

In true Montana spirit, the Chuckwagon . . . the newsletter to fill your fair housing appetite.



Montana Fair Housing is a private, non-profit, civil rights organization providing education, outreach, and enforcement activities throughout the state of Montana and elsewhere. MFH does not have an attorney on staff. Information contained in this newsletter should not be construed as legal advice and does not provide a legal opinion.

Tales Roun' the Campfire

A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This summary is not all inclusive . . .

MFH, et. al. vs Tri Star Rentals, and Dennis & Ray Reisman

Montana Fair Housing has filed complaints of housing discrimination against Tri Star Rentals, Dennis R. Reisman and Ray D. Reisman of Libby. The complaints allege the Respondents denied housing on the basis of sex (female) and familial status; imposed different terms and conditions on females and families with children; and made discriminatory statements that indicated a preference, limitation or discrimination based on sex and familial status.

In April 2016 MFH received a call alleging the Respondents discriminated against the caller because she was a woman and had children in the household. As a result of this call, and in furtherance of its mission, MFH initiated an investigation of the Respondents' policies and practices.

The complaints allege that also in April of 2016, a second female head of household with minor children spoke with Respondent Dennis Reisman. The woman stated she was responding to an advertisement posted in the local newspaper, the Western News. Respondent D. Reisman informed the woman that she could get an application and more information after he and his wife met the woman and her children. During the conversation, Respondent D. Reisman mentioned there was an additional rental available.

A few days later a male head of household with minor children spoke with Respondent Dennis Reisman. According to the complaints, the male stated he was responding to an advertisement posted in the local newspaper, the Western News. After Respondent D. Reisman clarified that the male was a single parent with minor children, he informed the male that the 3-bedroom unit had "steep stairs" and may not be suitable for the household. Respondent D. Reisman provided full information to the male about an available two-bedroom, ranch-style home and encouraged the male to rent from Respondents. Respondent D. Reisman informed the male that the property was located in a nice, safe neighborhood and that after a year he would have the opportunity to purchase the home with a low down payment and a finance plan. Respondent D. Reisman congratulated the male for providing for his children while being a single parent.

The complaints are filed with the Department of Housing and Urban Development, and are pending final investigation.

Shootin' the Bull

Assistance and Service Animals

. . . We can do this better together! . . .

People often refer to them as companion animals or pets, therapy animals or pets, emotional support animals or pets, or service animals. Animals are being used more frequently to treat many conditions. Effective use of animals for treatment reduces the need for medications and support services, ultimately reducing the cost of medical care. For some people with disabilities, animals may be the only reason the person maintains an independent living environment and even remains alive.

To comply with federal and state nondiscrimination laws related to housing, landlords and property managers should avoid getting caught up in terminology. If a household member, someone on behalf of that person, or a guest is requesting, for a disability-related reason, a waiver of a no pets rule, or waiver of fees and charges associated with having pets, the housing provider needs to think, "Is this a request for a reasonable accommodation?" Upon recognizing the request is or may be disability-related, the request should be reviewed as any other type of Request for a Reasonable Accommodation. Neither the request nor verification of disability-related need have to be provided on specific forms, in specific formats, or by using specific language. They can be provided verbally, though providing the information in writing is encouraged.

Healthcare providers can be required to include several elements in a letter or statement to verify disability-related requests. A healthcare provider should verify the person has a disability as defined by federal and state laws. A disability is defined as a "physical or mental impairment that substantially limits one or more major life activities." Requesting an assistance animal to help household members adjust to and grieve a divorce may be situational, and may not qualify as disability-related. Requesting an assistance animal to augment physical therapy for a broken leg may also be situational. However, in some circumstances a temporary impairment may qualify as a disability depending on its severity. *Summers v. Altarum Institute Corp.* (4th Cir. 2014). Animals live a long time and the request must be linked to the need and the duration of the need.

The statement should then list major life activities that are substantially limited by the disability and

that are related to the request. These activities are things like walking, seeing, working, talking, sleeping, etc.

A description of the symptoms arising from the disability should be limited to only those related to the request. Symptoms addressed are often linked to anxiety, depression, emotional regulation - symptoms all people experience. What is different for the person needing the accommodation vs. someone without a disability? The difference is without the disability, the person could cope with these symptoms without assistance; for people with a disability experiencing anxiety, depression or problems regulating emotions, the symptoms persist or may be aggravated without assistance. The request needs to clearly identify why the animal is essential for the person with the disability.

Healthcare providers verifying disability and need should take the "prescribing" of an animal for treatment as seriously, and with as much care and interaction with their client, as he/she would when prescribing medications or medical devices. Healthcare providers should talk with their clients about the responsibilities involved in having an animal prior to verifying disability and need. Do the symptoms arising from the disability limit the person's ability to care for the animal? If so, how will the needs associated with animal care be addressed? Having an animal requires financial resources. They need food and water, and medical care. Can the household financially meet these needs? Many communities have local ordinances in regards to having animals. Does the household understand, and can it meet, these requirements? What about the requirements the housing provider may impose? Does the household understand what those rules will be and the need to comply with those rules? The statement should not include diagnosis nor specific treatment components outside the need for the animal.

Healthcare providers must understand that Requests for Reasonable Accommodations are for persons with disabilities only, and these provisions exist to ensure persons with disabilities have an equal opportunity to use and enjoy their dwelling and home, and its public and common areas. How does the request provide, if approved, an equal opportunity? If a household is requesting multiple animals the need for each animal should be specifically described. What does each animal provide that the other animal does not?

The healthcare field is a field of specialties. If the healthcare provider is, for example, a dentist or oncologist verifying a disability-related need for mental health care, it is useful to know how that person is able to verify the mental-health related need for an assistance animal. Most often, this is simply a statement verifying the healthcare provider has access to records that clarify need. A healthcare provider may have to testify in a deposition and/or in court about the disability, the need for the animal, and his/her qualifications to verify the need for an accommodation. Clarifying that information at the onset of the request reduces the likelihood of confusion, as well as a denial based on confusion.

Tenants or visitors should not bring an animal to a site or a dwelling unit until a request to have the animal is submitted AND approved. If an animal is brought to a site without approval that can be a violation of the lease, and the household may risk eviction. A housing provider can request an animal be removed from the property until it is approved. There are situations when a denial is made and is not a violation of fair housing laws. A review of denials is done on a case-by-case basis. Please call our office if you believe your request was unreasonably denied.

The provisions and definitions of a service animal contained in the Americans with Disabilities Act (ADA) do not cover dwelling units. Title I provides protections for persons with disabilities related to employment. Titles II and III apply to public entities and public accommodations. The ADA defines SERVICE ANIMALS as dogs, and in specific instances, miniature horses, and requires that the animal be trained to do work or perform tasks directly related to a person's disability. Animals needed for emotional support, therapy, comfort, or companion animals are not considered service animals under the ADA.

In Montana, a 'service animal' is simply defined as "a dog or other animal individually trained to provide assistance to an individual with a disability." §49-4-203(2), MCA. In our state, the courts have said that service animals are not considered pets, but may qualify as an "assistive device" needed by a person with a disability.

Fair housing laws are different because they deal with a person's opportunity to live in their own home. The Montana Human Rights Act (HRA) and Federal Fair Housing Act (FHAA) require housing

providers to approve requests for reasonable accommodations needed by persons with disabilities. A housing provider cannot refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

Adopting a "no animals" policy is not on its own a defense justifying denial of a request for a reasonable accommodation for an assistance animal. Requests can be denied if the request is not made for a person with a disability, the request poses a "direct threat" to other persons or property, the request imposes an undue financial and administrative burden, or if the request fundamentally alters the nature of a housing provider's operations. There are also exemptions included in both Acts for some housing providers. Denial because of a direct threat must be made based on credible and reliable information, and occur only if the threat can not be mitigated.

The HRA and FHAA do not limit the type or size of assistance animals. A housing provider can not charge additional deposits or other monies from a qualified person needing an assistance animal (or service animal), nor require documentation that the animal has received training. The person responsible for the animal does however remain responsible for any damage done by that animal.

The owner of an animal serving as an assistance animal can be required to produce documentation that the animal has all vaccinations and licenses, and is spayed or neutered, if required by county and city laws. However, this inquiry should only be made if the housing provider requires all households to comply with all laws and ordinances, including compliance with other licensing and legal requirements. If that is not occurring, there may be argument for a different terms and conditions violation.

This article is not intended to be exhaustive on the subject of service or assistance animals in relationship to fair housing laws.

Further information and resources are available at montanafairhousing.org. For information specific to requests for accommodations see: http://www.montanafairhousing.org/forms/HUD_DO_J_RA_joint_statement.pdf.