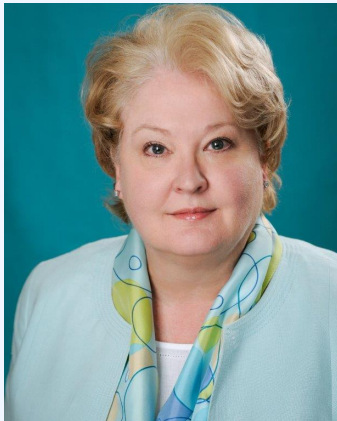




# Fair Housing Newsletter

*Keeping you current on fair housing news and issues*



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## “No Criminal Record” In Ad Is Not Evidence of Unlawful Policy

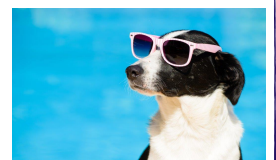
A Florida Federal Judge recently dismissed a fair housing tester’s lawsuit because a single ad stating “No Criminal Record” was not enough to show a real estate agent had a discriminatory policy.

The case started when a fair housing tester saw an ad for a rental home stating, "no criminal record." He contacted the real estate company, who confirmed the home was available. The tester asked whether a felony arrest in 2013 would disqualify him from renting the home. The agent responded that it might and agreed to check and get back to the tester. The tester called the next day, and the agent said the home was rented. The tester then inquired from a different phone number, and the agent confirmed the home was still available.

The tester filed a fair housing lawsuit in federal court claiming the ad violated the Fair Housing Act because it caused a disparate impact on Black applicants. The real estate company requested the court dismiss the complaint. The court agreed.

In this case, the complaint failed to clearly identify a policy. The tester had not alleged sufficient facts to support an inference that the agent refused to rent to anyone with an arrest record. The single incident was not enough to establish a policy. The Court dismissed the lawsuit, but will allow the tester to file an amended complaint later. The Court cautioned the tester that an amended complaint must satisfy the Supreme Court's "robust causality requirement" in disparate impact cases. The broad reference to "recent data, studies and HUD findings" in the original complaint will not suffice.

Note From the Editor: The year is flying by. Enjoy the sun while you can because it will soon be too cold to be outdoors. You can always watch our webinars on you phone or tablet while sitting under a shade tree.



## **N.C. Man Pleads Guilty to Criminal Interference with Fair Housing Act**

The U.S. Department of Justice announced a North Carolina man has pled guilty to one count of criminal interference with the Fair Housing Act, for using threats of force against an African American family because of the family members' race.



According to the DOJ press release, the man had threatened an African American mother and her four children who were renting a home by yelling racial slurs and threatening to shoot the family. The man told the family they did not belong in the home and waived a metal rod in a threatening way. The man also engaged in similar conduct towards two other African American families living in the same neighborhood. The man faces a sentence of up to 10 years in prison and a maximum fine of \$250,000.

## **New Florida Law Opposes Fraudulent ESAs**

Florida, like many other states, has recently enacted a law intended to cut down on fraudulent emotional support animals (ESA). Much like the federal law, the Florida law allows landlords to request documentation showing the resident is disabled and in need of a support animal when the disability and need are not readily apparent. In addition, under both laws, a housing provider is under no obligation to accommodate an animal that poses a direct threat to the health or safety of others.

However, the Florida law goes a little further. It addresses what type of supporting documentation is and is not legally sufficient for ESA requests and it imposes penalties on those who make or support fraudulent requests.

It first establishes that an ESA registration, of any kind, including an identification card, patch, certificate, or similar registration document obtained from the internet is not, by itself, sufficient proof of a resident's disability or need for the animal. Additionally, for healthcare and other practitioners, the provider must have personal knowledge of the resident's disability to provide reliable information and they must be acting within the scope of his or her practice.

Next, the Florida law places limitations on out-of-state healthcare and other practitioners – excluding licensed telehealth providers – who certify these requests. To document that a resident has a disability, an out-of-state practitioner must have provided in-person care or services to the resident on at least one occasion. Further, any professional offering information about either a person's disability or disability-related need for an ESA without personal knowledge is grounds for disciplinary action.

Finally, the new Florida law makes it a misdemeanor in the second degree for a person to falsify information or documents, or knowingly provide fraudulent information or documents to support an ESA request – or if that person otherwise knowingly and willfully misrepresents the resident's disability status or needs. A convicted offender must perform 30 hours of community service for an organization that serves people with disabilities, or another organization designated by the court.

These laws are welcomed by landlords across the U.S. who are trying to enforce no-pet policies and make exceptions for those who are truly disabled.



# HOUSING CROSSROADS

WHERE FAIR HOUSING AND  
LANDLORD TENANT LAWS INTERSECT

## Housing Crossroads Webinar

# Recognizing and Addressing Sexual Harassment on the Property

Wednesday, September 30, 2020  
10:00 a.m. - 11:30 a.m. central

Sexual harassment claims are on the rise. Since the #metoo movement and the DOJ and HUD's initiative on sexual harassment in housing, the number of sexual harassment fair housing claims have skyrocketed.

In this webinar, we will discuss measures landlords can take to combat sexual harassment claims, what to do once you receive a claim, and the potential for liability. Our discussion will include:

- Preventative Measures
- Recognizing Unlawful Sexual Harassment
- Recent Cases
- The DOJ and HUD Initiative
- Investigating a Complaint
- Taking the Appropriate Action
- A Landlord's Liability

**\$34.99**  
[Register Now](#)



**Nathan Lybarger**  
Law Office of Hall &  
Associates

## Speakers



**Angelita Fisher**  
Law Office of Angelita E.  
Fisher

## CertaPet Documentation Deemed Unreliable

In a long-anticipated decision, the Tennessee Human Rights Commission (THRC) found documentation purchased from the website CertaPet.com was unreliable and did not establish a disability or the disability related need for an emotional support animal (ESA).

The case began when a Nashville resident requested an accommodation to allow her Shih Tzu puppy to live at her apartment complex as an ESA. The landlord allowed pets, but the resident did not want to pay the \$500 deposit. In support of her disability and need for the animal, the resident provided a letter from Rhea Hill, an Atlanta therapist with a Tennessee license. Upon review of the letter, it was clear the letter had been purchased from the website CertaPet.com. Although the letter did not identify CertaPet.com, there was a Texas address at the bottom of the letter which was connected to the website. The Property Manager was also familiar with the therapist, because she had received and denied other documentation from the same therapist.

After looking over the letter, the Property Manager contacted the resident and told her the letter was not considered reliable because it was purchased from a website. The resident did not deny she had purchased the letter, but believed it was sufficient to establish her disability and need for the animal. The Property Manager disagreed and allowed the resident additional time to obtain reliable documentation. The resident refused to provide additional documentation and instead, filed a fair housing complaint with the THRC.

The THRC investigated the complaint. According to the THRC's findings, the resident again acknowledged the letter was purchased through the CertaPet.com website. The resident completed an on-line form and spent 30 minutes on a call with Rhea Hill. The telephone conversation consisted of discussing the resident's answers on the pre-screening form. There was no face-to-face interaction and the therapist did not request any medical documentation. There was also no evidence of a follow-up visit.

The THRC found the evidence suggested the therapist lacked the personal knowledge of the resident's condition necessary to be able to determine whether she had a disability or a disability related need for the ESA. As such, the documentation was not considered reliable. In addition, the Property Manager never denied the ESA. She never threatened to charge the resident a pet deposit or evict her if she did not pay. Instead, the Property Manager engaged in the interactive process and asked for additional information. And finally, the Property Manager had other ESA requests which had been granted after residents provided reliable documentation. The THRC found there was no evidence of discrimination. Complaint dismissed.

This case is support for landlords attempting to differentiate between residents who truly need an ESA and those who simply do not want to pay a deposit. Tennessee landlords can now be more confident when making the decision to ask for additional information.





## DOJ Sues New Jersey Landlord for Sexual Harassment

A New Jersey landlord who owns hundreds of rental units, has been sued by the U.S. Department of Justice alleging he sexually harassed female residents since 2005.

The complaint alleges the owner demanded sexual favors like oral sex to get or keep housing, offered housing benefits like reduced rent in exchange for sexual favors, touched tenants and applicants in a way that was sexual and unwelcome, and made unwelcome sexual comments and advances to tenants and applicants. The complaint also alleges the owner initiated or threatened to initiate eviction actions against tenants who objected to or refused his sexual advances. Many of the residents received federal Housing Choice or Section 8 vouchers.

The case, which was filed in a federal New Jersey court, is a result of a joint investigation with the U.S. Department of Housing and Urban Development. It is seeking monetary damages to compensate the victims, civil penalties to vindicate the public interest, and a court order barring future discrimination.



## Did you know?

*The protected class of familial status includes pregnant females.*



### Fair Housing Webinar **Walking Into Trouble** *Fair Housing for Maintenance*

Wednesday, September 9, 2020  
10:00 a.m. - 11:00 a.m. Central

**\$24.99**

Did you hear the one about the maintenance guy that walked into the wrong apartment? He got sued for sexual harassment. Oh wait...that isn't funny. But, it can happen. Maintenance employees are the first in line for fair housing complaints because they have the most interaction with residents. In this webinar, we will discuss the latest guidance, rules, and cases involving fair housing as it applies to maintenance employees. Our discussion will include:

- How Fair Housing Applies to Maintenance
- Harassment Cases involving Maintenance
- Common Fair Housing Maintenance Complaints
- Pointers on Staying Out of Trouble

**\$24.99**  
[Register Now](#)

## Arkansas Landlord Pays \$51,000 to Settle Three Fair Housing Complaints

The U.S. Department of Housing and Urban Development has agreed to settle three fair housing complaints filed against an Arkansas landlord – two from tenants and one from a former employee.

The first tenant claimed the landlord refused to renew his lease and filed eviction proceedings against him based on his national origin. This claim settled for \$6,000. The second tenant claimed the landlord filed eviction proceedings against them without giving a reason. The tenant believed it was because of his national origin. This claim settled for \$5,000. Both tenants were from The Republic of the Marshall Islands.

When a property employee attempted to help the tenants whom she believed were being discriminated against based on their national origin, she was terminated. Since she lived on the property, she was also evicted. This claim settled for \$30,000. Legal Aid received an additional \$10,000 for legal fees.

The landlord did not admit guilt, but agreed to pay the money, distribute a non-discrimination policy, attend fair housing training and market housing opportunities to immigrant communities in their area.



## ESA Policy Checklist

Do you have an emotional support animal policy? If not, now is the time. Here are a few things to include:

- The animal must have a license if a license is necessary in your city;
- The resident must pick up after the animal;
- The resident is responsible for any damage caused by the animal;
- The animal must be kept current on vaccinations;
- Dogs need to be on a leash and under control when on the property; and
- The animal cannot disturb the quiet enjoyment of other residents.

Remember, you may not enforce the company pet policy. ESAs are not pets. Plus, don't ever enforce company policy on:

- Weight restrictions
- Breed restrictions
- Pet rent
- Pet deposits / fees
- Requirement of insurance
- Restrictions on the number of animals if they are ESAs

