



In this issue:

- CRD, HAA Working Together for Fair Housing..... 1
- Director's Corner: Austin's Fair Housing Summit – a Success 4
- Dallas Company Takes Proactive Stance Against Sexual Harassment 5
- Initiatives To Combat Sexual Harassment In Housing..... 6
- Recent Fair Housing Case Summary..... 7
- CRD Successfully Conciliates Complaints of Reasonable Accommodation, Sexual Harassment and Discriminatory Lease Non Renewal..... 9
- CRD Education, Training & Outreach 11

Mission Statement

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

Vision

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

Texas Workforce Commission Commissioners

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CRD, HAA Working Together for Fair Housing

(This article is an edited reprint from the April 2018 edition of ABODE, the Houston Apartment Association Magazine.)

By Lowell A. Keig, CRD Director and Michelle Goodwine, CRD Fair Housing Manager

Win-Win Solutions

Bradley (fictitious name) is an individual with a mobility disability who uses a wheelchair. He has been living at Lumber Apartments (fictitious name) since 2008. When Bradley first moved there, he was assured that the apartment complex voluntarily would build a ramp as a modification, so that he could get out of his unit easily. But, the apartment complex did not come through, so Bradley took matters into his own hands and built a wooden ramp to exit his unit; and he worked out a route to the parking lot.

However, the apartment complex made changes to the parking lot, which resulted in Bradley having problems accessing the parking lot when cars were parked in his usual pathway. He asked the property manager

if something could be done about the cars blocking his pathway. The property manager told Bradley that nothing could be done. Bradley was forced to file a housing complaint with the U.S. Department of Housing and Urban Development (HUD) for failure to make a reasonable accommodation. HUD transferred the complaint to its state counterpart, the Texas Workforce Commission Civil Rights Division (CRD).

The good news is that within two months of Bradley's complaint being assigned to CRD, all parties found a win-win solution. The complex agreed to build a ramp and reserve a parking space in front of Bradley's unit. In addition, the apartment complex agreed to have its staff take fair housing training.

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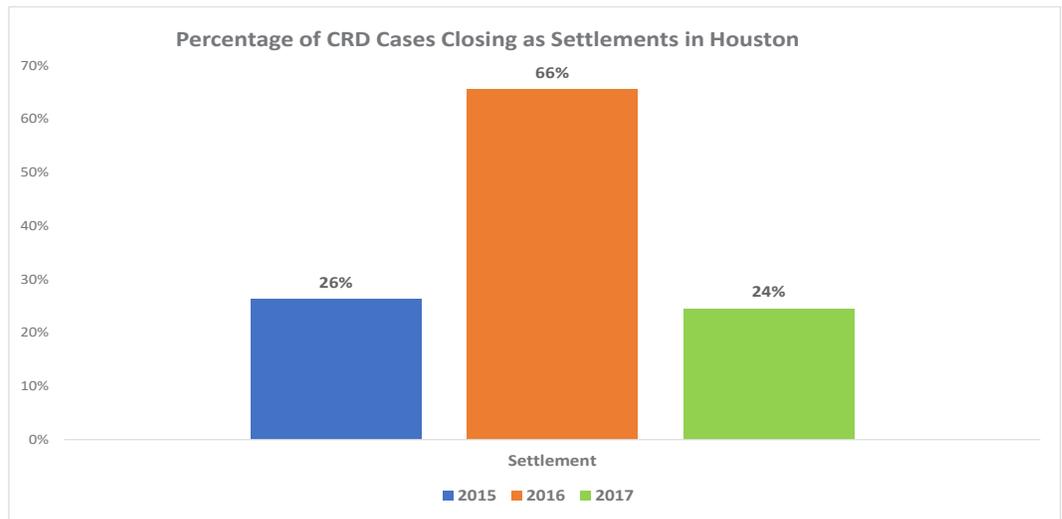
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Finding win-win solutions with housing providers, housing consumers, and fair housing organizations happens often with CRD. In fact, in each of the last three years, at least 24 percent of fair housing cases in Houston closed with a conciliation agreement involving TWC as a party (see chart above). (All CRD case closure data and statistics cited in this article were generated by HUD's database and are currently unofficial).

Areas for Focus

Disability was the most common basis, followed by race, for Houston housing discrimination complaints in 2016 and 2017. In 2015, race was the most common basis and disability was a close second. (See table below).

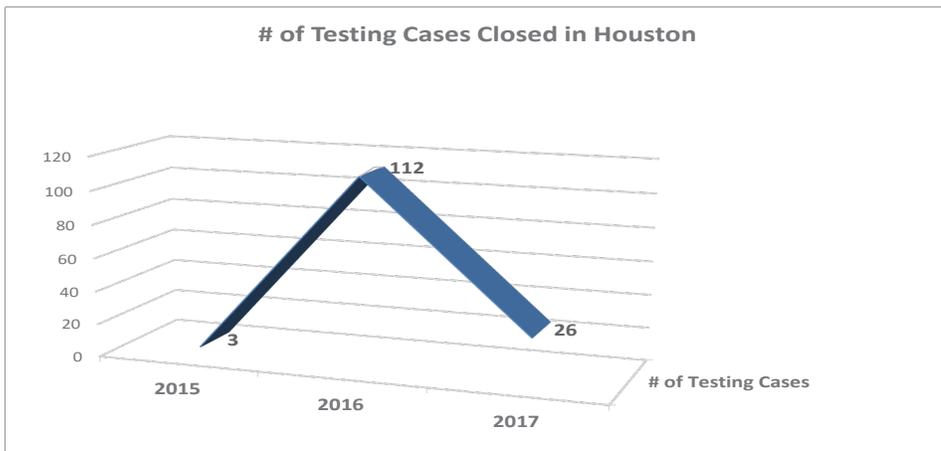
Basis	2015	2016	2017
Disability	43%	80%	57%
Race	47%	13%	32%
National Origin	15%	6%	6%
Familial Status	7%	2%	7%
Religion	2%	1%	5%
Retaliation	3%	1%	8%
Sex	12%	1%	1%
Color	1%	0%	1%

(NOTE: Since some complaints filed involve multiple bases, the percentages were calculated based on the total cases closed in Houston, and the percentages will total more than 100 percent).

Because disability continues to be the most common basis, multi-family housing providers will want to ensure that their training and compliance efforts cover issues affecting persons with disabilities.

Testing, Testing

In 2015 and 2017, about 100 housing discrimination complaints closed in Houston. In 2016, however, the number jumped to 177. What is the reason for the jump? Testing cases. During that year, 112 of the Houston closures involved testing cases with disability as the basis. Since 2016, the number of testing cases has significantly declined. Typically, the Greater Houston Fair Housing Center, a Fair Housing Initiatives Program (FHIP) supported by HUD, will test housing providers to determine if individuals from a specific protected class are being discriminated against or treated more favorably than another protected class. In 2016, two *non-FHIP* organizations called housing providers to determine if they were in violation of the Fair Housing Act for reasonable accommodations involving emotional support animals (ESAs). The testers posed as applicants with disabilities who owned ESAs. A tester would mention having a breed of dog commonly listed on an apartment complex's restricted breed list. These testing calls



would be recorded. Because the two *non-FHIP* organizations that utilized this approach were not able to demonstrate organizational standing on a consistent basis, the number of Houston testing cases significantly decreased in 2017.

Hurricane Harvey – No Significant Impact to CRD

In late August 2017, Harvey, a Category 4 Hurricane, swept through Texas. According to the Texas Department of Public Safety, about 7 percent of the Houston area’s 2.4 million housing units were impacted by Harvey. CRD was watching for any impact Hurricane Harvey could have on discrimination complaint filings. Interestingly, the impact has been negligible. Of the cases received this fiscal year, only two *specifically* mention Hurricane Harvey in the allegations and those two cases were not in Houston. Furthermore, the number of complaints filed in Houston has remained fairly consistent. Both cases allege that the complainant’s units experienced damage caused by Hurricane Harvey. Of the *inquiries* (not yet formal complaints) that have been dismissed this fiscal year by CRD, only one mentions Hurricane Harvey. The inquiry was dismissed by CRD because the allegations indicated the issue was a landlord-tenant issue, and did not involve discrimination.

Spreading the Word About Fair Housing Online, On the Streets

As part of CRD’s “Let’s Work Together for Fair Housing” fair housing campaign, from late November through the end of 2017 CRD expanded its social media campaign on Facebook. Public service announcements (PSAs) targeted people in the following geographic areas: Austin, Dallas/Fort Worth, Gulf Coast, Midland-Odessa, Alamo, and the Valley. According to the statistics, these PSAs reached over 457,000 people.

CRD also placed PSAs on the interior and exterior of buses, billboards, and bus shelters in Austin, the Dallas-Fort Worth area, Houston, and in McAllen. These PSAs were funded by a generous grant from HUD.

Convenient and Cost Free Fair Housing Training

More than two years ago, thanks in part to a HUD grant, CRD began providing convenient and cost-free fair housing and reasonable accommodation webinars on a monthly basis to housing providers throughout Texas.

Also, for the third year in a row, CRD partnered with the Texas Department

of Housing and Community Affairs to provide two free webinars in celebration of Fair Housing Month in April.

Reaching Out to Houston

CRD Director Lowell A. Keig traveled to Houston twice last year to give presentations to housing industry businesses. He covered current topics such as service and assistance animals; design and construction issues; HUD’s updated rule on harassment, retaliation, interference and coercion; and accommodations or modifications for parking, ramps and curb cuts.



Houston PSA Billboard

Reaching out to community and professional organizations helps CRD strive toward its vision of “creat[ing] an environment in which people of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.” CRD management team members are always available to share their technical assistance on fair housing/civil rights issues with community and professional organizations. If your community group, professional association, or other non-profit would like CRD to present a fair housing workshop or seminar, please do not hesitate to contact us at crdtraining@twc.state.tx.us or by telephone at 888-452-4778. We always look forward to working together for fair housing.

Director's Corner

Austin's Fair Housing Summit – a Success

By: Lowell A. Keig, CRD Director

Hats off to the City of Austin for hosting a successful Fair Housing Summit in April to celebrate the 50th Anniversary of the Fair Housing Act and educate stakeholders on fair housing issues! The Texas Workforce Commission Civil Rights Division (CRD) and staff supported the event as a sponsor, planning committee member, presenter, and attendee.

One highlight of the Summit was a special session for local/state enforcement agencies known as Fair Housing Assistance Programs (FHAPs) and advocacy organizations known as Fair Housing Initiatives Programs (FHIPs) with the U.S. Department of Housing and Urban Development (HUD) Assistant Secretary for Fair Housing and Equal Opportunity, Anna Maria Farias. Asst. Secretary Farias is from San Antonio and was a commissioner of the former Texas Commission on Human Rights, the predecessor to CRD. From 2001-2008, Asst. Secretary Farias also served as Senior Counsel to former HUD Secretary Mel Martinez, Deputy Assistant Secretary for Special Initiatives, Deputy Assistant Secretary for Grant Programs (CDBG) and Director for the Center for Faith-Based and Community Initiatives. Asst. Secretary Farias told us her story of growing up in the Crystal City Housing Projects, and returning home to serve as the Executive

Director of the Housing Authority from 1993-2000. She became one of the first Executive Directors in the country who agreed to live in the housing developments during her tenure.

Asst. Secretary Farias stressed that she will fully support the advocacy organizations and local/state agencies. She answered questions and received input, including a request from CRD management that the federal investigations database (HUD Enforcement Management

System or HEMS) be upgraded to allow for more functionality for local/state agencies. The Asst. Secretary was receptive to the request. She asked that CRD prepare a written request with details of upgrades needed and associated business needs for those items. The formal request was submitted on April 30th.

The Summit brought in speakers and attendees from across the state and from other states. The event yielded 410 attendees this year and was considered a resounding success.



Photo courtesy of CRD

Dallas Company Takes Proactive Stance Against Sexual Harassment

By: Edward Hill, CRD Training & Outreach Specialist

Fiscal Year 2018 presented many financial and social challenges for businesses across the nation, including allegations of sexual harassment. Although most businesses have little to no control over the nation's economy, all can set and enforce standards of conduct within their work environments.

Following the wake of the "MeToo" movement during late 2017, Madeleine Ficaccio and Patrick Gergen, owners Bella Vista management LP, a Dallas-based employer and housing provider, devised a plan to take a proactive stance against sex discrimination and sexual harassment through preventative training and education.

Bella Vista Management's diverse 30-employee workforce includes persons from all protected classes as well as several employees with English as a Second Language (ESL) and Limited English Proficiency (LEP). Their customer base, multi-family housing residents, is very diverse as well. The owners directed Sonia Hernandez, Assistant to the Controller, to request and coordinate a training event through the Texas Workforce Commission's Civil Rights Division (CRD). While discussing the training, Ficaccio stated, "As responsible business owners, we believe it is important to care for the well-being of both, our team and residents in the communities we



oversee." After identifying a need for bilingual training to accommodate ESL and LEP personnel, Hernandez submitted a request to CRD for consideration and scheduling.

On March 28, 2018, CRD Trainer, Edward Hill and CRD EEO Investigator Railin Isaac teamed up to present a bilingual (English and Spanish) Sex Discrimination and Sexual Harassment class at the Bella Vista Park Apartment Complex in Dallas, Texas. The class was tailored to address Bella Vista Management's needs in educating its staff and customers. The training helped communicate standards and expectations for

everyone, which should assist Bella Vista Management in preventing discrimination and harassment in the workplace.

Proactive companies like Bella Vista Management are instrumental in minimizing and overcoming discrimination and hostile work environments. If you have training needs, we want to encourage you to take advantage of CRD training, which is provided to private employers at-cost via webinar or in-person training platforms. For more information, visit us at <http://www.texasworkforce.org/civilrights>.

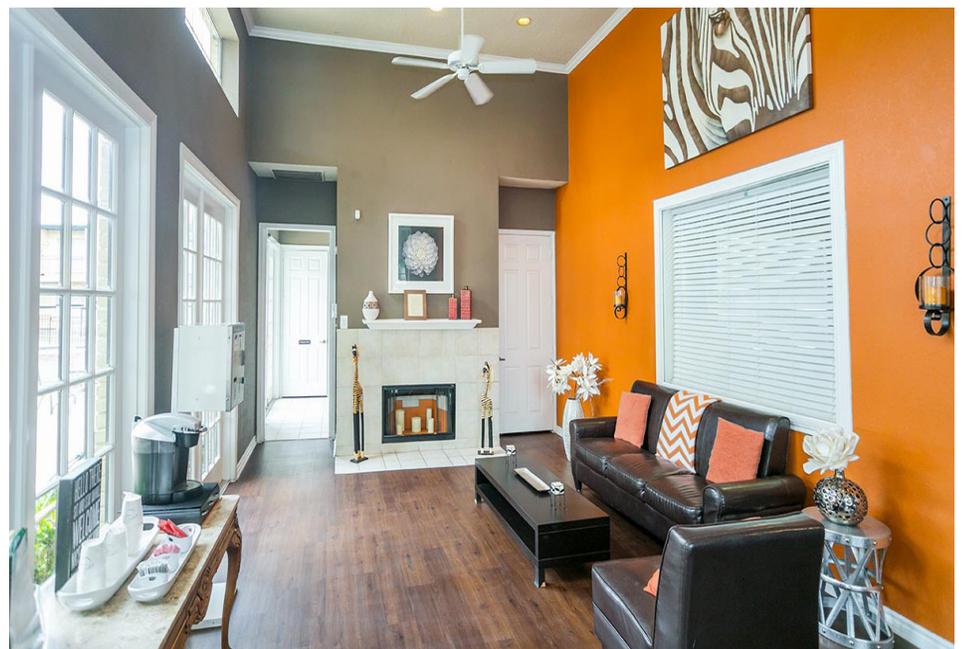


Photo courtesy of Bella Vista Management

Initiatives To Combat Sexual Harassment In Housing

By: Michelle Goodwine, CRD Fair Housing Manager

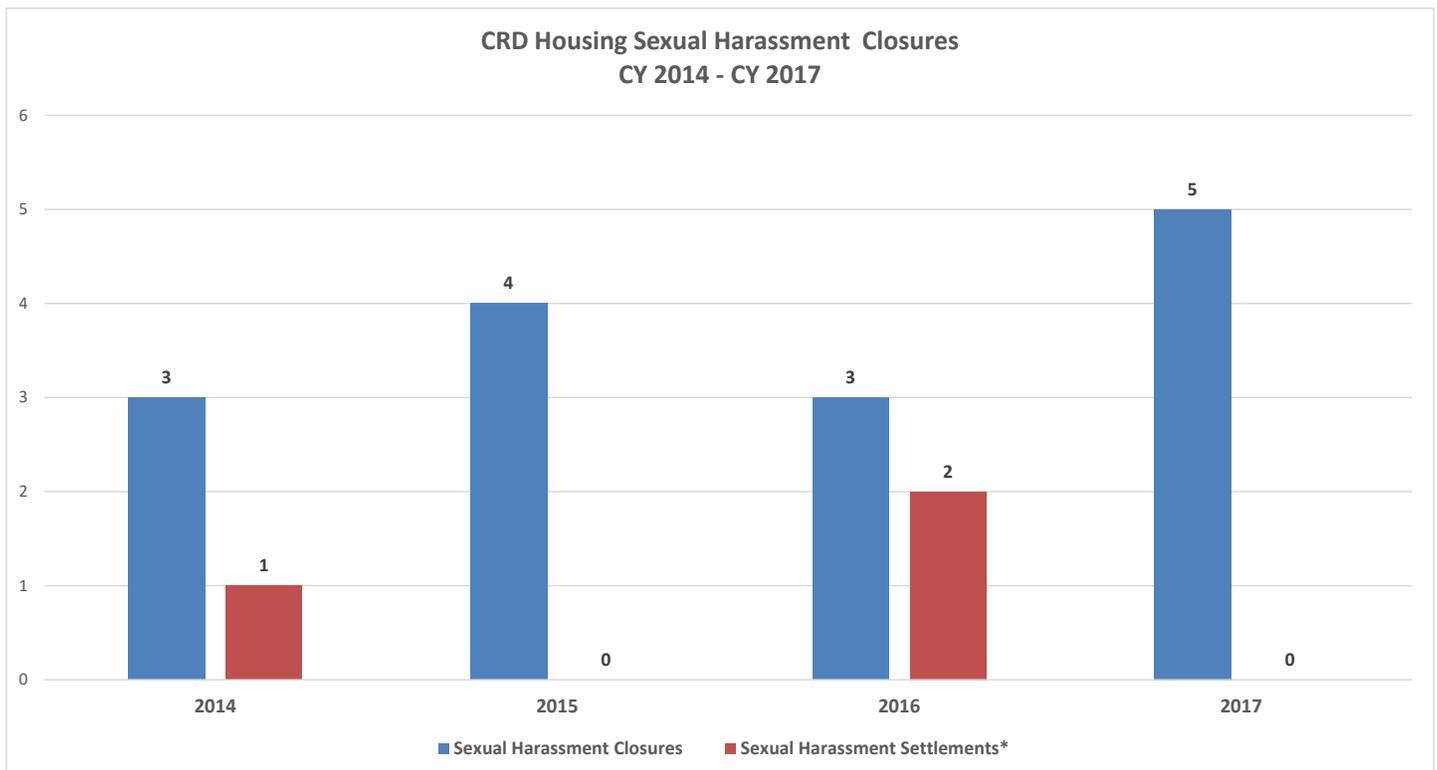
Sexual harassment is considered a type of sex-based discrimination prohibited under the Fair Housing Act (FHA). On April 12, 2018, the Texas Workforce Commission adopted amendments to align the State Rules (40 Texas Administrative Code Chapter 819) with the revisions to the federal regulations that the U.S. Department of Housing and Urban Development (HUD) adopted in 2016 regarding quid pro quo and hostile environment sexual harassment. The state rule amendments became effective on May 14, 2018.

On the state level, CRD continues its efforts to reduce sexual harassment in housing through enforcement and education.

Below is a chart of the number of CRD housing complaints with sexual harassment allegations from Contract Year (CY) 2014 to CY 2017. Note that there were more cases with sexual harassment allegations in CY 2017 during this four-year period. So far, during CY 2018, CRD has closed six cases with sexual harassment allegations.

While the majority of these cases closed as No Reasonable Cause, three of the 15 cases (20%) closed with a private settlement or CRD conciliation.

In addition to no-cost fair housing training offered by CRD, which includes sexual harassment as a topic, housing providers, as Texan employers, can take advantage of CRD's at-cost, employment-related, sexual harassment prevention training. Training may be obtained by sending a request to crdtraining@twc.state.tx.us.



Recent Fair Housing Case Summary

By: Corra Dunigan, TWC Assistant General Counsel and
Roberta Swan, Legal Assistant

Tammy Baughman v. City of Elkhart, et al.

**2018 U.S. Dist. LEXIS 50241 *;
2018 WL 1510678 (E.D. Texas
March 27, 2018)**

In December 2014, Plaintiff Tammy Baughman purchased a home in the City of Elkhart. Plaintiff owns a 7-pound lemur which she claims is an emotional support animal for her disability. Plaintiff asserts that she is “disabled as a result of failed back surgery, fibromyalgia, depression and other health issues.” In June 2015, the lemur bit a woman who was shopping at the Plaintiff’s store, requiring her to get stitches. This individual made a complaint to the sheriff’s office about the animal. During the course of that investigation, the city learned that the lemur bit a mail carrier back in 2012, which resulted in a 30-day quarantine. Baughman also stated during a City Council meeting that there were a couple of other incidents, including one where her son-in-law was injured. This prompted the City to enact an ordinance “to protect its citizens from injury.” On October 5, 2015, the City of Elkhart passed “ordinance 112 081307 that bans all primates from the city.”

Plaintiff requested an accommodation to the city ordinance to allow her to keep her lemur because it was an emotional support animal. The City of Elkhart denied her request for an accommodation. Plaintiff filed a fair housing complaint with the U.S. Department of Housing and Urban Development, which was deferred to the Texas Workforce Commission Civil Rights Division (CRD) for investigation. CRD found no reasonable cause for discrimination because the City was not unreasonable in denying the request for an accommodation due to the known history of the lemur injuring humans and the concern for the health, safety and welfare of citizens.

Plaintiff filed a lawsuit against the City of Elkhart under the Fair Housing Amendments Act (“FHAA”), 42 U.S.C. § 3613, the Americans with Disabilities Act (“ADA”), and 42 U.S.C. § 1983. (This case summary does not discuss the Section 1983 claim, but rather focuses on the Fair Housing Act and ADA claims). Defendants filed a motion for summary judgment.

The Court stated that there are three theories of disability discrimination under 42 U.S.C. § 3604(f): (1) disparate treatment; (2) disparate impact; and (3) a failure to make reasonable accommodations.” In Plaintiff’s case, she asserted failure to make reasonable accommodations.

Plaintiff’s request for an accommodation was made by submitting letters from her “psychologist and counselor stating that her lemur is beneficial to her mental health.” Defendants asserted that Plaintiff did not make an accommodation request, but regardless it would have been reasonably denied “based upon the lemur’s history of attacks.” The Court concluded that “Plaintiff did not provide facts that would show that her interest in keeping her lemur outweighs the City’s interest in protecting its citizens.”

Plaintiff also alleged disability discrimination under the ADA. “The ADA prohibits public entities from discriminating against individuals with disabilities, such that ‘no qualified individual with a disability shall, by reason of such disability, be excluded from

participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” In cases where an individual is requesting an accommodation for a service animal the ADA provides specific criteria for what qualifies as a service animal. A service animal “is ‘specially trained to

perform tasks directly related to a disability, contrasted with animals that have received only general training, provide only emotional support, or otherwise perform tasks not directly related to a disability.” The Court stated that there must be some evidence to show that the lemur performs a function to assist the Plaintiff with her disability which “sets the

animal apart from an ordinary pet.” Plaintiff failed to provide any evidence which would cause the court to draw this conclusion.

The Court granted the Defendants’ motion for summary judgment on all claims.



Photo courtesy of Getty Images

CRD Successfully Conciliates Complaints of Reasonable Accommodation, Sexual Harassment and Discriminatory Lease Non-Renewal

During the third quarter of the Department of Housing and Urban Development (HUD) Performance Period 2018 (December 1 to March 2018), 23 of the 121 cases closed (19 percent) were resolved by a Conciliation Agreement with the Texas Workforce Commission Civil Rights Division (CRD) and the parties to the complaint. These cases were conciliated through 1) a formal mediation process conducted by a mediator; 2) conciliation negotiations conducted by a mediator, or 3) conciliation discussions facilitated by an investigator (collectively referred to below as alternative dispute resolution or “ADR” cases). In close to 80 percent of the conciliated cases, disability was the basis. This is a continuing trend.

In most of these cases, the conciliations include non-monetary public interest relief, which is a HUD/CRD priority. Below are highlights of selected ADR closures.

Tenant Alleges Baby Not Welcomed by Landlords, Receives Non-Renewal

Allegation:

The tenants lived at the apartment building for four years. The tenants did not have problems with their

landlord until they notified her they were having a baby. Eventually the landlord decided not to renew the complainants’ lease. The landlord also filed eviction papers in court against the complainants. The landlord’s notice stated, “No Children” as the reason for they were evicting the tenants.

Background Information:

Prior to the eviction, the landlord gave the complainants a handwritten letter in which she stated, “You have known for 17 months that you could not live there with a child. I don’t know why you thought this would not apply to you just because you have lived in the apartment for over four years.” The landlord further stated that the complainants’ two previous leases stated -0- children.

Settlement Terms:

- \$3,500.00 monetary settlement
- \$1,000.00 in the event the complainants’ credit report is negatively affected because of the eviction
- Positive rental reference
- Fair Housing Policy revision, including adding CRD and HUD contact information on the first page of the lease application

Lesson Learned:

Housing for elderly persons under a federal or state program approved by the HUD Secretary, or properties intended exclusively for individuals 62 years and older, or properties that maintain occupancy of at least 80% of individuals 55 and older may be entitled to the familial status exemption. But, no matter the intention, landlords who do not fall within these three exemptions cannot refuse to rent to a tenant because he or she has a child.

Tenant’s Request for Return to Accessible Apartment Denied

Allegation:

Around November 2014, the complainant was required to move from his accessible apartment so that it could be renovated. About two years later, when the complainant realized the unit renovations were completed, he asked for a transfer back to his accessible apartment. The management denied his request.

Background Information:

After the renovation of the complainant’s accessible apartment was completed, another tenant was moved into that unit.



Photo courtesy of Getty Images

Settlement Terms:

- Tenant will be transferred to an accessible unit as soon as one is available.
- Respondent will provide assistance with moving Complainant's belongings at no cost to Complainant from the inaccessible unit into the accessible unit.
- CRD-approved fair housing training

Lesson Learned:

A housing provider should make sure that it keeps accurate records regarding all unit transfers. At times, a tenant may need to be temporarily relocated while renovating a unit.

However, the tenant should be returned to that unit as soon as the renovations are completed.

Applicant Denied, Leasing Agent Claims Emotional Support Animal is Restricted Breed Allegation:

An applicant was denied an apartment rental because the leasing agent indicated that the applicant's Pitbull emotional support animal was a prohibited breed. The leasing agent suggested that the applicant inquire about another apartment complex that accepted Pitbulls.

Settlement Terms:

- \$6,000 monetary settlement

- Respondent agrees to review and revise its Fair Housing policies and procedures.
- CRD-approved fair housing training

Lesson Learned:

An assessment of an emotional support animal cannot be based on its breed. Decisions about an emotional support animal must be made on a case-by-case basis. The request for an emotional support animal may be denied if it is determined there is evidence based on previous conduct that the animal is a direct threat of harm or would cause substantial property damage, and no further accommodation could reduce or eliminate the risk.

CRD Education, Training & Outreach

The Texas Workforce Commission Civil Rights Division (CRD) is committed to providing training and technical assistance, outreach and education programs to assist housing providers, housing consumers, and other stakeholders in understanding and preventing discrimination. We believe that discrimination can be averted if everyone knows their rights and responsibilities.

Fair Housing Computer Based Training

CRD began offering our Fair Housing Overview Computer-based Training (CBT) in January 2018. This CBT enables participants to learn about fair housing at their own pace and location, using their personal computers. The course is available and free of charge. For registration information, send an e-mail to CRDtraining@twc.state.tx.us.

Upcoming Fair Housing Webinar Training

Topic: Fair Housing Overview
In this webinar, the basics about Fair Housing in Texas, as well as an overview of federal and state housing discrimination laws, are discussed.

Dates: June 21, August 16

Topic: Reasonable Accommodations and Accessibility

The basics about the reasonable accommodation process, including issues involving emotional support animals, as well as other accessibility issues, will be discussed.

Date: July 19

To register, please complete and submit the Fair Housing Training Request Form to CRDTraining@twc.state.tx.us.

No-Cost Outreach and Education Programs

CRD representatives are available on a limited basis at no cost to make presentations and participate in meetings with housing consumers and housing providers, and their representative groups, as well as community organizations and other members of the public.

For more information, contact CRD at (888) 452-4778 or by email at CRDTraining@twc.state.tx.us.

Upcoming Housing Events in Texas

7/17-19/18 (Corpus Christi)
Rural Rental Housing Association of Texas (RRHA TX) 40th Annual Convention and Trade Show
<https://www.rrhatx.com/>

07/23-25/18 (Austin)
2018 Texas Affiliation of Affordable Housing Providers (TAAHP) Conference
<http://www.taahp.org/events/2018-texas-housing-conference/>

08/20-23/18 (Galveston)
Texas Housing Association Annual Conference And Trade Show
<http://www.txtha.org/index.php/conference/>



Photo courtesy of Getty Images