



FAIR HOUSING

YOUR MONTHLY UPDATE TO HOUSING NEWS, INFORMATION AND EVENTS

June 2018

Another Edition – Another Assistance Animal Case

Adapted from a HUD Press Release dated May 28, 2018

WASHINGTON - The U.S. Department of Housing and Urban Development (HUD) announced it has approved a Conciliation Agreement regarding a prospective tenant in Nevada over allegations that the applicant's request to have an assistance animal was denied. Read the agreement [here](#).

The Fair Housing Act requires housing providers to make reasonable accommodations in policies or practices when a person with a disability requires such accommodations, including granting waivers to "no-pet" policies for persons who require assistance animals. Additionally, the law makes

it unlawful to make housing unavailable to any person because of a disability.

The agreement is the result of a complaint a woman filed with HUD alleging that the landlord denied her request to keep an assistance animal in the apartment she was attempting to rent, even though she provided documentation from her doctor attesting to her need for the animal due to her disability.

According to the woman's complaint, the leasing agent told her that the owner did not allow pets because the floors had been recently upgraded to hardwood. After that interaction, the woman did not pursue the rental.

Under the terms of the agreement, respondents will pay the woman \$6,000; obtain fair housing training; and, adopt reasonable accommodation policies that assess requests on a timely basis and maintain records related to such requests.

PRACTICE POINTERS

- Have a written policy on reasonable modification and accommodation.
- Make sure your process is interactive.
- Denials should be in writing and be based only on allowable grounds.
- Train your staff on Fair Housing Laws.

STATES PASS ASSISTANCE/SERVICE ANIMAL LAWS

Congratulations to the following states with General Assemblies that have adopted bills in 2018 on misrepresentation of assistance animals: [Alabama](#), [Arizona](#), [Hawaii](#), [Indiana](#), [Kentucky](#), [Minnesota](#), [Oklahoma](#), [South Dakota](#), [Washington](#) and [Wisconsin](#). A broader bill on misrepresentation of disabilities passed in [West Virginia](#). And, [Mississippi](#) came up with new definitions and [New York](#) is forming a commission.



Senior Communities and HOPA Updates

..ain't no cure for the summertime (pool) blues

As stated in last month's edition, MHI has received several requests to include issues relative to the Housing for Older Persons Act (HOPA) in the monthly Fair Housing Update. This month we continue the series on how fair housing rules apply to senior communities.

The Fair Housing Act protects all residents from discrimination on the basis of race, color, national origin, religion, sex, handicap or familial status.

However, the Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Under this very narrow exemption, senior communities can lawfully refuse to sell or rent manufactured homes to families with minor children. How the exemption applies was addressed in last month's edition.

HOPA qualified communities with pools present a unique fair housing issue. Many of these communities allow residents to have guests at the pool. And while courts have upheld certain reasonable age separation requirements for HOPA community pools, the community owner must make sure that rules for usage do not violate federal, state and local fair housing laws.

For instance, if guests are allowed, communities should not have an outright ban on children's use of the pool nor require that parents (or grandparents) be present to use. While these rules may be well intentioned and safety conscious, such outright bans may violate familial status discrimination under the Fair Housing Act.

As safety is a genuine concern, however, implement rules that require reasonable supervision of individuals (of any age) that are unable to swim.

Do not implement rules that restrict the use of the pool to persons over a certain age. An "adult hour" seems nice, but it may draw concern for Fair Housing Act compliance. Many HOPA communities avoid this by restricting the pool during certain times for residents and guests for laps only.

Diving boards and slides come with warnings from their manufacturer on the appropriate age for usage. While you should post the manufacturer's warning, banning usage under a certain age sends up red flags. The previously mentioned rule regarding supervision of those that cannot swim may be more appropriate.

Finally, check with your local jurisdiction on health rules that apply to the operation of pools. These local ordinances may offer additional guidance on appropriate swimming pool policies for residents and guests, as well.

Future editions of the Fair Housing Update will deal with topics specific to senior manufactured home communities. Feel free to send ideas for topics to Rick Robinson at rrobinson@mfghome.org.



If you have any questions regarding Fair Housing or would like back issues, please contact MHI's Senior Vice President of State and Local Affairs and General Counsel, Rick Robinson at rrobinson@mfghome.org.

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