



Fair Housing Newsletter

Keeping you current on fair housing news and issues



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Inadequate Doctor's Note Does Not Prove Disability

Requests for emotional support animals are on the rise. On-line certifications and fraudulent letters are now frequent issues landlords must deal with when an applicant or residents makes a request they be exempted from a breed or weight restriction, a no-pet policy, or a pet fee/deposit. Even when you get a letter from a real doctor, it is hard to determine if the letter is enough. One Pennsylvania judge has held that simply stating the resident has "mental health issues" is not enough to show she is disabled.

The case began when a condo association told an Owner she must get rid of her two male Chihuahuas because the association had a No-Pet Policy. The Owner in turn, claimed the dogs were emotional support animals for her panic attacks and argued she should be allowed to keep them as an accommodation. The condo association filed a Petition for a Temporary Restraining Order with a Pennsylvania state court asking that the Owner be enjoined from keeping her dogs at the condo. When the state court granted the TRO, the Owner sued in federal court alleging the TRO violated the Americans with Disabilities Act because the dogs were emotional support animals.

The court first pointed out that the ADA does not apply in this case. Title I of the ADA applies in employment cases – not housing cases. Title II of the ADA applies to discriminatory treatment by state and local governments – not private condominium associations.

Chihuahuas: Continued on Page 2

Note from the Editor: Happy Holidays! I wish you each of you a happy, healthy, and prosperous New Year. Thank you for making 2017 a great year for the firm.



In the News

Squirrely Emotional Support Animal

A Florida condo association and a resident have squared-off over an emotional support squirrel. The resident rescued the squirrel after Hurricane Matthew and has been keeping the animal for emotional support. All was well until a dog chased the squirrel up a tree resulting in the condo association finding out about the squirrel and social media catching fire over the story.

When the condo association found out about the squirrel, it told the resident that exotic animals – including wild squirrels - were not permitted and he would need to get rid of the animal. The resident refused and provided a doctor's prescription for the animal because he suffered from several herniated discs in his lower back following a car accident in 2004. These injuries allegedly caused the emotional disability of post traumatic stress. Because of the emotional disability, he need an emotion support animal – the squirrel.

While this case has been all over the news as humorous, it serves as a reminder to landlords that emotional support animals may include a variety of species. Birds, snakes, fish, and even pigs have been deemed support animals. Don't be too quick to reject an animal just because it does not bark or meow.

Chihuahuas: Continued from Page 1

Title III of the ADA applies to discriminatory acts that prevent disabled individuals from accessing goods, services, facilities, privileges, advantages or accommodations found in a place of public



accommodation. Since the action did not involve places of public accommodation, but rather the Owner's home, Title III also did not apply. Moreover, the ADA specifically excludes emotional support animals.

The court pointed out that the case should have been brought under the Fair Housing Act, but regardless, the Owner would still lose because she had not shown that she was disabled and thus, entitled to an accommodation. The owner provided a note from her doctor stating she suffered from "mental health issues." Additionally, the Owner testified she suffered from panic attacks but failed provide any evidence that she was actually disabled as defined by the Fair Housing Act. Specifically, she failed to show panic attacks substantially limited her in one or more in major life activities. Thus, the two Chihuahuas would have to move.

This case is a good reminder to landlords that before granting an accommodation, the resident must first show they are disabled. A resident can establish this if he/she receives disability benefits as income or they provide a written statement from a healthcare provider – or another reliable source - stating they are disabled. A landlord may not ask about the resident's diagnosis or severity of the disability. Asking for too much information is a violation of fair housing laws. Not asking for enough should be a violation of your policy.



HOUSING CROSSROADS

WHERE FAIR HOUSING AND
LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar Residents Behaving Badly

January 31, 2018
10:00 a.m. - 11:30 a.m. Central

Somehow every property has one or two residents that are always walking-the-line of eviction. These few residents consume most of the manager's time with investigations, inspections, and sending out notices. Everything they do is seems to be either a violation of the lease or cause a problem with a neighbor.

In this webinar, we will discuss some common problems when residents behave badly and give landlords some guidance on how to address the problems. Our discussion will include:

- Refusal to Allow Access to the Apartment
- Unauthorized Occupants
- Unauthorized Pets
- Damage to the Property
- Bad Housekeeping
- Noise Issues
- Smoking Pot in the Apartment
- and much, much, more

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Nathan Lybarger
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“No-Puppies” Support Animal Case Settles

A Shih Tzu puppy was the subject of a recent federal lawsuit alleging fair housing violations. The case began when a Minnesota apartment complex refused to allow a resident to have the puppy as an emotional support animal. Why? Because puppies chew up things and bark. Instead, the apartment complex told the resident she should get a cat. The resident sued.

The parties have now agreed to settle the case. The apartment complex has agreed to overhaul its policies on accommodating assistance animals, notify residents of the changes, and state in any new ads that they are an “Equal Housing Opportunity Provider.” The apartment complex will also pay an undisclosed amount to the resident for damages.



Fair Housing Webinar **Asked & Answered: Eight of the Most** **Common Fair Housing Questions**

\$24.99

Wednesday, December 13, 2017

10:00 a.m. - 11:00 a.m. Central

As a fair attorney, I receive calls and emails daily asking questions about how to handle a particular situation with a resident or applicant. Many of the questions relate to the same issues over and over again.

In this webinar, we will discuss eight of the most common fair housing questions asked by landlords. The questions are:

1. What is the difference in a companion and service animal?
2. Can I evict someone arrested for domestic violence?
3. Do I have to reserve a handicapped spot for someone with a disability?
4. What can I do about a companion animal that threatens to bite a resident?
5. How do I handle a resident who is threatening to hit my maintenance guy?
6. May I still refuse to accept a Section 8 voucher?
7. Is it still okay to non-renew someone without giving them notice of lease a violation?
8. Should I accept a doctor’s letter for a companion animal if it was purchased from an on-line doctor?

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HUD Charges Kansas Landlord with Sexual Harassment

The U.S. Department of Housing and Urban Development has filed a charge against the owner and landlord of several rental properties in Wichita, Kansas. The charge alleges the landlord sexually harassed two female tenants at his properties.

The landlord allegedly subjected the property manager, who also lived on the property, to harassment including entering her apartment uninvited. On one occasion, she awoke to find him in her bedroom on her bed. In addition, the charge alleges the landlord requested sex in exchange for allowing her to stay in her unit, offered to be her “sugar daddy,” grabbed her buttocks and made comments about her body.

A second woman also alleged that the landlord made numerous requests for sex when he picked up her rent payments. Once, when she was late paying a portion of the rent, the landlord allegedly asked her if she wanted to have sex with him instead of paying the \$150 she owed. When she refused, the landlord wrote her a three-day notice to vacate.

The charge will be heard by a U.S. Administrative Judge unless either party elects to have the case heard by a federal court.



“No Sports Play” Policy Costs HOA Over \$1M

The cost of a fair housing case can be astronomical. In a recent California case, a homeowner association and board members agreed to pay over a million dollars to settle a case alleging they had child restrictive rules which discriminated against families with children in violation of fair housing laws.

It started when California HOA adopted and enforced a “No Sports Play” rule which prohibited any children under the age of 14 from being in the complex’s common area without adult supervision and from engaging in any “sports activities” in the common areas. This rule was implemented in 2000 and continued to be enforced into 2015. The HOA posted the notice in the monthly newsletter and fined parents of children in breach of the rule.



In June, 2016, the homeowners filed a class action lawsuit against the HOA and the board members claiming the rule violated fair housing laws. Before the case went to trial, the HOA and board members agreed to settle the case. As part of the settlement, the 334 class members will receive \$800,000, the lead family bringing the case will receive \$35,000, the non-profit advocacy group involved will receive \$19,000, and the attorneys will receive \$296,020 in fees and \$3,461 in cost. Total bill for the child restrictive policy - \$1,153,481.

Compliance Review Results in HUD Lawsuit

A routine compliance review initiated by the U.S. Department of Housing and Urban Development has resulted in a fair housing lawsuit being filed against the Housing Authority of the City of Bridgeport, Connecticut. The lawsuit alleges the Housing Authority failed to properly process, decide and fulfill requests for reasonable accommodations for tenants with disabilities over a two-year period. It also alleges the Housing Authority failed to provide an adequate number of public housing units accessible to tenants with certain disabilities.

The lawsuit alleges violations of the Americans with Disabilities Act, the Fair Housing Act, and Section 504 of the Rehabilitation Act. It seeks monetary damages to compensate the victims, a court order requiring the housing authority to remedy the violations and a civil penalty.

Fair Housing 2018 Three-Part Webinar Series

Fair Housing Fundamentals

Wednesday, March 7, 2018

10:00 a.m. - 11:00 a.m. Central Time

[Register Now](#)
\$24.99

Common Fair Housing Problems

Wednesday, March 14, 2018

10:00 a.m. - 11:00 a.m. Central Time

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Making an Accommodation

Wednesday, March 21, 2018

10:00 a.m. - 11:00 a.m. Central Time

[Register Now](#)
\$24.99

All Three Webinars in Series

March 7, 2018 - Fair Housing Fundamentals

March 14, 2018 - Common Fair Housing Problems

March 21, 2018 - Making an Accommodation

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