
22           ~~training using a training program from CRD's preapproved list of training programs~~  
23           ~~that have been reviewed and certified by CRD as compliant with its training~~  
24           ~~standards, including the standards set forth in this subchapter.~~

25  
26           (b) The minimum standards for the content of standard employment discrimination  
27           training shall include, but not be limited to, requiring participants to:

- 28  
29           (1) identify an unlawful employment practice according to the Civil Rights Act;  
30  
31           (2) apply knowledge of the applicable laws by correctly identifying whether  
32           individual case studies would be considered violations;  
33  
34           (3) identify the protected classes under federal and state law;  
35  
36           (4) list a complainant's rights and remedies;  
37  
38           (5) identify the agency personnel to whom a complaint shall be addressed; and  
39  
40           (6) describe the general stages involved in processing a complaint.

41  
42       **§819.25. Compliance Employment Discrimination Training.**

43  
44           (a) For purposes of this section, the term "complaint with merit" shall mean a complaint  
45           that is resolved, either by a cause finding or through withdrawal of the complaint

1 with a remedy favorable to the complainant, such as a negotiated settlement,  
2 withdrawal with benefits, or conciliation.

3  
4 (b) State agencies receiving three or more complaints with merit within a fiscal year  
5 shall provide compliance employment discrimination training. The training may be  
6 provided by the Agency or by another entity or person approved by the Agency. ~~The~~  
7 ~~compliance training may be provided using a training program from CRD's~~  
8 ~~preapproved list of training programs. If a state agency chooses to provide~~  
9 ~~compliance training using a person or state agency not included on CRD's list of~~  
10 ~~preapproved training programs, the training provider and the training program to be~~  
11 ~~used by the person or state agency shall be reviewed and approved for compliance~~  
12 ~~with CRD standards.~~

13  
14 (c) CRD's minimum standards for the content of compliance employment discrimination  
15 training shall include, but not be limited to, requiring participants to:

- 16  
17 (1) distinguish between disparate treatment and disparate impact;  
18  
19 (2) identify the elements of a complaint involving disparate treatment and  
20 disparate impact;  
21  
22 (3) explain the defenses available to an employer resulting from both statute and  
23 case law involving disparate treatment and disparate impact;  
24  
25 (4) explain the burden of proof requirements for disparate treatment and disparate  
26 impact;  
27  
28 (5) identify criteria for accurately measuring compliance with applicable laws;  
29  
30 (6) define the different types of employment discrimination;  
31  
32 (7) identify the appropriate action to be taken in a situation involving a potential  
33 case of employment discrimination; and  
34  
35 (8) describe strategies for prevention of employment discrimination.

36  
37 **SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND**  
38 **APPEALS PROCESS**

39  
40 **§819.46. Dismissal of Complaint.**

41 (a) The CRD director may dismiss a complaint if:

- 42  
43 (1) it is not filed timely;  
44  
45 (2) it fails to state a claim under Texas Labor Code, Chapter 21;  
46

- 1  
2 (3) a complainant fails to perfect a complaint within 10 days of the receipt of the  
3 complaint; or  
4  
5 (4) a complainant fails to cooperate, fails or refuses to appear or to be available for  
6 interviews or conferences, or fails or refuses to provide requested information.  
7 Prior to dismissing the complaint, the complainant shall be notified and given a  
8 reasonable time to respond.  
9  
10 (b) CRD shall notify the complainant ~~and the respondent, and any agencies,~~ as required  
11 by law, by certified mail of its dismissal of a complaint. The respondent and any  
12 federal enforcement agency shall be notified of the dismissal of a complaint.  
13  
14 (c) CRD shall notify the complainant, by mail, of the complainant's right to file a civil  
15 action against the respondent named in the perfected complaint pursuant to Texas  
16 Labor Code §21.208 and §21.252, and §819.50 of this subchapter.  
17  
18

19 **§819.47. Cause Determination.**

- 20  
21 (a) The CRD director shall review the investigation report and record of evidence to  
22 determine if there is reasonable cause to believe the respondent has engaged in an  
23 unlawful employment practice.  
24  
25 (b) If after the review, the CRD director determines that reasonable cause exists, the  
26 CRD director shall confer with ~~a panel of three commissioners of the Commission~~  
27 ~~members on Human Rights, as identified by the chair of the Commission on Human~~  
28 ~~Rights.~~ If at least two of the three Commission members ~~commissioners~~ concur with  
29 the CRD director's determination that the respondent has engaged in an unlawful  
30 employment practice, the CRD director shall issue a letter of cause determination.  
31 The cause determination letter shall be provided by mail, or electronic  
32 communication upon agreement of the person or entity, to the complainant,  
33 respondent, and any agency as required by law and shall contain the CRD director's  
34 finding that the evidence supports the perfected complaint and include an invitation  
35 to participate in conciliation.  
36

37 **§819.50. Right to File a Civil Action.**

- 38  
39 (a) CRD shall inform the complainant by certified mail of:  
40  
41 (1) the dismissal of a complaint filed with CRD; or  
42  
43 (2) the failure to resolve a complaint in writing that was filed with CRD 180 days  
44 previously. CRD shall inform the complainant of the complainant's right to  
45 request from CRD a notice of right to file a civil action against the respondent.

1                   Upon receipt of a written request, CRD ~~may~~ shall issue a notice of right to file a  
2                   civil action.

- 3
- 4           (b) Before the expiration of 180 days after filing the complaint and upon a written  
5           request from a complainant, CRD shall issue a notice of right to file a civil action if:
- 6
- 7                   (1) written confirmation by a physician licensed to practice medicine in Texas  
8                   states that the complainant has a life threatening illness; or
- 9
- 10                   (2) certification by the CRD director states that the administrative processing of  
11                   the perfected complaint cannot be completed before the expiration of the 180th  
12                   day after the complaint was filed. The certification shall take into account the  
13                   exigent circumstances of the complainant.
- 14
- 15           (c) CRD shall issue notice under subsection (b) of this section by certified mail no later  
16           than the fifth business day after receipt of the complainant's request.
- 17
- 18           (d) The complainant's written request shall include the respondent's name, CRD  
19           complaint number, and EEOC complaint number if the complaint has been deferred  
20           by EEOC.

21

22   **§819.52. Judicial Enforcement.**

23

- 24           (a) On a majority vote of the Commission, CRD may bring a civil action against a  
25           respondent named in a perfected complaint pursuant to the requirements of Texas  
26           Labor Code §21.251.
- 27
- 28           (b) Upon a determination by the Commission ~~CRD~~ to bring a civil action, CRD shall  
29           notify the complainant by certified mail.
- 30
- 31           (c) On a majority vote of the Commission ~~on Human Rights~~, CRD may pursue  
32           intervention in a civil action pursuant to the requirements of Texas Labor Code  
33           §21.255.
- 34

35   **SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS**

36

37   **§819.72. Requirements for a Local Commission.**

38

- 39           ~~(a)~~ To be a local commission eligible to receive deferrals from CRD, pursuant to Texas  
40           Labor Code §§21.151 - 21.156, and this chapter, the local commission must be  
41           currently certified by the EEOC as a Fair Employment Practices Agency (FEPA).  
42           ~~following materials and information shall be submitted to CRD:~~
- 43
- 44
- 45           ~~(1) A letter from EEOC verifying the local commission's designation as a Fair~~  
46           ~~Employment Practices Agency;~~
- 47

- 1           ~~(2) A copy of the local ordinance that prohibits practices designated as unlawful under~~  
2           ~~Texas Labor Code, Chapter 21;~~
- 3
- 4           ~~(3) A copy of rules, policies, and procedures governing the operations of the local~~  
5           ~~commission;~~
- 6
- 7           ~~(4) A copy of an organizational chart of the internal structure of the local commission~~  
8           ~~and its relationship to the governing authorities of the political subdivision or~~  
9           ~~subdivisions of which it is a part; and~~
- 10
- 11          ~~(5) A copy of the local commission's budget and resources.~~
- 12
- 13          ~~(b) Upon examination of the materials and information provided by a local commission,~~  
14          ~~the CRD director shall provide written notification to the local commission of its~~  
15          ~~eligibility to receive deferrals.~~
- 16
- 17          ~~(c) If CRD determines that the local commission is not eligible to receive deferrals, it~~  
18          ~~shall identify in writing the reasons and provide the local commission the necessary~~  
19          ~~assistance to comply with the requirements established by Texas Labor Code~~  
20          ~~§§21.151–21.156, and this chapter.~~

21

22       **SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS**

23

24           **§819.112. Definitions.**

25

26           The following words and terms, when used in Subchapter G, Texas Fair Housing Act

27           Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair

28           Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to

29           Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial

30           Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless

31           the context clearly indicates otherwise.

- 32
- 33           (1) Accessible or readily accessible to and usable by--~~Means a~~A public or  
34           common use area ~~that is accessible~~can be approached, entered, and used by  
35           individuals with disabilities, as set forth in Texas Property Code  
36           §301.025(c)(3). Compliance with the appropriate requirements of the  
37           American National Standards Institute (ANSI) for buildings and facilities  
38           providing accessibility and usability for persons having physical disabilities,  
39           commonly cited as ANSI A117.1, satisfies this requirement.
- 40
- 41           (2) Accessible building entrance--A building entrance that is accessible by  
42           individuals with disabilities, as set forth in Texas Property Code §301.025(c).  
43           Compliance with the appropriate requirements of ANSI for buildings and  
44           facilities providing accessibility and usability for persons having physical  
45           disabilities, commonly cited as ANSI A117.1, satisfies this requirement.
- 46



- 1 (3) Accessible route--A route that is accessible by individuals with disabilities, as  
2 set forth in Texas Property Code §301.025(c). Compliance with the appropriate  
3 requirements of ANSI for buildings and facilities providing accessibility and  
4 usability for persons having physical disabilities, commonly cited as ANSI  
5 A117.1, satisfies this requirement.  
6
- 7 (4) Building--A structure, facility, or the portion thereof that contains or serves  
8 one or more dwelling units.  
9
- 10 (5) Common use areas--Rooms, spaces, or elements inside or outside of a building  
11 that are made available for the use of residents or the guests of a building.  
12 These areas include, but are not limited to, hallways, lounges, lobbies, laundry  
13 rooms, refuse rooms, mailrooms, recreational areas, and passageways among  
14 and between buildings.  
15
- 16 (6) Complaint--A written statement made under oath stating that an unlawful  
17 housing practice has been committed, setting forth the facts on which the  
18 complaint is based, and received within one year of the date the alleged  
19 unlawful housing practice occurred or terminated, whichever is later, and for  
20 which CRD shall initiate an investigation.  
21
- 22 (7) Controlled substance--Any drug or other substance or immediate precursor as  
23 defined in the Controlled Substances Act, 21 U.S.C. § 802 [or the Texas](#)  
24 [Controlled Substances Act, Texas Health and Safety Code Chapter 481.](#)  
25
- 26 (8) Disability --A mental or physical impairment that substantially limits at least  
27 one major life activity, a record of such an impairment, or being regarded as  
28 having such an impairment. The term does not include current illegal use of or  
29 addiction to any drug or illegal or ~~federally~~-controlled substance; and reference  
30 to "an individual with a disability" or perceived as "disabled" does not apply to  
31 an individual based on that individual's sexual orientation or because that  
32 individual is a transvestite.  
33
- 34 (A) ~~Physical~~[Mental](#) or ~~physical~~ mental impairment includes:  
35
- 36 (i) any physiological disorder or condition, cosmetic disfigurement, or  
37 anatomical loss affecting one or more of the following body  
38 systems: neurological, musculoskeletal, special sense organs,  
39 respiratory, including speech organs, cardiovascular, reproductive,  
40 digestive, genitourinary, hemic and lymphatic, skin, and endocrine;  
41 or  
42
- 43 (ii) any mental or psychological disorder, such as [intellectual](#)  
44 [disability](#)~~mental retardation~~, organic brain syndrome, emotional or  
45 mental illness, and specific learning disabilities. The term "physical  
46 or mental impairment" includes, but is not limited to, such diseases



1 and conditions as orthopedic, visual, speech and hearing  
2 impairments, cerebral palsy, autism, epilepsy, muscular dystrophy,  
3 multiple sclerosis, cancer, heart disease, diabetes, human  
4 immunodeficiency virus infection, intellectual disability, emotional  
5 illness, drug addiction (other than addiction caused by current,  
6 illegal use of a controlled substance) and alcoholism.  
7

8 (B) Major life activity means a function such as caring for one's self,  
9 performing manual tasks, walking, seeing, hearing, speaking, breathing,  
10 learning, and working.  
11

12 (C) A record of having such an impairment means a history of, or  
13 misclassification as having, a mental or physical impairment that  
14 substantially limits one or more major life activity.  
15

16 (D) Being regarded as having an impairment means having:  
17

18 (i) a physical or mental impairment that does not substantially limit one  
19 or more major life activity but that is treated by another person as  
20 constituting such a limitation;  
21

22 (ii) a physical or mental impairment that substantially limits one or  
23 more major life activity only as a result of the attitudes of others  
24 toward such impairment; or  
25

26 (iii) none of the impairments in subparagraph (A) of this paragraph but  
27 is treated by another person as having such an impairment.  
28

29 (9) Discriminatory housing practice--An action prohibited by Texas Fair Housing  
30 Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act,  
31 Subchapter I.  
32

33 (10) Entrance--Any access point to a building or portion of a building used by  
34 residents for the purpose of entering the building.  
35

36 (11) Exterior--All areas of the premises outside of an individual dwelling unit.  
37

38 (12) Ground floor--Within a building, any floor with an entrance on an accessible  
39 route. A building may have more than one ground floor.  
40

41 (13) Interior--The spaces, parts, components, or elements of an individual dwelling  
42 unit.  
43

44 (14) Modification--Any change to the public or common use areas of a building or  
45 any change to a dwelling unit.  
46

- 1 (15) Premises--The interior or exterior spaces, parts, components, or elements of a  
2 building, including individual dwelling units and the public and common use  
3 areas of a building.  
4  
5 (16) Public use areas--Interior or exterior rooms or spaces of a building that are  
6 made available to the general public. Public use may be provided at a building  
7 that is privately or publicly owned.  
8  
9 (17) Site--A parcel of land bounded by a property line or a designated portion of a  
10 public right of way.  
11  
12 (18) Texas Fair Housing Act--Texas Property Code, Chapter 301.  
13  
14 (19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as  
15 amended by the Fair Housing Amendments Act of 1988.

16  
17 **SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES**  
18

19 **§819.122. Three Exemptions Based on Familial Status.**  
20

- 21 (a) Discrimination prohibitions under the Texas Fair Housing Act based on familial  
22 status do not apply to housing provided under any federal or state program that is  
23 designed and operated specifically to assist elderly individuals, as defined in the  
24 federal or state program.  
25  
26 (b) Discrimination prohibitions under the~~The~~ Texas Fair Housing Act based on familial  
27 status do ~~does~~ not apply to housing intended for and solely occupied by individuals  
28 62 years of age or older. This exemption shall apply regardless of the fact that:  
29  
30 (1) there were individuals residing in such housing on September 13, 1988, who  
31 were under 62 years of age, provided that all new occupants are 62 years of  
32 age or older;  
33  
34 (2) there are unoccupied units, provided that such units are reserved for occupancy  
35 for individuals 62 years of age or older; or  
36  
37 (3) there are units occupied by employees of the housing (and family members  
38 residing in the same unit) who are under 62 years of age provided they perform  
39 substantial duties directly related to the management or maintenance of the  
40 housing.  
41  
42 (c) Discrimination prohibitions under the~~The~~ Texas Fair Housing Act based on familial  
43 status do ~~does~~ not apply to housing intended and operated for occupancy by  
44 individuals 55 years of age or older if:  
45

- 1 (1) at least 80 ~~percent~~% of the units in the housing facility are occupied by at least  
2 one person 55 years of age or older. However:  
3  
4 (A) a newly constructed housing facility for first occupancy after March 12,  
5 1989, need not comply with this 80% occupancy requirement until 25%  
6 of the units in the facility are occupied; and  
7  
8 (B) a housing facility or community may not evict, refuse to renew leases, or  
9 otherwise penalize families with children in order to achieve occupancy  
10 of at least 80% of the occupied units by at least one person 55 years of  
11 age or older;  
12  
13 (2) the owner or manager of a housing facility publishes and adheres to policies  
14 and procedures that demonstrate an intent by the owner or manager to provide  
15 housing for individuals 55 years of age or older. The following factors, among  
16 others, are relevant in determining whether the owner or manager of a housing  
17 facility has complied with the requirements of this paragraph:  
18  
19 (A) The manner in which the housing facility is described to prospective  
20 residents;  
21  
22 (B) The nature of any advertising designed to attract prospective residents;  
23  
24 (C) Age verification procedures;  
25  
26 (D) Lease provisions;  
27  
28 (E) Written rules and regulations;  
29  
30 (F) Actual practices of the housing facility or community; and  
31  
32 (G) Public posting in common areas of statements describing the facility or  
33 community as housing for individuals 55 years of age or older; and  
34  
35 (3) the housing facility satisfies the requirements of this section regardless of the  
36 fact that:  
37  
38 (A) as of September 13, 1988, under 80% of the occupied units in the  
39 housing facility were occupied by at least one person 55 years of age or  
40 older, provided that at least 80% of the units that were occupied by new  
41 occupants after September 13, 1988, were occupied by at least one  
42 person 55 years of age or older;  
43  
44 (B) there are unoccupied units, provided that at least 80% of such units are  
45 reserved for occupancy by at least one person 55 years of age or older;  
46 and

- 1  
2 (C) there are units occupied by employees of the housing facility (and family  
3 members residing in the same unit) who are under 55 years of age  
4 provided they perform substantial duties directly related to the  
5 management or maintenance of the housing.  
6

7 **§819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation.**  
8

9 (a) It is unlawful to interfere, coerce, intimidate, or retaliate against any person in the  
10 exercise or enjoyment of, or on account of that person having exercised or enjoyed,  
11 or on account of that person having aided or encouraged any other person in the  
12 exercise or enjoyment of, any right granted or protected by the Texas Fair Housing  
13 Act.  
14

15 (b) Prohibited conduct made unlawful under this section includes, but is not limited to:  
16

17 (1) coercing a person, either orally, in writing, or by other means, to deny or limit  
18 the benefits provided that person in connection with the sale or rental of a  
19 dwelling or in connection with a residential real estate--related transaction  
20 based on race, color, disability, religion, sex, national origin, or familial status;  
21

22 (2) threatening, intimidating, or interfering with individuals in their enjoyment of a  
23 dwelling based on race, color, disability, religion, sex, national origin, or  
24 familial status of such individuals, or of visitors or associates of such  
25 individuals;  
26

27 (3) threatening an employee or agent with dismissal or an adverse employment  
28 action, or taking such adverse employment action, for any effort to assist a  
29 person seeking access to the sale or rental of a dwelling or seeking access to  
30 any residential real estate--related transaction, based on the race, color,  
31 disability, religion, sex, national origin, or familial status of that person or of  
32 any person associated with that individual;  
33

34 (4) intimidating or threatening any person because that person is engaging in  
35 activities designed to make other individuals aware of, or encouraging such  
36 other individuals to exercise rights granted or protected by this chapter; and  
37

38 (5) retaliating against any person because that person has made a complaint,  
39 testified, assisted, or participated in any manner in a proceeding under the  
40 Texas Fair Housing Act.  
41  
42

1 **SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS**

2  
3 **§819.151. Filing a Complaint.**

- 4
- 5 (a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD to obtain  
6 information on filing a complaint with CRD.  
7
- 8 (b) At the complainant's request, CRD:  
9
- 10 (1) shall confer with the complainant about the facts and circumstances that may  
11 constitute the alleged unlawful housing practice; and  
12
- 13 (2) shall assist the complainant with preparation of the complaint if the facts and  
14 circumstances constitute an alleged unlawful housing practice; or  
15
- 16 (3) may advise the complainant if the facts and circumstances presented to CRD  
17 do not appear to constitute an unlawful housing practice.  
18
- 19 (c) The complaint shall be filed in writing and under oath with CRD by electronic  
20 communication, mail, fax, or in person with:  
21
- 22 (1) the CRD office on a CRD-provided form;  
23
- 24 (2) a HUD office; or  
25
- 26 (3) a local municipality certified by HUD.  
27
- 28 (d) The CRD director may require complaints to be made in writing, under oath, on a  
29 prescribed form. The complaint shall include the following information:  
30
- 31 (1) The name and address of the complainant;  
32
- 33 (2) The name and address of the respondent;  
34
- 35 (3) A description and address of the dwelling that is involved, if appropriate;  
36
- 37 (4) The basis for the alleged discriminatory housing practices, which may include  
38 any of the following: race, color, disability, religion, sex, national origin, or  
39 familial status;  
40
- 41 (5) A concise statement of the facts and circumstances that constitute alleged  
42 discriminatory housing practices under the Texas Fair Housing Act, including  
43 identification of personal harm, reason given to complainant by respondent for  
44 the action taken; and  
45
- 46 (6) A declaration of unlawful discrimination under federal or state law.

- 1
- 2 (e) A complaint shall be filed on or before the first anniversary of the date the alleged
- 3 discriminatory housing practice occurs or terminates, whichever is later.
- 4
- 5 (f) The date of the filing of the complaint is the date when it is received by CRD or
- 6 dual-filed with HUD, except when the CRD director determines that a complaint is
- 7 timely filed for the purposes of the one-year period for filing of complaints upon
- 8 submission of written information (including information provided by telephone by
- 9 the complainant and documented by CRD) that is substantially equivalent to the
- 10 information identified in subsection (d) of this section. When a complaint alleges
- 11 discriminatory housing practices that are continuing, as manifested in a number of
- 12 incidents of such conduct, the complaint shall be timely when filed within one year
- 13 of the last alleged occurrence.
- 14
- 15 (g) A complaint may be amended to cure technical defects or omissions, or to clarify
- 16 and amplify allegations made therein. Such amendment or amendments alleging
- 17 additional acts that constitute unlawful housing practices related to or growing out of
- 18 the subject matter of the original complaint shall relate back to the date the complaint
- 19 was first filed. CRD shall provide a copy of the complaint to the respondent. An
- 20 amended complaint shall be subject to the procedures set forth in applicable law.
- 21
- 22 (h) The CRD director may file a complaint when the CRD director receives information
- 23 from a credible source that one or more individuals may have violated the rights of
- 24 one or more individuals protected by the Texas Fair Housing Act. A complaint filed
- 25 by the CRD director shall be considered for approval by the Commission ~~at a~~  
~~Human Rights at its first regularly scheduled~~ meeting following the filing of the
- 26 complaint. Upon a majority vote of the Commission ~~on Human Rights~~, the
- 27 complaint is approved and any investigation of the complaint shall continue. If a
- 28 majority of the Commission ~~on Human Rights~~ does not approve the complaint, such
- 29 complaint shall be withdrawn by CRD.
- 30
- 31
- 32 (i) The complainant and respondent shall be notified periodically by CRD of the status
- 33 of their complaint, unless the notice would jeopardize an undercover investigation by
- 34 another state, federal, or local government.
- 35
- 36 (j) Upon the acceptance of a complaint, the CRD director shall notify by mail, or
- 37 electronic communication upon agreement of the complainant, each complainant on
- 38 whose behalf the complaint was filed. The notice shall:
- 39
- 40 (1) acknowledge the filing of the complaint and state the date that the complaint
- 41 was accepted for filing;
- 42
- 43 (2) include a copy of the complaint;
- 44

- 1 (3) advise the complainant of the time limits applicable to complaint processing  
2 and of the procedural rights and obligations of the complainant under the  
3 Texas Fair Housing Act and this chapter;  
4
- 5 (4) advise the complainant of his or her right to commence a civil action under the  
6 Texas Fair Housing Act, Subchapter H, and federal law, not later than two  
7 years after the occurrence or termination of the alleged discriminatory housing  
8 practice. The notice shall state that the computation of this two-year period  
9 excludes any time during which an administrative hearing is pending under this  
10 chapter and Texas Fair Housing Act, Subchapter E, with respect to a complaint  
11 or charge based on the alleged discriminatory housing practice; and  
12
- 13 (5) advise the complainant that retaliation against any person because he or she  
14 made a complaint or testified, assisted, or participated in an investigation,  
15 conciliation, or an administrative proceeding under this chapter is a  
16 discriminatory housing practice that is prohibited under the Texas Fair  
17 Housing Act and this chapter.  
18

19 **§819.153. Investigation of a Complaint.**  
20

- 21 (a) Upon the acceptance of a complaint under this chapter, CRD shall initiate an  
22 investigation. The CRD director may initiate an investigation to determine whether a  
23 complaint should be filed under this chapter and the Texas Fair Housing Act,  
24 Subchapter E. Such investigations shall be conducted in accordance with the  
25 procedures set forth in this chapter. [CRD also may invite the parties to participate in  
26 a voluntary mediation program in an effort to conciliate the dispute.](#)  
27
- 28 (b) The CRD director shall determine the scope and nature of the investigation within  
29 the context of the allegations set forth in the complaint.  
30
- 31 (c) At all reasonable times in the complaint investigation, the CRD director shall have  
32 access to:  
33
- 34 (1) necessary witnesses for examination under oath or affirmation; and  
35
- 36 (2) records, documents, and other information relevant to the investigation of  
37 alleged violations of the Texas Fair Housing Act, for inspection and copying.  
38
- 39 (d) Within 20 days of the acceptance of a complaint or amended complaint under this  
40 chapter, the CRD director shall serve a notice on each respondent by regular mail, or  
41 electronic communication upon agreement of the respondent. A person who is not  
42 named as a respondent in a complaint, but who is identified in the course of the  
43 investigation under the Texas Fair Housing Act, Subchapter E, and this chapter, as a  
44 person who is alleged to be engaged or to have engaged in the discriminatory  
45 housing practice upon which the complaint is based, may be joined as an additional

1 or substitute respondent by service of a notice on the person under this section ~~within~~  
2 ~~10 days of identification.~~

3  
4 (e) The notice to a respondent shall include, but not be limited to, the following:

5  
6 (1) Identification of the alleged discriminatory housing practice upon which the  
7 complaint is based, and a copy of the complaint;

8  
9 (2) Date that the complaint was accepted for filing;

10  
11 (3) Time limits applicable to complaint processing under this chapter and the  
12 procedural rights and obligations of the respondent under the Texas Fair  
13 Housing Act, and this chapter, including the opportunity to submit an answer  
14 to the complaint within 10 days of the receipt of the notice;

15  
16 (4) Complainant's right to commence a civil action under the Texas Fair Housing  
17 Act, Subchapter H, and federal law, not later than two years after the  
18 occurrence or termination of the alleged discriminatory housing practice; an  
19 explanation that the computation of the two-year period excludes any time  
20 during which an administrative hearing is pending under this chapter or the  
21 Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge  
22 based on the alleged discriminatory housing practice;

23  
24 (5) If the person is not named in the complaint, but is being joined as an additional  
25 or substitute respondent, an explanation of the basis for the CRD director's  
26 belief that the joined person is properly joined as a respondent;

27  
28 (6) Instruction that retaliation against any person because he or she made a  
29 complaint or testified, assisted, or participated in an investigation, conciliation,  
30 or an administrative proceeding under this chapter is a discriminatory housing  
31 practice that is prohibited under the Texas Fair Housing Act;

32  
33 (7) Invitation to enter into a conciliation agreement for the purpose of resolving  
34 the complaint; and

35  
36 (8) Initial request for information and documentation concerning the facts and  
37 circumstances surrounding the alleged discriminatory housing practice set  
38 forth in the complaint.

39  
40 (f) The respondent may file an answer not later than 10 days after receipt of the notice  
41 described in this section. The respondent may assert any defense that might be  
42 available to a defendant in a court of law. The written answer shall either be signed  
43 under oath or subscribed by the person making the declaration as true under penalty  
44 of perjury and in substantially the form prescribed by Texas Civil Practice and  
45 Remedies Code, Chapter 132, or its successor statute.  
46



- 1 (g) An answer may be reasonably and fairly amended at any time.  
2
- 3 (h) CRD may conduct discovery in aid of the investigation by the same methods and to  
4 the same extent that parties may conduct discovery in an administrative proceeding  
5 under the Texas Fair Housing Act, Subchapter E. The CRD director shall have the  
6 power to issue subpoenas described under the Texas Fair Housing Act, Subchapter  
7 D, in support of the investigation.  
8
- 9 (i) As part of the complaint investigation, CRD may request information relevant to the  
10 alleged violations of the Texas Fair Housing Act. In obtaining this information,  
11 CRD may use, but is not limited to using, any of the following:  
12
- 13 (1) Oral and video interviews and depositions;  
14  
15 (2) Written interrogatories;  
16  
17 (3) Production of documents and records;  
18  
19 (4) Requests for admissions;  
20  
21 (5) On-site inspection of respondent's facilities;  
22  
23 (6) Written statements or affidavits;  
24  
25 (7) A written statement of position or information provided by the complainant or  
26 the respondent that is either under oath or subscribed in conformity with this  
27 section regarding the allegations in the complaint; or  
28  
29 (8) Other forms of discovery authorized by the Administrative Procedure Act,  
30 Texas Government Code §§2001.081 - 2001.103, or the Texas Rules of Civil  
31 Procedure.  
32
- 33 (j) CRD may establish time requirements regarding responses to requests for  
34 information relevant to an investigation of alleged violations of the Texas Fair  
35 Housing Act. The CRD director may extend such time requirements for good cause  
36 shown.  
37
- 38 (k) CRD shall complete the initial investigation of the alleged discriminatory housing  
39 practice within 100 days of the filing of the complaint, unless it is impracticable to  
40 do so.  
41
- 42 (l) The complaint shall remain open until a no reasonable cause determination is made, a  
43 charge is made, or a conciliation agreement is executed and approved under this  
44 chapter and the Texas Fair Housing Act, Subchapter E.  
45

- 1 (m) At the end of each investigation under this chapter, CRD shall prepare a final  
2 investigative report. The investigative report shall contain:  
3  
4 (1) the names and dates of contacts with witnesses. The report shall not disclose  
5 the names of witnesses that request anonymity; however, the names of such  
6 witnesses may be required to be disclosed in the course of an administrative  
7 hearing or a civil action;  
8  
9 (2) a summary and the dates of correspondence and other contacts with the  
10 complainant and the respondent;  
11  
12 (3) a summary description of other pertinent records;  
13  
14 (4) a summary of witness statements; and  
15  
16 (5) answers to interrogatories.  
17  
18 (n) A final investigative report may be amended if additional evidence is discovered.  
19  
20 (o) CRD shall provide a summary of the final determination and shall make available  
21 the full investigative report to the complainant and the respondent.  
22

23 **§819.156. Reasonable Cause Determination and Issuance of a Charge.**  
24

- 25 (a) If a conciliation agreement under this chapter and the Texas Fair Housing Act,  
26 Subchapter E, has not been executed by the complainant and the respondent, and  
27 approved by the CRD director, the CRD director on behalf of the  
28 Agency~~Commission on Human Rights~~, within the time limits set forth in subsection  
29 (f) of this section, shall determine whether, based on the totality of the factual  
30 circumstances known at the time of the decision, reasonable cause exists to believe  
31 that a discriminatory housing practice has occurred. The reasonable cause  
32 determination shall be based solely on the facts concerning the alleged  
33 discriminatory housing practice, provided by complainant and respondent ~~or and~~  
34 otherwise disclosed during the investigation. In making the reasonable cause  
35 determination, the CRD director shall consider whether the facts concerning the  
36 alleged discriminatory housing practice are sufficient to warrant the initiation of a  
37 civil action in state district court.  
38  
39 (b) If the CRD director determines that reasonable cause exists, the CRD director shall  
40 immediately issue a charge under the Texas Fair Housing Act, Subchapter E, and this  
41 chapter on behalf of the complainant, and shall notify the complainant and the  
42 respondent of this determination by certified mail or personal service.  
43  
44 (c) If the CRD director determines that no reasonable cause exists, the CRD director  
45 shall issue a short written statement of the facts upon which the CRD director has  
46 based the no reasonable cause determination; dismiss the complaint; notify the

1 complainant and the respondent of the dismissal (including the written statement of  
2 facts) by certified mail or personal service; and make public disclosure of the  
3 dismissal.

- 4
- 5 (d) If the CRD director determines that the matter involves the legality of local zoning  
6 or land use laws or ordinances, the CRD director, in lieu of making a determination  
7 regarding reasonable cause, shall refer the investigative materials to the Office of the  
8 Attorney General for appropriate action under the Texas Fair Housing Act,  
9 Subchapter G, and shall notify the complainant and the respondent of this action by  
10 certified mail or personal service.
- 11
- 12 (e) The CRD director shall not issue a charge under this chapter and the Texas Fair  
13 Housing Act, Subchapter E, regarding an alleged discriminatory housing practice, if  
14 a complainant has commenced [the trial of](#) a civil action under federal or state law  
15 seeking relief with respect to the alleged discriminatory housing practice. If a charge  
16 is not issued because of the commencement of a [trial of a](#) civil action, the CRD  
17 director shall notify the complainant and the respondent by certified mail or personal  
18 service.
- 19
- 20 (f) The CRD director shall make a reasonable cause determination within 100 days after  
21 filing of the complaint.
- 22
- 23 (g) If the CRD director is unable to make the determination within the 100-day period,  
24 the CRD director shall notify the complainant and the respondent, by certified mail  
25 or personal service, of the reasons for the delay.
- 26
- 27 (h) The CRD director shall notify the complainant and respondent, and any aggrieved  
28 person on whose behalf a complaint has been filed, that they may elect to have the  
29 claims asserted in the charge decided in a civil action, as provided in Texas Property  
30 Code §301.131, or an administrative hearing pursuant to §819.191 of this chapter.

## 31 32 **SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES**

### 33 34 **§819.171. Deferral.**

35  
36 ~~(a) Pursuant to the Texas Fair Housing Act §301.068, CRD may defer proceedings and~~  
37 ~~refer complaints to a municipality that [is currently](#) ~~has been~~ certified by HUD [as a Fair](#)~~  
38 ~~[Housing Assistance Program \(FHAP\) to investigate fair housing complaints.](#)~~

39  
40 ~~(b) A local municipality certified by HUD shall submit the following materials and~~  
41 ~~information to CRD before a deferral or referral shall be made:~~

42  
43 ~~(1) A copy of the local ordinance that is determined to be substantially equivalent~~  
44 ~~to federal law;~~

1 ~~(2) A letter verifying that the ordinance of the municipality has been approved by~~  
2 ~~HUD as substantially equivalent to federal law;~~

3  
4 ~~(3) A copy of rules, policies, and procedures governing the administration and~~  
5 ~~enforcement of the local ordinance determined to be substantially equivalent to~~  
6 ~~federal law and the Texas Fair Housing Act; and~~

7  
8 ~~(4) A copy of the organizational chart of the municipality's internal structure for~~  
9 ~~enforcing the local ordinance determined to be substantially equivalent to~~  
10 ~~federal law and the Texas Fair Housing Act.~~

11  
12 ~~(e) Upon examination of the materials and information provided by the municipality, the~~  
13 ~~CRD director shall notify the municipality in writing as to the determination of its~~  
14 ~~eligibility.~~

15  
16 **~~§819.172. Memoranda of Understanding.~~**

17  
18 ~~The Agency shall enter into memoranda of understanding with local municipalities~~  
19 ~~qualified under §819.171 of this subchapter to ensure effective and integrated~~  
20 ~~administrative review procedures, share information, and provide technical assistance and~~  
21 ~~training.~~

22  
23 **SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL**  
24 **REVIEW**

25  
26 **~~§819.191. Administrative Hearings.~~**

27  
28 ~~Administrative hearings shall be conducted by the Agency's Special Hearings~~  
29 ~~Department pursuant to the procedures set forth in Texas Government Code, Chapter~~  
30 ~~2001, Subchapters C, D, F, H, and Z.~~

31  
32 **~~§819.192. Ex Parte Communications.~~**

33  
34 ~~Except as provided in this chapter, and unless required for the disposition of ex parte~~  
35 ~~matters authorized by law, no member of the Commission on Human Rights and no~~  
36 ~~employee of the Agency assigned to propose a decision or assigned to propose or make~~  
37 ~~findings of fact or conclusions of law in a case covered by this subchapter may~~  
38 ~~communicate, directly or indirectly, in connection with any issue of fact or law with any~~  
39 ~~person or party or any representative of either, except on notice and opportunity for all~~  
40 ~~parties to participate.~~

41  
42 **~~§819.193. Proposal for Decision and Hearing Officer's Report.~~**

43  
44 ~~(a) If the proposed decision is not adverse to any party to the hearing proceeding, the~~  
45 ~~hearing officer may propose to the Commission on Human Rights a decision that~~  
46 ~~need not contain findings of fact or conclusions of law.~~

1  
2 ~~(b) The Commission on Human Rights shall not make a decision adverse to a party until~~  
3 ~~a proposal for decision has been served on the parties, and an opportunity has been~~  
4 ~~afforded each party adversely affected to file exceptions and present briefs to the~~  
5 ~~Commission on Human Rights.~~

6  
7 ~~(c) The proposal for decision shall be accompanied by a hearing officer's report. This~~  
8 ~~report shall contain a statement of the nature of the case and a discussion of the~~  
9 ~~issues, evidence, and applicable law.~~

10  
11 ~~(d) Any penalty assessed by the hearing officer for an administrative violation shall be~~  
12 ~~in accordance with Texas Fair Housing Act §301.112.~~

13  
14 ~~§819.194. Countersignature by the CRD Director.~~

15  
16 ~~The CRD director shall countersign each hearing officer's report and proposal for~~  
17 ~~decision.~~

18  
19 ~~§819.195. Oral Argument before the Commission on Human Rights.~~

20  
21 ~~A party may request oral argument before the Commission on Human Rights before final~~  
22 ~~determination. A request for oral argument may be incorporated in the exceptions, in a~~  
23 ~~reply to the exceptions, or in a separate pleading.~~

24  
25 ~~§819.196. Pleading Before Order.~~

26  
27 ~~The CRD director may permit or request parties to file briefs and proposed findings of~~  
28 ~~fact at any time after the hearing and before final decision by the Commission on Human~~  
29 ~~Rights. A party doing so shall file an original and 10 copies with the CRD director,~~  
30 ~~certifying to the CRD director that each party has been served with a copy.~~

31  
32 ~~§819.197. Form and Content of the Order.~~

33  
34 ~~(a) After the time for filing exceptions and replies to exceptions has expired, the~~  
35 ~~Commission on Human Rights shall consider the hearing officer's report and the~~  
36 ~~proposal for decision. The Commission on Human Rights may adopt the proposal for~~  
37 ~~decision; modify and adopt it; reject it and issue a Commission on Human Rights~~  
38 ~~decision; or remand the matter to the hearing officer. The Commission on Human~~  
39 ~~Rights shall render its decision or issue its final order within 60 days after the~~  
40 ~~hearing closes. The hearing officer shall prepare the final order for the Commission~~  
41 ~~on Human Rights.~~

42  
43 ~~(b) It is the policy of the Commission on Human Rights to change a finding of fact or~~  
44 ~~conclusion of law or to vacate or modify any proposed order from the hearing officer~~  
45 ~~when the proposed order is:~~  
46

- 1                   ~~(1) erroneous;~~  
2  
3                   ~~(2) against the weight of the evidence;~~  
4  
5                   ~~(3) based on insufficient review of the evidence;~~  
6  
7                   ~~(4) not sufficient to protect the public interest;~~  
8  
9                   ~~(5) an infringement on the Commission on Human Rights' discretion to determine~~  
10                   ~~its policies; or~~  
11  
12                   ~~(6) to correct a technical error.~~  
13  
14                   ~~(e) If the Commission on Human Rights modifies, amends, or changes the hearing~~  
15                   ~~officer's proposal for decision, a final order reflecting the changes and the~~  
16                   ~~justification for the changes shall be prepared.~~

17  
18                   **~~§819.198. Final Order.~~**  
19

- 20                   ~~(a) A final order of the Commission on Human Rights that is adverse to one or more~~  
21                   ~~parties shall be in writing and signed by a majority vote of the quorum of the~~  
22                   ~~Commission on Human Rights. Such a final order shall include findings of fact and~~  
23                   ~~conclusions of law separately stated. Findings of fact, if set forth in statutory~~  
24                   ~~language, shall be accompanied by a concise and explicit statement of the underlying~~  
25                   ~~facts supporting the findings. Findings of fact shall be based exclusively on the~~  
26                   ~~evidence and on matters officially noticed. If a party submits proposed findings of~~  
27                   ~~fact, the decision shall include a ruling on each proposed finding. The CRD director~~  
28                   ~~shall deliver a copy of the final order to each party or the party's authorized~~  
29                   ~~representative by certified mail or personal service.~~  
30  
31                   ~~(b) A final order is effective on the date it is issued by the Commission on Human~~  
32                   ~~Rights, unless otherwise stated in the final order. The date of issuance shall be~~  
33                   ~~incorporated in the body of each decision or final order.~~  
34  
35                   ~~(c) The Commission on Human Rights' issuance of a final order remains in effect unless~~  
36                   ~~a party to the proceeding files a motion for rehearing before the expiration of 21~~  
37                   ~~calendar days.~~

38  
39                   **~~§819.199. Rehearing.~~**  
40

- 41                   ~~(a) A motion for rehearing is not required to exhaust all administrative remedies. A~~  
42                   ~~motion for rehearing shall be made before the expiration of 21 calendar days after~~  
43                   ~~the date of the Commission on Human Rights' final order, as set forth in §819.198 of~~  
44                   ~~this subchapter. Any reply to a motion for rehearing shall be filed with the~~  
45                   ~~Commission on Human Rights before the expiration of 30 calendar days after the~~  
46                   ~~date of the Commission on Human Rights' final order, as set forth in §819.198 of this~~

1           subchapter. A party filing a motion for rehearing or a reply to a motion for rehearing  
2 shall serve a copy on each party within the filing deadline.  
3

4           ~~(b) The Commission on Human Rights may, by written order, extend the time for filing  
5 motions and replies and for taking Commission on Human Rights action. No  
6 extension may extend the period for Commission on Human Rights action beyond 90  
7 days after the date of the final order, as set forth in §819.198 of this subchapter. In  
8 the event of an extension, a motion for rehearing is denied on the date fixed by the  
9 written order or, in the absence of a fixed date, 90 days from the date of the final  
10 order, as set forth in §819.198 of this subchapter.~~

11  
12           ~~(c) If a party files a motion for rehearing, the Commission on Human Rights may:~~

13                     ~~(1) grant such motion and remand for rehearing;~~

14                     ~~(2) deny such motion as set forth in §819.198 of this subchapter, either expressly  
15 or by operation of law; or~~

16                     ~~(3) render a decision and issue an order that no rehearing shall be necessary  
17 because imminent peril to the public health, safety, or welfare requires  
18 immediate effect be given to the final order.~~

19  
20           ~~(d) If the Commission on Human Rights does not act on the motion for rehearing within  
21 45 calendar days, the motion is denied by operation of law and the order is final.~~

#### 22 23 **§819.200. Judicial Review.**

24           ~~(a) A person who has exhausted all administrative remedies available under the Texas  
25 Fair Housing Act and who is aggrieved by a final order of the Commission on  
26 Human Rights is entitled to judicial review under the substantial evidence rule as set  
27 forth in the Administrative Procedure Act §§2001.001 et seq.~~

28           ~~(b) Proceedings for judicial review are instituted by filing a petition within 30 calendar  
29 days after a final order is issued.~~

#### 30 31 **§819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation.**

32           ~~(a) It is unlawful to interfere, coerce, intimidate, or retaliate against any person in the  
33 exercise or enjoyment of, or on account of that person having exercised or enjoyed,  
34 or on account of that person having aided or encouraged any other person in the  
35 exercise or enjoyment of, any right granted or protected by the Texas Fair Housing  
36 Act.~~

37           ~~(b) Prohibited conduct made unlawful under this section includes, but is not limited to:~~



- 1           ~~(1) coercing a person, either orally, in writing, or by other means, to deny or limit~~  
2           ~~the benefits provided that person in connection with the sale or rental of a~~  
3           ~~dwelling or in connection with a residential real estate related transaction~~  
4           ~~based on race, color, disability, religion, sex, national origin, or familial status;~~  
5  
6           ~~(2) threatening, intimidating, or interfering with individuals in their enjoyment of a~~  
7           ~~dwelling based on race, color, disability, religion, sex, national origin, or~~  
8           ~~familial status of such individuals, or of visitors or associates of such~~  
9           ~~individuals;~~  
10  
11           ~~(3) threatening an employee or agent with dismissal or an adverse employment~~  
12           ~~action, or taking such adverse employment action, for any effort to assist a~~  
13           ~~person seeking access to the sale or rental of a dwelling or seeking access to~~  
14           ~~any residential real estate related transaction, based on the race, color,~~  
15           ~~disability, religion, sex, national origin, or familial status of that person or of~~  
16           ~~any person associated with that individual;~~  
17  
18           ~~(4) intimidating or threatening any person because that person is engaging in~~  
19           ~~activities designed to make other individuals aware of, or encouraging such~~  
20           ~~other individuals to exercise rights granted or protected by this chapter; and~~  
21  
22           ~~(5) retaliating against any person because that person has made a complaint,~~  
23           ~~testified, assisted, or participated in any manner in a proceeding under the~~  
24           ~~Texas Fair Housing Act.~~

25  
26       **§819.191. Administrative Hearings.**

- 27  
28  
29       (a) Administrative hearings shall be conducted by the Agency's Special Hearings  
30       Department pursuant to the procedures set forth in this Subchapter K, which  
31       incorporates the procedures set forth in Texas Government Code, Chapter 2001,  
32       Subchapters C - D, F - H, and Z, and adapts such procedures specifically for fair  
33       housing administrative hearings. If any procedures under this Subchapter K are in  
34       conflict with Texas Government Code, Chapter 2001, Subchapters C - D, F - H, or Z,  
35       such subchapters under Chapter 2001 shall control.  
36  
37       (b) Hearings may be conducted by electronic means, including but not limited to  
38       telephonic hearings, unless the hearing officer determines that an in-person hearing is  
39       necessary.  
40  
41       (c) Parties needing special accommodations, including the need for a bilingual or sign  
42       language interpreter, shall make this request before the hearing is set, if possible, or  
43       as soon as practical.

44  
45       **§819.192. Parties.**



1 (a) Parties to proceedings under this section are the Agency, respondent(s) and any  
2 intervenor(s). Respondents include persons named as such in a charge issued under  
3 §819.156.

4  
5 (b) An aggrieved person as defined under Texas Property Code §301.003(1) is not a  
6 party but may file a motion to intervene. Requests for intervention shall be filed  
7 within 50 days after the issuance of the charge; however, the hearing officer may  
8 allow intervention beyond that time. An intervenor's right to participate as a party  
9 may be restricted by order of the hearing officer.

10  
11 (c) Intervention shall be permitted if the person requesting intervention is:

12  
13 (1) The aggrieved person on whose behalf the charge is issued; or

14  
15 (2) An aggrieved person who claims an interest in the property or transaction that  
16 is the subject of the charge and the disposition of the charge may, as a practical  
17 matter, impair or impede this person's ability to protect that interest, unless the  
18 aggrieved person is adequately represented by the existing parties.

19  
20 (d) If an aggrieved person does not intervene within 50 days after issuance of the  
21 charge, and the parties have reached a settlement, the hearing officer shall dismiss  
22 the case.

23  
24 **§819.193. Evidence and Pre-hearing Conference.**

25  
26 (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is  
27 relevant and if in the judgment of the hearing officer it is the kind of evidence on  
28 which reasonably prudent persons are accustomed to rely in conducting their affairs.  
29 However, the hearing officer may exclude evidence if its probative value is  
30 outweighed by the danger of unfair prejudice, by confusion of the issues, or by  
31 reasonable concern for undue delay, waste of time, or needless presentation of  
32 cumulative evidence.

33  
34 (b) Exchange of Exhibits. To be considered as evidence in a decision, any document or  
35 physical evidence must be entered as an exhibit at the hearing. Any documentary  
36 evidence to be presented during a telephonic hearing shall be exchanged with all  
37 parties in advance of the hearing and a copy shall be provided to the hearing officer  
38 in advance of the hearing. Upon consideration of a party's proffered reason for  
39 failure to exchange documentary evidence in advance of the hearing, the hearing  
40 officer may admit or exclude same, or grant a postponement of the hearing, in the  
41 discretion of the hearing officer.

42  
43 (c) Stipulations. The parties, with the consent of the hearing officer, may agree in  
44 writing to facts that are not in controversy. The hearing officer may decide the  
45 appeal on the basis of such stipulations or, at the hearing officer's discretion, may set

1 the appeal for hearing and take such further evidence as the hearing officer deems  
2 necessary.

3  
4 (d) The hearing officer may, on the hearing officer's own motion or at the request of any  
5 party, set an informal pre-hearing conference and require that all parties attend.  
6 Notice of the conference shall be in writing to each party. The conference will be  
7 held in accordance with §819.191 of these Rules, and will be an official part of the  
8 hearing record. Pursuant to the conference, the hearing officer may consider:

9  
10 (1) establishing the identities of parties and witnesses;

11  
12 (2) the agreement of the parties on facts that are not in controversy;

13  
14 (3) conciliation of the dispute;

15  
16 (4) clarification of the issues;

17  
18 (5) procedures for scheduling and conduct of the hearing;

19  
20 (6) exchange of documents; and

21  
22 (7) any other matter that promotes the orderly and prompt conduct of the hearing.  
23

24 **§819.194. Notice of Hearing.**

25  
26 (a) The Agency shall assign a hearing officer and mail a notice of hearing to the parties  
27 and/or their designated representatives. The notice of hearing shall be in writing and  
28 include:

29  
30 (1) a statement of the date, time, place, and nature of the hearing;

31  
32 (2) a statement of the legal authority and jurisdiction under which the hearing is to  
33 be held;

34  
35 (3) a reference to the particular sections of the statutes and rules involved; and

36  
37 (4) a short, plain statement of the factual matters asserted.

38  
39 (b) The notice of hearing shall be issued at least 10 calendar days before the date of the  
40 hearing by sending it to each party's last known address as shown by Agency records  
41 by first-class-mail..  
42

1  
2 **§819.195. Postponement and Continuance.**  
3

4 On the hearing officer's own motion, or for good cause, at a party's request, the hearing  
5 officer may postpone or continue a hearing.  
6

7 **§819.196. Default.**  
8

9 If a party to whom a notice of hearing is served or provided under this section fails to  
10 appear for hearing, the hearing officer may proceed in that party's absence on a default  
11 basis. If a proposal for decision or final decision is issued, the factual allegations listed in  
12 the notice of hearing may be deemed admitted. If a party fails to appear at a hearing, the  
13 hearing officer will issue a notice of default to that party. A party may file a motion no  
14 later than -15 calendar days after the notice of default is mailed to set aside a default  
15 announced at the hearing and to reopen the record. If a timely motion to set aside a  
16 default is filed, the hearing officer may grant the motion, set aside the default, and reopen  
17 the hearing for good cause shown, or in the interests of justice.  
18

19 **§819.197. Ex Parte Communications.**  
20

- 21 (a) Except as provided in this chapter, and unless required for the disposition of ex parte  
22 matters authorized by law, neither the hearing officer nor a Commission member  
23 may communicate, directly or indirectly, in connection with any issue of fact or law  
24 with a party or representative of a party, except on notice and opportunity for all  
25 parties to participate.  
26  
27 (b) The hearing officer or a Commission member may communicate concerning the case  
28 with an Agency employee who has not participated in the hearing, but may do so  
29 only for the purpose of using the special skills or knowledge of the Agency and its  
30 staff in evaluating the evidence.  
31  
32 (c) For purposes of this section, the Agency is considered to be a party to the case.  
33

34 **§819.198. Proposal for Decision.**  
35

- 36 (a) The hearing officer shall prepare a proposal for decision containing a statement of  
37 the reasons for the proposed decision and of each finding of fact and conclusion of  
38 law.  
39  
40 (b) The hearing officer shall submit a copy of the proposal for decision to each party by  
41 first-class mail. The parties may submit to the hearing officer exceptions to the  
42 proposal for decision and replies to exceptions to the proposal for decision.  
43  
44 (c) Exceptions shall be filed within 15 calendar days after the date of service of the  
45 proposal for decision. A reply to the exceptions shall be filed within 15 calendar  
46 days of the filing of the exceptions. The date of service shall be presumed to be on

1 the third day after the date on which the proposal for decision is mailed. The hearing  
2 officer may extend or shorten the time to file exceptions or replies.

3  
4 (d) The hearing officer shall review all exceptions and replies and notify the parties as to  
5 whether the hearing officer recommends any changes to the proposal for decision.

6  
7 (e) The hearing officer will not issue a proposal for decision during the 15-day period  
8 referenced in §819.196 within which a defaulting party may file a motion to set aside  
9 a default and to reopen the record.

10  
11 **§819.199. Commission Decision.**

12  
13 (a) After the time for filing exceptions and replies to exceptions has expired, the  
14 Commission shall consider the hearing officer's report and the proposal for decision.  
15 The Commission may adopt the proposal for decision, modify and adopt it, reject it  
16 and issue a Commission decision, or remand the matter to the hearing officer. The  
17 Commission shall issue its decision within 60 calendar days of the end of the  
18 exceptions period. The hearing officer may extend the period in which the decision  
19 may be signed- and prepare the decision for the Commission.

20  
21 (b) A Commission decision that is adverse to one or more parties shall be in writing and  
22 signed after a majority vote of the Commission. Such a decision shall include  
23 findings of fact and conclusions of law separately stated. Findings of fact, if set forth  
24 in statutory language, shall be accompanied by a concise and explicit statement of  
25 the underlying facts supporting the findings. Findings of fact shall be based  
26 exclusively on the evidence and on matters officially noticed.

27  
28 (c) The Agency shall notify each party to a contested case of any decision or order of the  
29 Commission by first-class mail.

30  
31 (d) A Commission decision becomes final:

32  
33 (1) if a motion for rehearing is not filed on time, on the expiration of the period for  
34 filing a motion for rehearing;

35  
36 (2) if a motion for rehearing is filed on time, on the date:

37  
38 (A) the order overruling the motion for rehearing is signed; or

39  
40 (B) the motion is overruled by operation of law;

41  
42 (3) if the Commission finds that an imminent peril to the public health, safety, or  
43 welfare requires immediate effect of a decision on the date the decision is  
44 signed, provided that the Commission incorporates in the decision a factual  
45 and legal basis establishing such imminent peril; or

1           (4) on the date specified in the decision for a case in which all parties agree to the  
2           specified date in writing or on the record, if the specified date is not before the  
3           date the decision is signed or later than the 20th day after the date the decision  
4           was issued.

5  
6       **§819.200. Motion for Rehearing.**

7  
8       (a) A motion for rehearing is required to exhaust all administrative remedies. A motion  
9       for rehearing must be filed not later than the 25th calendar day after the date the  
10       Commission decision is signed, unless the time for filing the motion has been  
11       modified by agreement between the parties and approved by the Commission. Any  
12       reply to a motion for rehearing shall be filed with the Commission not later than the  
13       40th calendar day after the date the Commission decision is signed. A party filing a  
14       motion for rehearing or a reply to a motion for rehearing shall serve a copy on each  
15       party within the filing deadline.

16  
17       (b) The Commission may, by written order, extend the time for filing motions and  
18       replies and for taking Commission action. No extension may extend the period for  
19       Commission action beyond 100 days after the date the decision is signed. In the  
20       event of an extension, a motion for rehearing is denied on the date fixed by the  
21       written order or, in the absence of a fixed date, 100 days from the date the decision is  
22       signed.

23  
24       (c) If a party files a motion for rehearing, the Commission may:

25  
26           (1) grant such motion and remand for rehearing;

27  
28           (2) deny such motion, either expressly or by operation of law; or

29  
30           (3) render a decision and issue an order that no rehearing shall be necessary  
31           because imminent peril to the public health, safety, or welfare requires  
32           immediate effect be given to the final order.

33  
34       (d) If the Commission does not act on the motion for rehearing within 55 calendar days  
35       after the date the decision was signed, the motion is denied by operation of law and  
36       the decision is final.

37  
38       (e) A motion for rehearing must identify with particularity findings of fact or conclusions  
39       of law that are the subject of the complaint and any evidentiary or legal ruling  
40       claimed to be erroneous. The motion must also state the legal and factual basis for  
41       the claimed error.

42  
43       **§819.201. Judicial Review.**

44  
45       (a) A person who has exhausted all administrative remedies available under the Texas  
46       Fair Housing Act and who is aggrieved by a final decision of the Commission is

1 entitled to judicial review under the substantial evidence rule as set forth in  
2 Administrative Procedure Act §2001.001, et seq.

3  
4 (b) Proceedings for judicial review are instituted by filing a petition in a Travis County  
5 district court within 30 calendar days after the final decision is mailed.  
6

7  
8 **SUBCHAPTER L. FAIR HOUSING FUND**

9  
10 **§819.221. Fair Housing Fund.**

- 11  
12 (a) A fair housing fund is a fund in the state treasury in the custody of the Texas  
13 Comptroller of Public Accounts.  
14  
15 (b) Civil penalties assessed against a respondent under the Texas Fair Housing Act,  
16 Subchapters E and G, shall be deposited to the credit of the fair housing fund.  
17  
18 (c) The Agency~~Commission on Human Rights~~ may use monies deposited to the credit  
19 of the fair housing fund for the administration of the Texas Fair Housing Act.  
20  
21 (d) Gifts and grants received as authorized by the Texas Fair Housing Act, Subchapter  
22 D, shall be deposited to the credit of the fair housing fund.  
23  
24  
25