

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

2
3 **ADOPTED 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 24, 2018, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW**
8 **RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

9
10 Estimated date of publication in the *Texas Register*: **May 11, 2018**

11 The rules will take effect: **May 14, 2018**

12
13 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
14 Chapter 819, relating to TWC's Civil Rights Division (CRD), *with* changes, as published in the
15 February 16, 2018, issue of the *Texas Register* (43 TexReg 856):

16
17 Subchapter H. Discriminatory Housing Practices, §§819.122 and 819.136

18 Subchapter I. Texas Fair Housing Act Complaints and Investigations Process [Title]

19 Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.194,
20 819.199, and 819.200

21
22 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

23 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES**

24
25 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

26 The purpose of the adopted Chapter 819 rule change is to align the CRD rules with US
27 Department of Housing and Urban Development (HUD) federal regulations, and comply with
28 amendments to the Administrative Procedure Act (“APA” or Texas Government Code, Chapter
29 2001), pursuant to Senate Bill 1446, enacted by the 85th Texas Legislature, Regular Session
30 (2017), and signed into law effective September 1, 2017.

31
32 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
33 **RESPONSES**

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

36
37 **SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES**

38 **TWC adopts the following amendments to Subchapter H:**

39
40 **§819.122. Three Exemptions Based on Familial Status**

41 Section 819.122(a) is amended to align with HUD’s regulation at 24 CFR § 100.302 to clarify
42 that the first exemption only applies to federal or state programs that the HUD Secretary
43 determines are specifically designed and operated to assist elderly persons.

44
45 **§819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation**

1 Section 819.136 adds a provision that makes it unlawful, in accordance with HUD regulations at
2 24 CFR §§100.400 and 100.600, to retaliate against a person who reports a discriminatory
3 housing practice or to harass a person because of race, color, religion, sex, familial status,
4 national origin, or disability.

5
6 **Comment:** Two commenters support adoption of proposed rules with the following changes
7 to §819.136 to more closely align with the corresponding federal regulations in 24 CFR
8 100.600 (2017):

9
10 (1) Amend §819.136 to incorporate the following sentence from 24 CFR §100.600(a)(1)
11 (2017) regarding quid pro quo harassment: "An unwelcome request or demand may
12 constitute quid pro quo harassment even if a person acquiesces in the unwelcome request
13 or demand."

14
15 (2) Amend §819.136 to incorporate the following sentence from 24 CFR §100.600(a)(2)
16 (2017) regarding hostile environment harassment: "Hostile environment harassment does
17 not require a change in the economic benefits, terms, or conditions of the dwelling or
18 housing-related services or facilities, or of the residential real-estate transaction."

19
20 **Response:** TWC agrees with the commenters and has incorporated the recommended federal
21 quid pro quo harassment and hostile environment language into §§819.136(b)(7)(A) and (B),
22 respectively, to provide further guidance to housing providers and consumers.

23
24 **SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND**
25 **INVESTIGATIONS PROCESS**

26 **TWC updates the title of Subchapter I to read "Texas Fair Housing Act Complaints and**
27 **Investigations Process."**

28
29 **SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL**
30 **REVIEW**

31 **TWC adopts the following amendments to Subchapter K:**

32
33 **§819.194. Notice of Hearing**

34 Section 819.194 adds that an attachment that incorporates, by reference, the factual matters
35 asserted in a complaint constitutes an acceptable option for the information required with a
36 notice of hearing.

37
38 **§819.199. Commission Decision**

39 Section 819.199 adds language to:

40 --specify the acceptable methods that TWC may use to notify each party to a contested case of
41 any decision or order of TWC's three-member Commission (Commission); and

42 --clarify when a Commission decision becomes final following timely submission of a motion
43 for rehearing.

1 **Comment:** One commenter recommends removal of the phrase “by first-class mail” from the
2 first sentence of §819.199(c), as it changes the meaning of the subsection and because first-
3 class mail is one of the delivery methods specified in subdivision (3).
4

5 **Response:** TWC has corrected the error by removing the phrase “first-class mail” from the
6 introductory sentence of §819.199(c).
7
8

9 **§819.200. Motion for Rehearing**

10 Section 819.200 adds language to specify that a party filing a motion for rehearing or a reply to a
11 motion for rehearing must serve a copy on each party using the newly enacted notification
12 methods set forth in §819.199(c).
13

14 **COMMENTS WERE RECEIVED FROM:**

15 Fred Fuchs, Texas RioGrande Legal Aid, Inc.

16 Juliana Gonzales, Austin Tenants’ Council
17

18 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be
19 within TWC's legal authority to adopt.
20

21 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC
22 with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective
23 administration of TWC services and activities.
24

25 The adopted rules affect Texas Government Code, Chapter 552.
26

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

2
3 **SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES**

4
5 **§819.122. ~~Three~~ Exemptions Based on Familial Status.**

- 6
7 (a) Discrimination prohibitions under the Texas Fair Housing Act based on familial
8 status do not apply to housing provided under any federal or state program that [the](#)
9 [US Department of Housing and Urban Development \(HUD\) Secretary has](#)
10 [determined](#) is designed and operated specifically to assist elderly ~~individuals~~[persons](#),
11 as defined in the federal or state program.
- 12
13 (b) Discrimination prohibitions under the Texas Fair Housing Act based on familial
14 status do not apply to housing intended for and solely occupied by individuals 62
15 years of age or older. This exemption shall apply regardless of the fact that:
- 16
17 (1) there were individuals residing in such housing on September 13, 1988, who
18 were under 62 years of age, provided that all new occupants are 62 years of
19 age or older;
- 20
21 (2) there are unoccupied units, provided that such units are reserved for occupancy
22 for individuals 62 years of age or older; or
- 23
24 (3) there are units occupied by employees of the housing (and family members
25 residing in the same unit) who are under 62 years of age provided they perform
26 substantial duties directly related to the management or maintenance of the
27 housing.
- 28
29 (c) Discrimination prohibitions under the Texas Fair Housing Act based on familial
30 status do not apply to housing intended and operated for occupancy by individuals 55
31 years of age or older if:
- 32
33 (1) at least 80 percent of the units in the housing facility are occupied by at least
34 one person 55 years of age or older. However:
- 35
36 (A) a newly constructed housing facility for first occupancy after March 12,
37 1989, need not comply with this 80 percent occupancy requirement until
38 25 percent of the units in the facility are occupied; and
- 39
40 (B) a housing facility or community may not evict, refuse to renew leases, or
41 otherwise penalize families with children in order to achieve occupancy
42 of at least 80 percent of the occupied units by at least one person 55
43 years of age or older;
- 44
45 (2) the owner or manager of a housing facility publishes and adheres to policies
46 and procedures that demonstrate an intent by the owner or manager to provide

1 housing for individuals 55 years of age or older. The following factors, among
2 others, are relevant in determining whether the owner or manager of a housing
3 facility has complied with the requirements of this paragraph:

- 4 (A) The manner in which the housing facility is described to prospective
5 residents;
- 6 (B) The nature of any advertising designed to attract prospective residents;
- 7 (C) Age verification procedures;
- 8 (D) Lease provisions;
- 9 (E) Written rules and regulations;
- 10 (F) Actual practices of the housing facility or community; and
- 11 (G) Public posting in common areas of statements describing the facility or
12 community as housing for individuals 55 years of age or older; and

13
14
15
16
17
18
19
20 (3) the housing facility satisfies the requirements of this section regardless of the
21 fact that:

- 22 (A) as of September 13, 1988, under 80 percent of the occupied units in the
23 housing facility were occupied by at least one person 55 years of age or
24 older, provided that at least 80 percent of the units that were occupied by
25 new occupants after September 13, 1988, were occupied by at least one
26 person 55 years of age or older;
- 27 (B) there are unoccupied units, provided that at least 80 percent of such units
28 are reserved for occupancy by at least one person 55 years of age or
29 older; and
- 30 (C) there are units occupied by employees of the housing facility (and family
31 members residing in the same unit) who are under 55 years of age
32 provided they perform substantial duties directly related to the
33 management or maintenance of the housing.

34
35
36
37
38
39 **§819.136. Prohibited Interference, Coercion, Intimidation, ~~or~~ Retaliation, or**
40 **Harassment.**

- 41 (a) It is unlawful to interfere, coerce, intimidate, ~~or~~ retaliate against, or harass any
42 person in the exercise or enjoyment of, or on account of that person having exercised
43 or enjoyed, or on account of that person having aided or encouraged any other person
44 in the exercise or enjoyment of, any right granted or protected by the Texas Fair
45 Housing Act.
46

1
2
3 (b) Prohibited conduct made unlawful under this section includes, but is not limited to:

- 4
5 (1) coercing a person, either orally, in writing, or by other means, to deny or limit
6 the benefits provided that person in connection with the sale or rental of a
7 dwelling or in connection with a residential real estate--related transaction
8 based on race, color, disability, religion, sex, national origin, or familial status;
9
10 (2) threatening, intimidating, or interfering with individuals in their enjoyment of a
11 dwelling based on race, color, disability, religion, sex, national origin, or
12 familial status of such individuals, or of visitors or associates of such
13 individuals;
14
15 (3) threatening an employee or agent with dismissal or an adverse employment
16 action, or taking such adverse employment action, for any effort to assist a
17 person seeking access to the sale or rental of a dwelling or seeking access to
18 any residential real estate--related transaction, based on the race, color,
19 disability, religion, sex, national origin, or familial status of that person or of
20 any person associated with that individual;
21
22 (4) intimidating or threatening any person because that person is engaging in
23 activities designed to make other individuals aware of, or encouraging such
24 other individuals to exercise rights granted or protected by this chapter; ~~and~~
25
26 (5) retaliating against any person because that person has made a complaint,
27 testified, assisted, or participated in any manner in a proceeding under the
28 Texas Fair Housing Act;:-

29
30 (6) retaliating against any person because that person reported a discriminatory
31 housing practice to a housing provider or other authority ;:- and

32
33 (7) harassing any person because of race, color, religion, sex, familial status,
34 national origin, or disability:

35
36 (A) Quid pro quo harassment. Quid pro quo harassment refers to an
37 unwelcome request or demand to engage in conduct where submission to
38 the request or demand, either explicitly or implicitly, is made a condition
39 related to the sale, rental, or availability of a dwelling; the terms,
40 conditions, or privileges of the sale or rental, or the provision of services
41 or facilities in connection therewith; or the availability, terms, or
42 conditions of a residential real estate-related transaction. **An unwelcome**
43 **request or demand may constitute quid pro quo harassment even if a**
44 **person acquiesces in the unwelcome request or demand.**
45

1 (B) Hostile environment harassment. Hostile environment harassment refers to
2 unwelcome conduct that is sufficiently severe or pervasive as to interfere
3 with the availability, sale, rental, or use or enjoyment of a dwelling; the
4 terms, conditions, or privileges of the sale or rental, or the provision or
5 enjoyment of services or facilities in connection therewith; or the
6 availability, terms, or conditions of a residential real estate-related
7 transaction. Hostile environment harassment does not require a change
8 in the economic benefits, terms, or conditions of the dwelling or
9 housing-related services or facilities, or of the residential real-estate
10 transaction.

11
12 **SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND**
13 **~~APPEALS~~INVESTIGATIONS PROCESS**

14
15 **SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL**
16 **REVIEW**

17
18 **§819.194. Notice of Hearing.**

- 19
20 (a) The Agency shall assign a hearing officer and mail a notice of hearing to the parties
21 and/or their designated representatives. The notice of hearing shall be in writing and
22 include:
23
24 (1) a statement of the date, time, place, and nature of the hearing;
25
26 (2) a statement of the legal authority and jurisdiction under which the hearing is to
27 be held;
28
29 (3) a reference to the sections of the statutes and rules involved; and
30
31 (4) either:
32
33 (A) a short, plain statement of the factual matters asserted~~;~~ or
34
35 (B) an attachment that incorporates by reference the factual matters asserted in
36 the complaint.
37
38 (b) The notice of hearing shall be issued at least 10 calendar days before the date of the
39 hearing by sending it to each party's last known address, as shown by Agency
40 records, by first-class mail.

41
42 **§819.199. Commission Decision.**

- 43
44 (a) After the time for filing exceptions and replies to exceptions has expired, the
45 Commission shall consider the hearing officer's report and the proposal for decision.
46 The Commission may adopt the proposal for decision, modify and adopt it, reject it

1 and issue a Commission decision, or remand the matter to the hearing officer. The
2 Commission shall issue its decision within 60 calendar days of the end of the
3 exceptions period. The hearing officer may extend the period in which the decision
4 may be signed and prepare the decision for the Commission.
5

6 (b) A Commission decision that is adverse to one or more parties shall be in writing and
7 signed after a majority vote of the Commission. Such a decision shall include
8 findings of fact and conclusions of law separately stated. Findings of fact, if set forth
9 in statutory language, shall be accompanied by a concise and explicit statement of
10 the underlying facts supporting the findings. Findings of fact shall be based
11 exclusively on the evidence and on matters officially noticed.
12

13 (c) The Agency shall notify each party to a contested case of any decision or order of
14 the Commission ~~by first class mail,~~ by using at least one of the following methods
15 of service:
16

17 (1) personal service;

18
19 (2) if agreed to by the party to be notified, service by electronic means sent to the current
20 e-mail address or facsimile number of the party's attorney of record or of the party if
21 the party is not represented by counsel; or
22

23 (3) first-class, certified, or registered mail sent to the last known address of the
24 party's attorney of record or of the party if the party is not represented by
25 counsel.
26

27 (d) A Commission decision becomes final:
28

29 (1) if a motion for rehearing is not filed on time, on the expiration of the period for
30 filing a motion for rehearing;
31

32 (2) if a motion for rehearing is filed on time, on the date:
33

34 (A) the order overruling the latest filed motion for rehearing is signed; or
35

36 (B) the latest filed motion for rehearing is overruled by operation of law;
37

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

- 1
2 (4) on the date specified in the decision for a case in which all parties agree to the
3 specified date in writing or on the record, if the specified date is not before the date
4 the decision is signed or later than the 20th day after the date the decision 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 [using the notification methods set forth in](#)
16 [§819.199\(c\)](#).
17
- 18 (b) The Commission may, by written order, extend the time for filing motions and
19 replies and for taking Commission action. No extension may extend the period for
20 Commission action beyond 100 days after the date the decision is signed. In the
21 event of an extension, a motion for rehearing is denied on the date fixed by the
22 written order or, in the absence of a fixed date, 100 days from the date the decision is
23 signed.
24
- 25 (c) If a party files a motion for rehearing, the Commission may:
26
27 (1) grant such motion and remand for rehearing;
28
29 (2) deny such motion, either expressly or by operation of law; or
30
31 (3) render a decision and issue an order that no rehearing shall be necessary
32 because imminent peril to the public health, safety, or welfare requires
33 immediate effect be given to the final order.
34
- 35 (d) If the Commission does not act on the motion for rehearing within 55 calendar days
36 after the date the decision was signed, the motion is denied by operation of law and
37 the decision is final.
38
- 39 (e) A motion for rehearing must identify with particularity findings of fact or
40 conclusions of law that are the subject of the complaint and any evidentiary or legal
41 ruling claimed to be erroneous. The motion must also state the legal and factual basis
42 for the claimed error.