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A New Leash on Fair Housing?

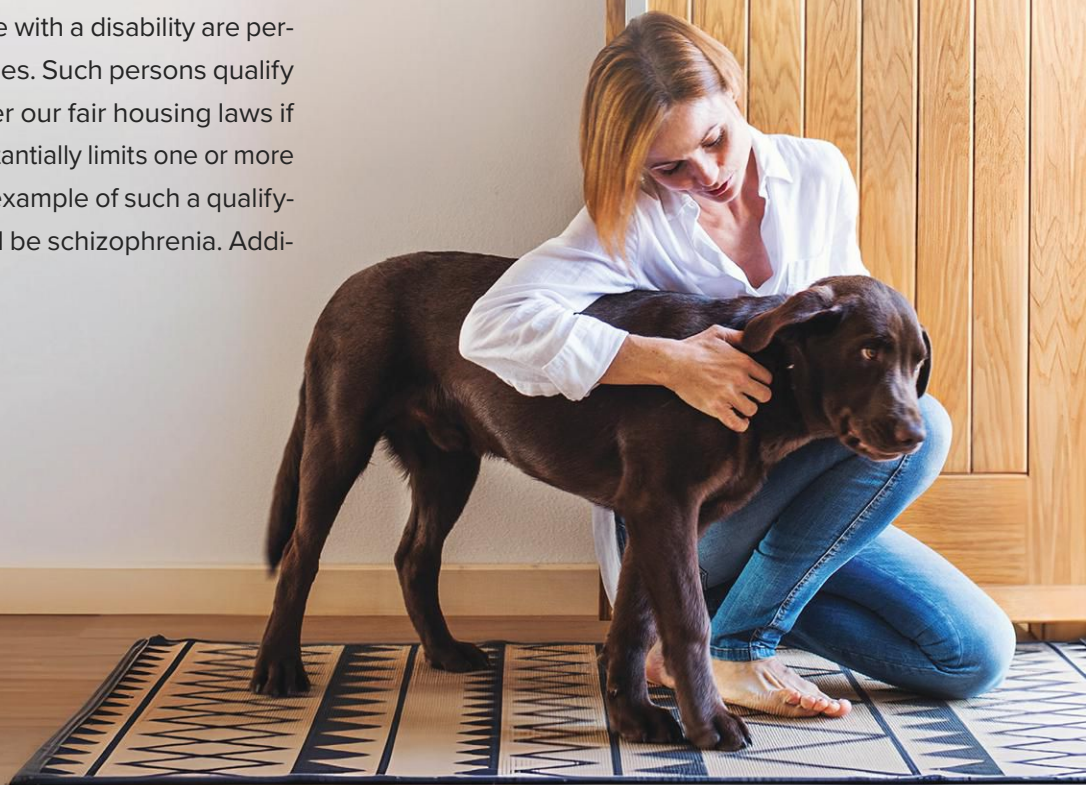
HUD Reconsiders Emotional Support Animals

HUD is changing its policy with regards to emotional support animals. While the law has not changed, HUD's interpretation of it has. Based on the new guidance, emotional support animals are no longer presumptively protected in HUD's investigations and enforcement actions.

Our fair housing laws require landlords to make reasonable accommodations for persons with disabilities. Up until now, HUD took the position that one of those reasonable accommodations was for emotional support animals that provided comfort or companionship to disabled persons (even if such animals were not trained to perform specific tasks).

Included among those with a disability are persons with mental illnesses. Such persons qualify as being disabled under our fair housing laws if their mental illness substantially limits one or more major life activities. An example of such a qualifying mental illness would be schizophrenia. Addi-

tionally, depression and mood disorders, anxiety disorders, trauma and stress-related conditions such as post-traumatic stress disorder ("PTSD"), developmental and neurological conditions such as autism, substance abuse disorders such as chronic alcoholism and drug addiction, and intel-



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lectual disabilities, to name a few, are also qualifying mental disorders that entitle a person to be considered as disabled under our fair housing laws. The definition of a disability resulting from a mental disorder is so broad under our fair housing laws that millions of Americans technically qualify in this area alone as having a disability.

As a result, tenants started to claim that they were suffering from a mental illness and needed an animal for emotional support. A cottage indus-

HUD's new internal guidance is not to treat persons with emotional support animals as in need of a reasonable accommodation. This means that new fair housing complaints involving a landlord's denial of a tenant's request to have an emotional support animal as a reasonable accommodation will likely be denied by HUD unless the animal is trained to assist with a disability. Because training is now incorporated into the guidance, assistance animals will largely be limited to dogs.

Word quickly spread among tenants that claiming a disability was a great way to avoid having to pay to keep a pet in an apartment and the cottage industry exploded in size. Landlords complained that our fair housing laws were being abused, but there was little they could do about it.

try soon developed where such tenants were able to purchase certifications from healthcare providers. The certifications stated that the tenant was disabled by some type of mental disorder and needed an otherwise prohibited pet as an emotional support animal. Landlords were thus required to allow tenants with such disabilities to keep all types of non-commercial domesticated animals. Landlords were further advised that charging a pet deposit to a tenant for an emotional support animal or prohibiting dangerous dog breeds was almost certainly a violation of our fair housing laws. Word quickly spread among tenants that claiming a disability was a great way to avoid having to pay to keep a pet in an apartment and the cottage industry exploded in size. Many landlords complained that our fair housing laws were being abused, but there was little they could do about it. This was unfortunate because it made landlords skeptical of persons who legitimately needed an emotional support animal.

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The change in HUD's position does not affect all animals. Tenants with a need for a service animal individually trained to perform specific tasks related to the tenant's disability will still be protected (for example, guide dogs). Disabled persons making requests for a service animal should still be allowed as a reasonable accommodation, and no pet deposit or other fee should be charged to the tenant seeking to have such a service animal.

So, is it safe for landlords to deny tenants the right to keep emotional support animals where no pets are allowed? The safe answer for now is to probably wait for additional guidance before prohibiting emotional support animals. Here's why. Georgia has its own fair housing law that closely mirrors the federal law. Georgia may similarly change how it interprets the law protecting disabled individuals, but they have not done so yet.

Is it safe for landlords to deny tenants the right to keep emotional support animals where no pets are allowed? The safe answer for now is to probably wait for additional guidance before prohibiting emotional support animals.

More importantly, our courts are not required to follow HUD's new interpretation of the law. Instead, they evaluate the Fair Housing Act independently based on their own interpretation of the law, rather than deferring to HUD's interpretation. While HUD's guidance may be persuasive in litigation, the courts are ultimately responsible for interpreting the law. Therefore, our courts could interpret the law differently from HUD and find

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that allowing emotional support animals is a reasonable accommodation.

Additionally, while the new guidance requires assistance animals to have task-specific training related to a disability, no specific certification is required. Housing providers, therefore, cannot request proof that the animal is trained. Instead,

HUD and the courts have said a housing provider may only ask the following limited questions (and only if the disability is not evident): (1) is the animal required because of a disability; and (2) what work or task is the animal trained to perform? So, for example, a landlord cannot ask an obviously blind person what service a guide dog is trained

SUMMER BONUS

Is your Builder in Compliance with License Law?

For many years, homebuilders were allowed to use unlicensed salespersons to sell the homes they build. This was because there was an exemption in license law for unlicensed salespersons to sell properties so long as they did this on a full-time basis. The old law specifically exempted:

“Any person who, as owner or through another person engaged by such owner on a full-time basis ... sells ... manages ... or otherwise deals with property owned by such person”. (See O.C.G.A. § 43-40-29(a)(7))

While it apparently went unnoticed by many homebuilders, in 2025 the Georgia legislature deleted from this section of license law “or through another person engaged by such owner on a full time basis”. The effect of this is that unlicensed salespersons can no longer sell a homebuilder’s homes even if they do so on a full-time basis. A homebuilder can continue to sell homes it owns without being licensed; however, the homebuilder can no longer hire unlicensed salespersons to do so. In other words, if a homebuilder constructs, for example, one house and wants to sell it without using a salesperson, the homebuilder can do so under the law. But, if a homebuilder wants to put together a sales team to sell multiple houses it owns, the salespersons must be licensed to sell real estate in the state of Georgia and must work under and be affiliated with a real estate broker.

The change in the law leaves homebuilders needing a sales team with two options. First, the homebuilder can hire a real estate brokerage firm to sell the homebuilder’s homes. Under such an arrangement, the broker would assign certain agents to be the listing agents for different homes and/or subdivisions. Second, the homebuilder can set up its own in-house real estate brokerage firm which must include a qualifying broker. Under this second arrangement, all the licensed real estate salespersons would then work under and be affiliated with the qualifying broker.

While a homebuilder can own an in-house brokerage firm without being licensed as either a broker or salesperson, the qualifying broker must play a significant role in the brokerage firm. So, for example, if the brokerage firm is a corporation, the qualifying broker must be an officer of the corporation whose actions are binding upon the corporation (See O.C.G.A. § 43-40-18(e)). Similarly, if the brokerage firm is a limited liability company, the qualifying broker must be a member of the limited liability company or a manager if the articles of organization or operating agreement vests management in a manager. Certainly, all decisions regarding any trust accounts of the builder should be made by the qualifying broker.

Since it is common practice for most homebuilders to sell their homes through a licensed real estate broker, this change in the law will force those using unlicensed salespersons to modify their business practices immediately.



to perform. Because a housing provider cannot require documentation, landlords should also not deny a request for a reasonable accommodation even if they suspect the animal is untrained.

The one group that may be particularly harmed by HUD's new interpretation of the law is veterans who have been in combat and are suffering from PTSD and have an emotional support animal to help address that condition. This group would

than adopting a blanket policy that no reasonable accommodations will be granted for emotional support animals.

HUD has also issued other new guidance on the enforcement of other fair housing laws. Specifically, HUD withdrew previous guidance that discouraged the use of criminal history in tenant screening. HUD has also issued new guidance easing restrictions on brokers discussing informa-



While the new guidance requires assistance animals to have task-specific training related to a disability, no specific certification is required.

likely have the best chance of prevailing in a lawsuit if they were denied an emotional support animal as a reasonable accommodation. Therefore, it is best to wait to disallow emotional support animals until: 1) we see how Georgia will respond to the new guidance; and 2) whether courts follow HUD's new interpretation of the law. At a minimum, landlords should evaluate each request for an emotional support animal on its merits rather

than about a neighborhood. HUD clarified that answering questions regarding school quality or crime in a neighborhood did not inherently constitute unlawful steering. HUD is also now prioritizing cases in which there is strong evidence of intentional discrimination and de-emphasizing cases based on disparate impact where a practice has a disproportionate adverse effect on a protected class of persons.



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HUD's secretary, in implementing these changes, has stated that his goal is to eliminate artificial, arbitrary and unnecessary barriers to housing by restoring fair housing enforcement to its core statutory mission. Of course, and as this article has emphasized, the best course of action is to proceed as usual until the state of Georgia indicates how it will interpret its fair housing statute and our federal courts decide how they interpret our fair housing laws. It may take several years before REALTORS® have the guidance they need on how best to comply with our fair housing laws. Ultimately, our U.S. Supreme Court may have to weigh in on the meaning of our fair housing laws. In this uncertain legal environment, REALTORS® are advised to proceed cautiously and let others be the test cases that will eventually decide the scope of our fair housing laws.

Seth G. Weissman is GAR General Counsel and senior partner of the law firm of Weissman PC.

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