



# MORE SEX AND SERVICE ANIMALS

*Welcome to fair housing month!*

IN APRIL OF each year, we pay extra attention to the fair housing rights and responsibilities of residents and housing providers in the apartment industry. We take this opportunity to refamiliarize ourselves with the nuts and bolts associated with compliance of fair housing laws, rules and regulations.

Last April, I reported in an article entitled "Sex, Service Animals and Shotguns" on HUD's new rules on quid pro quo and hostile environmental harassment discrimination, HUD's Notice on Service and Assistance Animals and a recent Texas federal case, which supported an owner's request for more information on assistance animals and taking action against problem residents who exhibit unstable behavior.

Recent settlements illustrate issues regarding sex and service animals. The following settlements (three with respect to assistance animals and one with respect to sex discrimination) give you some idea of the types of cases that HUD has focused on over the past year and how parties have resolved the disputes.

## Service Animal Settlements

### **U.S. v. Biafara's Incorporated et al. (West Virginia, Oct. 26, 2018)**

**What happened?** After receiving two complaints regarding the owner's properties, the Northern West Virginia Center for Independent Living conducted testing to determine whether the owner was discriminating on the basis of disability by denying requests for service animals. The testing indicated that the owner was distributing documents that could deter residents and prospective residents from seeking an accommodation to live with an assistance animal.

On one occasion, a resident with a disability submitted a request to have an assistance

dog in her apartment. The owner denied the request, required the resident to remove her assistance animal and demanded that the resident pay an additional security deposit because she had an unauthorized animal in her apartment. After the resident's parents complained to the property manager, the owner reversed its decision and allowed the resident to keep her assistance animal.

On the same day the owner allowed the resident to have her assistance animal, the resident filed a discrimination complaint alleging that the owner had discriminated against her on the basis of disability by refusing to grant her request for an assistance animal.

Another disabled resident at a sister property submitted a request for a reasonable accommodation for her assistance dog. The owner denied this request and required the resident to remove her dog and demanded that she pay an additional deposit because she had an unauthorized animal. This resident also filed a discrimination complaint.

After an investigation, HUD issued a charge of discrimination. The owner elected to have the charge determined by a federal district court.

**Settlement.** The owner agreed to pay \$6,000 each to the two individual complainants, adopt a new policy on reasonable accommodations and assistance animals, conduct fair housing training, and report to HUD on future requests for reasonable accommodations relating to assistance animals.

**What can we learn?** When a resident requests an assistance animal, if the disability

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or disability-related need for the animal is not known or obvious, the housing provider is entitled to ask for reliable disability-related information showing that the resident has a disability under the Fair Housing Act and that the resident has a disability-related need for the animal.

It is interesting to note the potential differences in how different courts interpret the law. In the case reported in last April's article, *Houston v. DTN Operating Company LLC* (decided in October 2017 by the United State District Court in the Eastern District of Texas), the court ruled in the owner's favor after the request for the assistance animal was denied. In the *Houston* case, the resident provided the owner with a letter from a licensed marriage and family therapist stating that the resident had a mental disability and needed an emotional support animal. When the owner requested additional documentation, the resident submitted a second letter from the same therapist stating that the resident was under the therapist's care and vaguely (in the court's opinion) explained that the resident needed a therapy dog to help her cope with her mental health condition. The resident also provided the owner with documentation that the resident had registered the animal as an emotional support dog with the United States Animal Registry.

When a resident requests an assistance animal, if the disability or disability-related need for the animal is not known or obvious, **the housing provider is entitled to ask for reliable disability-related information** showing that the resident has a disability under the Fair Housing Act and that the resident has a disability-related need for the animal.

Based upon the information submitted by the resident, the court concluded there were no medical facts to support the resident's claim that she was disabled. Although the doctor stated the resident met the definition of disability under the Fair Housing Act, the court stated the diagnosis failed to set forth any facts regarding if or how any of the resident's conditions "substantially limits" a major life activity.

Although the settlement report in this West Virginia case does not identify what information the residents provided in support of their request for an assistance animal, the Texas case provides some support to an owner who wants to challenge the information provided

by the resident (if it does not provide enough facts regarding if or how a resident's conditions would substantially limit a major life activity).

**U.S. v. Irvin (Oklahoma, Aug. 8, 2018)**

**What happened?** The owner operated and managed a mobile home park of approximately 20 lots. The owner maintained a policy

that permitted residents to keep "one small dog per family." The resident made a request for a reasonable accommodation asking that she be allowed to live with her assistance animal, a blue heeler Labrador retriever mix-breed dog. This request was made after the owner told the resident that her assistance animal was in violation of its pet policy due to the animal's size.

The owner was given information regarding the resident's disability and disability-related need for the accommodation, including a letter from the resident's treating psychiatrist that the resident was a person with a disability.

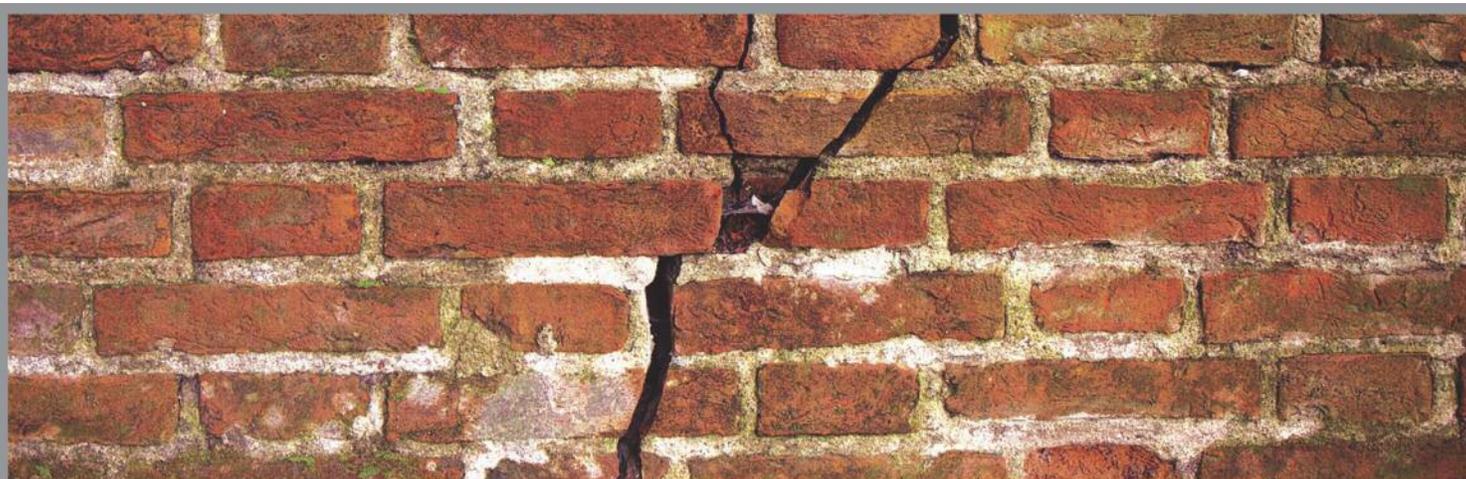
The resident filed a complaint with HUD. After the owner received notice of the filed

complaint, the owner issued a notice of eviction and demanded the resident vacate her unit. The resident then claimed she was being retaliated against because of the fair housing complaint. The owner also refused to rescind the demand for possession even though the resident removed her animal.

**Settlement.** The settlement agreement required the owner to pay \$50,000 in damages, participate in fair housing training and implement a reasonable accommodations policy.

**What can we learn?** Breed, size, weight and number limitations do not apply to assistance animals. A policy that restricts residents to one small animal cannot apply to a properly qualified assistance animal. Additionally, when a fair housing complaint has been made, proper precautions should be taken when issuing a subsequent notice to vacate or taking other action against the resident. Although a fair housing complaint does not prevent an owner from exercising its eviction remedy, a retaliation claim should be anticipated.

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**U.S. v. Tilsen et al.  
(Minnesota April 6, 2018)**

**What happened?** The owner denied the resident's request to have a dog as an assistance animal despite the recommendation of the resident's mental health provider. Instead, the owner suggested that the resident obtain a cat. The owner also applied a size requirement to the resident's emotional support dog. The owner also filed an eviction action against the resident for having an unauthorized pet after the fair housing complaint was filed.

Based upon the information gathered during the investigation, HUD determined reasonable cause existed to believe that illegal discriminatory housing practices occurred. The owner was charged with discrimination under the Fair Housing Act.

**Settlement.** The settlement agreement required the owner to pay \$15,000 to the resident, adopt a new reasonable

accommodation policy, conduct fair housing training and report on future denials of requests for assistance animals.

**What can we learn?** When a request for an accommodation is made, you have the option of either granting the request, denying the request or asking for more information. If you grant the request, the issue is done. If you deny the request, you should prepare for the possibility that a fair housing complaint will be filed. If you are inclined to deny the request or have some questions regarding whether the resident has a disability under the Fair Housing Act or a disability-related need for the assistance animal, rather than denying the request, you may want to request more information.

As indicated above with respect to the Houston case, there is support for an owner wanting more facts relating to if and how a condition substantially limits one or more major life activities. Of course, if you take action against a resident for having an unau-

thorized pet after a request is made for an assistance animal, be prepared for a retaliation claim in any subsequent eviction or fair housing complaint.

**Sex Settlement**

**U.S. v. Webb and Webb  
(Missouri, March 19, 2018)**

**What happened?** The U.S. alleged that Mr. Webb violated the Fair Housing Act by discriminating against tenants and prospective tenants on the basis of sex in the rental of dwellings he owned and managed in and around St. Louis, Missouri. Specially, from at least 1994 through at least 2014, Mr. Webb was alleged to subject multiple female tenants and prospective tenants to unwelcome sexual harassment and retaliation, including but not limited to the following:

- a. making unwelcome sexual comments and advances to female tenants and prospective tenants;
- b. groping, touching, or attempting to touch

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female tenants on their breasts and bodies without their consent;

c. offering to grant tangible housing benefits – such as reducing rent, overlooking or excusing late or unpaid rent, and for stalling or terminating eviction proceedings – in exchange for sex or sexual favors; and

d. taking adverse housing actions, or threatening to take such actions, against female tenants or prospective tenants who objected to, or refused, or would not continue to grant sexual favors.

**Settlement:** Under the settlement, the Webbs were required to pay a total of \$600,000 in monetary damages to 15 former and prospective tenants who were subjected to sexual harassment, as well as a \$25,000 civil penalty to the U.S. The settlement also bars the Webbs from continuing to serve as property managers.

**What can we learn?** Discrimination based on sex is prohibited. Additionally, this conduct violates HUD rules regarding quid pro quo and hostile environment harassment. HUD's quid pro quo harassment rule refers to an unwelcome request or demand to engage in conduct related to rental of a dwelling because of someone's protected class. Hostile environment harassment refers to unwelcome conduct that interferes with the rental of a dwelling related to a person's protected class.

These HUD rules have possible broad ranging effects in the apartment industry. One of the unique aspects of our industry is that, oftentimes, management and maintenance personnel live amongst the residents. This could present difficulties in maintaining a proper and appropriate landlord/tenant relationship. Social or romantic relationships between maintenance and management personnel and residents can lead to problems. While relationships are going well, others could claim some preferential treatment. When relationships go bad, spurned residents could cause problems. To avoid problems or the appearance of impropriety, it is beneficial to adopt nonfraternization policies.

Fair housing remains an issue that affects so many things in the operations and management of an apartment property. Sex and service animals are some of the most common issues that affect the apartment industry. It is imperative that you know your rights and responsibilities with respect to these issues and adopt policies geared towards compliance with applicable rules. 🏠

