



Fair Housing Newsletter

Keeping you current on fair housing news and issues



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Court Holds Request for Accessible Parking Space is Not Reasonable

The Fair Housing Act requires landlords to provide disabled applicants and residents with accommodations – as long as they are reasonable. Generally, an assigned parking space is a reasonable accommodation for residents who have mobility disabilities. But, do you need to provide an accessible parking space. Maybe not, according to one judge in Oregon.

In this case, the resident requested an assigned parking space due to her mobility disability. Because the parking spaces were limited, she was placed on a waiting list. When her name came up on the list, she was assigned a space which fulfilled her request. Then, the resident requested the space be made accessible because she sometimes used a wheelchair. She wanted the space enlarged and cut-ins placed in the curbs.

The landlord denied the request. There were no accessible spaces available. To convert her space into an accessible space would require two spaces to be used. As a result, the assigned parking space next to the resident's space would have to be used. Thus, the other resident, who was also disabled, would lose their assigned parking space. The landlord did not consider this to be reasonable.



Parking: Continued on Page 2.

Note From the Editor: Fall begins this month which means 2023 will soon be here. Do your maintenance employees still need training for 2022? If so, check out October's Fair Housing Webinar on page five.



Parking: Continued from Page 1.

When the landlord refused, the resident filed a lawsuit. The judge, however, dismissed the case in favor of the landlord. The court held it is not reasonable to require the landlord to remove other disabled individuals from their assigned parking spaces in favor of this resident.

In sum, first-come, first-served on accommodations. Landlords should not deny an accommodation that was already granted to another resident in order to grant a new accommodation for a different resident.

Arizona Federal Judge Upholds \$1M in Punitive Damages

A Federal Judge in Arizona was recently asked to review and reverse a jury's decision to award a deaf applicant \$1,000,000 in punitive damages against her prospective landlord. The Judge refused to reverse the jury's decision.

The case involved an applicant's request for a sign language interpreter as an accommodation. Her prospective landlord refused the accommodation and instead offered a white board and a lip-reading service. The applicant filed a lawsuit alleging the whiteboard and lip-reading service did not adequately meet the standard for providing effective communication necessary to enable her to fully and equally enjoy the prospective landlord's facility.

A jury agreed with the applicant and awarded her \$1 in nominal damages and \$1,000,000 in punitive damages. The prospective landlord asked the judge to lower the punitive damages award or grant a new trial. The Judge denied the request holding that the prospective landlord acted in the face of perceived risk that it could violate federal law when it refused to provide a sign language interpreter to a prospective deaf resident who requested one. Bottom line: the landlord is on the hook for \$1,000,000 in punitive damages.



Asking Too Many Questions Gets Landlord in Trouble

The U.S. Department of Housing and Urban Development (HUD) announced it has charged the owner and property manager of a Kansas property with violating the Fair Housing Act by refusing to allow an applicant to live with his assistance animal.

The HUD Charge alleges a veteran applied for an apartment and stated he had an emotional support animal. He provided documentation to the landlord signed by his VA psychiatrist and on VA letterhead. The letter stated the psychiatrist was "familiar with [the applicant's] history and with the functional limitations imposed by his emotional/mental health-related disorder(s)" and that [the applicant] met the definition of disability under the Act. The letter prescribed a dog of the applicant's choosing to help mitigate symptoms of his emotional impairments and stated "the presence of the dog...is necessary for his emotional/mental health." The applicant's dog was a 70 pound Doberman.



Questions: Continued on Page 4.



HOUSING CROSSROADS

WHERE FAIR HOUSING AND
LANDLORD TENANT LAWS INTERSECT

Housing Crossroads Webinar

The Changing World of Landlord/Tenant Relationships

Wednesday, September 28, 2022
10:00 a.m. - 11:30 a.m. central

The world as a whole continues to change at an increasingly rapid pace. Many of these changes are targeting the landlord / tenant relationship. New laws, regulations, and guidance are being passed nationwide.

In this webinar we will examine recent legislative and regulatory developments that are shaping our industry. In addition we will discuss recent trends and changes that may be on the horizon. Our discussion will include:

- The CARES Act's 30-day notice requirement
- VAWA documents that must accompany lease termination notices
- How available rental assistance continues to impact the eviction process
- Free legal representation for tenants
- Nationwide efforts to divert, slow, or stop the eviction process
- The push to stop or limit the use of criminal records in background checks
- Source of Income protections
- Scrutiny of selection criteria

\$34.99
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Nathan Lybarger
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Speakers



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Two SCRA Cases Cost Landlords Almost \$700,000

The Servicemembers Civil Relief Act (SCRA) allows servicemembers to terminate a lease early after entering military service or receiving qualifying military orders, such as permanent change of station orders, orders for a deployment of at least 90 days, stop movement orders, and separation or retirement orders. If a servicemember terminates a lease due to a deployment or other qualifying military orders, the SCRA prohibits the landlord from imposing any early termination charges. Violations of the SCRA can be expensive. Two landlords recently found out just how expensive after the U.S. Department of Justice agreed to settle their cases.



In the first case, a Virginia landlord was accused of filing false affidavits and/or failing to file affidavits of military service prior to obtaining default judgments against servicemembers. The DOJ alleges that the landlord knew or should have known that the affidavits they filed were inaccurate, because they could have easily verified their tenants' military status with information from the files.

In the second case, the DOJ alleged a Texas landlord charged unlawful early termination fees to at least 17 servicemembers. Some of these early termination fees took the form of "concession chargebacks," which required the servicemembers to pay back rent concessions or discounts that they had received during their tenancies. The suit also alleged that the landlord wrongfully denied two other servicemembers' lease termination requests.

Under the proposed settlement agreements, the Virginia landlord will pay \$162,971 to the servicemembers and a \$62,029 civil penalty to the United States. The Texas landlord has agreed to pay \$45,325 to the servicemembers and a \$62,029 civil penalty to the United States. Both agreements require the landlords to make the servicemembers whole and train employees.

Since 2011, the DOJ has obtained over \$476 million in monetary relief for over 121,000 servicemembers through its enforcement of the SCRA.

Questions: Continued from Page 2.

Instead of approving the ESA, the landlord asked for additional information. The landlord asked the psychiatrist three questions: (1) Is the person disabled as defined by the Fair Housing Act; (2) Based on the specific disability, does this person require the requested accommodation or modification exactly as stated above in order to have equal enjoyment of the premises as would a non-disabled resident; and (3) If asked, would you testify to this in a legal or administrative proceeding?

The psychiatrist did not respond to the questions in the allotted time because she was on vacation. As a result, the applicant was denied his apartment based on the landlord's Pet Policy that all dogs must weigh 25 pounds or less. Ultimately, the applicant had to find another place to live.

The applicant filed a fair housing complaint. HUD investigated and found evidence of discrimination. The three questions asked of the psychiatrist were unnecessary. The landlord already had all the information necessary to make the decision. As such, the request for additional information and ultimate denial was a violation of fair housing laws.

A United States Administrative Law Judge will hear HUD's Charge unless any party to the Charge elects to have the case heard in federal district court or the case is settled.

Lesson Learned: Don't ask questions if you already know the answer.

Gender Identity Case Settles for \$45,000

A Florida RV park owner and property manager have agreed to settle a fair housing claim by a transgender resident. The resident, who was transitioning from a man to a woman, claimed the landlord violated the Fair Housing Act when he gave the resident a letter stating that the landlord was aware the resident was transitioning and telling her to act as a man, talk as a man, and dress as a man to avoid trouble.

Although the landlord has not admitted guilt, the owner and property manager will pay the resident \$45,000 and undergo training on the Fair Housing Act, including training on transgender and gender non-conforming discrimination.



Fair Housing Webinar

Walking Into Trouble *Fair Housing for Maintenance*

Wednesday, October 12, 2022
10:00 a.m. - 11:00 a.m. Central

Maintenance employees are on the front-line of the battle of avoiding fair housing complaints. They often see and interact with the residents more than anyone else in the Company. It is important maintenance employees know what to say and do before they walk into a problem.

In this webinar, we will discuss common issues maintenance employees encounter and some realistic steps they can take to avoid getting in trouble with HUD. Our topics will include:

- Encountering Nude & Partially Nude Residents
- Dating Residents
- Apartments with Only Minor Children
- Recognizing a Hoarder
- Managing Maintenance Requests

\$24.99

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Did You Know?

Over 50% of all fair housing claims filed with HUD and state agencies are based on disability.

Appeals Court Confirms Award to Landlord of over \$220,000 After Upholding Dismissal of Resident's Complaint

When a landlord goes to court, their attorney may warn them that not all judges will award landlord's large sums of money. Such advice was not warranted in a recent case out of the District of Columbia.

The resident in this case complained about secondhand smoke entering into her apartment. Although the apartment complex was not smoke-free, it attempted to resolve the issue for the resident. While maintenance was working on the resident's unit, it allowed the resident to stay in one of its guest rooms. When the upgrades were completed, the resident was not satisfied and refused to move from the guest room. Eventually, the resident was told if she did not move from the guest room, she would be charged \$110 a night. The resident claimed being allowed to stay in the guest room without paying was an accommodation for her respiratory disability.

The landlord sued for possession of the guest room or rent. The resident filed a counterclaim seeking \$38 million in damages. The resident alleged the landlord had breached its fiduciary duties to her, housing discrimination, and breach of the implied warranty of habitability.

The landlord asked the court to dismiss the counterclaims. The court agreed. In addition, the court entered a permanent injunction requiring the resident to leave the guest room. It also awarded the landlord \$235,860 in damages and \$218,741.28 in attorney's fees and costs. The resident appealed.

The Court of Appeals for the District of Columbia agreed with the lower court's decision dismissing the resident's counterclaims and imposing the permanent injunction. However, it lowered the damages fees to \$227,800 from the \$235,860 originally awarded. It did not address the attorney's fees. In sum, the landlord won both the lower and appeals court cases. The resident is out and she is on the hook for almost half a million dollars.

