



FAIR HOUSING

YOUR MONTHLY UPDATE TO HOUSING NEWS, INFORMATION AND EVENTS

May 2018

Reasonable Accommodations for Dangerous Breeds Iowa Decision May Provide Some Relief

The most common Fair Housing Act claim made these days is for a housing provider's failure to grant a resident a reasonable accommodation to a no pet policy for an assistance, service or emotional support animal.

This issue becomes even more complicated when the reasonable accommodation is for a dangerous breed of dog that could pose a safety issue to the community. HUD insists that each animal must be dealt with individually and you can't ban entire breeds.

Community owners are often left in a Catch 22 situation whereby their compliance with the Fair Housing

Act leaves them without proper insurance coverage for the injuries the dog may cause. However, a recent decision by the Iowa Civil Rights Commission may offer some new guidance.

Last year, a resident in a manufactured housing community requested a reasonable accommodation from the no pet policy for an emotional support animal – a Chow Chow mix.

The community owner denied the accommodation based upon the fact that acceptance of the animal into the community would have caused a drastic (25%) increase

of its insurance premiums. On the grounds that the proposed accommodation posed "an undue financial burden" on the community, the case was dismissed.

PRACTICE POINTERS

This is an Iowa decision. Check with your lawyers before relying on this as a defense in any denial.

Make sure you have a reasonable accommodation policy in place and follow an interactive process as required by the law.

MORE 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.



NEW: Senior Communities and HOPA Updates

In recent months, MHI has received several requests to include issues relative to the Housing for Older Persons Act (HOPA) in the monthly Fair Housing Update. Starting with this issue (and for the foreseeable future), we will dedicate at least one page of this monthly newsletter to items about 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.

This exemption is very specific and there is a test to qualify. In order to be treated as a senior housing facility under federal law, a manufactured home community must prove that its housing is:

“Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or

Intended for, and **solely occupied** by persons 62 years of age or older; or

Intended and operated for occupancy by persons 55 years of age or older.”

In order to qualify for the broader "55 or older" housing exemption, HUD requires a manufactured home community to satisfy each of the following requirements:

“At least 80 percent of the homes must have at least one occupant who is 55 years of age or older; and

“The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and

“The facility or community must comply with HUD's regulatory requirements for age verification of residents.”

This special exemption under HOPA does not protect manufactured home communities from liability for other types of housing discrimination based on race, color, religion, sex, disability, national origin (or any other protected class proscribed by state law or local ordinance.

Additionally, the same rules apply if a resident needs a reasonable accommodation for a care giver that might happen to be under 55 years of age.

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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