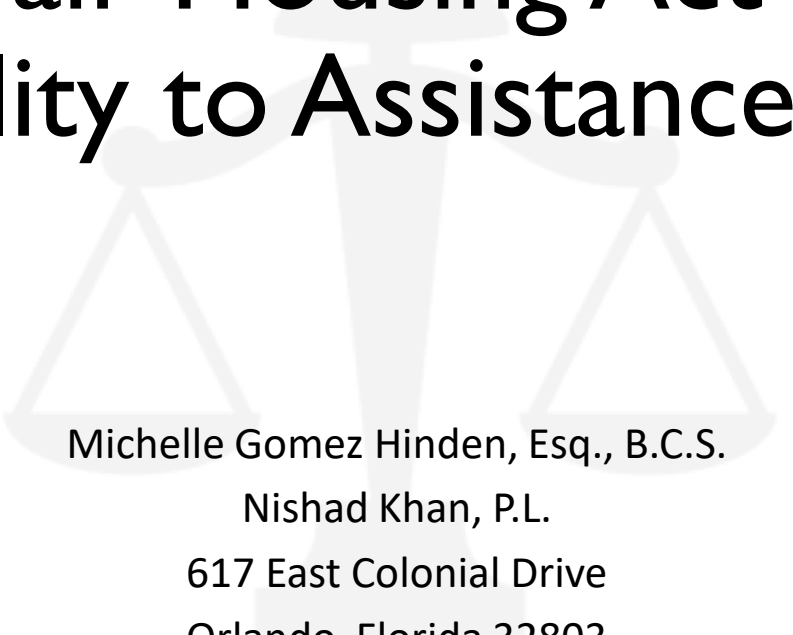


NISHAD || KHAN P.L.

REAL ESTATE AND BUSINESS LAW

SERVING CLIENTS THROUGHOUT FLORIDA
FOR ALL OF THEIR REAL ESTATE MATTERS

“The Fair Housing Act and its Applicability to Assistance Animals”



Michelle Gomez Hinden, Esq., B.C.S.

Nishad Khan, P.L.

617 East Colonial Drive

Orlando, Florida 32803

MHinden@NishadKhanLaw.com

www.NishadKhanLaw.com

Overview

- The Fair Housing Act
- “Disability” and under the Fair Housing Act
- “Request for a Reasonable Accommodation”
- Types of animals that qualify as an “Assistance Animal”
- Housing Provider obligations under the Fair Housing Act
- No obligation to accommodate under the Fair Housing Act
- The Complaint Process
- Best Practices for Housing Providers

Fair Housing Act

- Passed in 1968
- Amended in 1988 to prevent discrimination against handicapped persons as well
- Protects persons from discrimination based on race, color, religion, national origin, sex, familial status and disability when they are:
 - Renting a home
 - Buying a home
 - Getting a mortgage
 - Seeking housing assistance
 - Engaging in other housing-related activities
- Provides persons with disabilities with the right to request a reasonable accommodation

Examples of Violations

- Refusal to rent or sell housing
- Make housing unavailable
- Provide a person with different housing facilities or “steering”
- Falsely deny that housing is unavailable
- Impose different conditions such as sales or rental terms
- Limit the privileges, services or facilities
- Refusal to provide a reasonable accommodation

Fair Housing Act Applicability

- Very broad and far reaching purview
- The Fair Housing Act applies to (but are not limited to):
 - Individuals, corporations, associations and others involved in the business of providing housing
 - Property owners who do not fall under an exemption
 - Property managers
 - Homeowners and Condominium Associations
 - Residential Lenders
 - Real Estate Agents
 - Brokerage Services
 - State and Local Governments

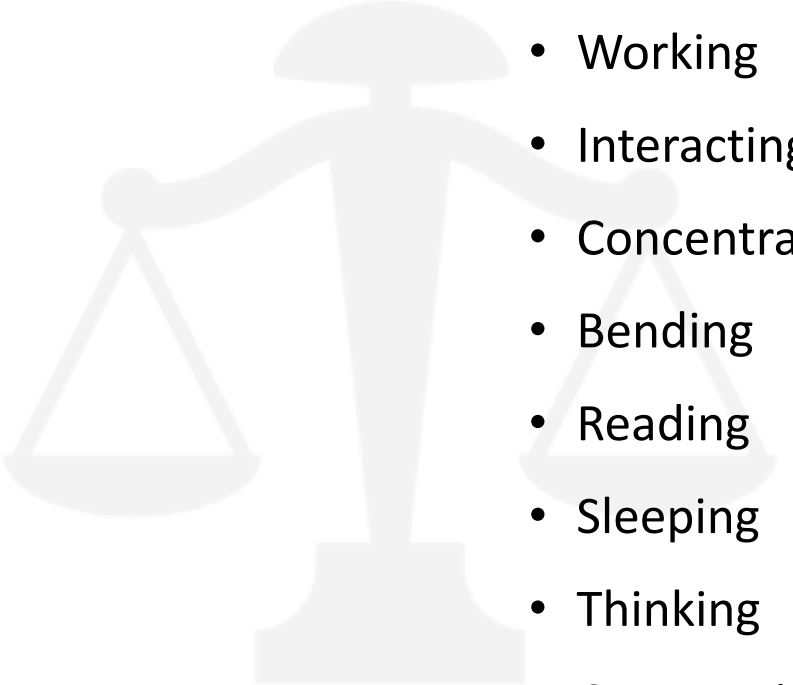
Fair Housing Act - Exemptions

- The Fair Housing Act exempts the following Housing Providers from its purview:
 - Owner occupied buildings with four units or less
 - Residential properties that are sold or rented by a religious organization or private club
 - A single family home that is sold or rented by a private individual owner, without the use of a broker under the following conditions:
 - Owner does not own more than three single-family homes
 - Owner does not employ any discriminatory advertising or notices
 - Owner is not in the business of renting dwellings

Fair Housing Act - Definition of “Disability”

- Broadly defined
- Referenced as “Handicapped” under the Fair Housing Act
- Same definition as “Disability” under the American with Disabilities Act
- A person with:
 1. A physical or mental impairment that substantially limits one or more of such person’s major life activities
 2. A record of having such an impairment; or
 3. Being regarded as having such an impairment.
- Limited to Residential Dwellings
- “Substantially limits” - Limitation must be “significant” or “to a large degree”
- “Major life activity” - Those activities that are of central importance to daily life

“Major Life Activities”

- 
- Seeing
 - Hearing
 - Walking
 - Breathing
 - Performing manual tasks
 - Caring for one's self
 - Learning
 - Speaking
 - Standing
 - Working
 - Interacting with Others
 - Concentrating
 - Bending
 - Reading
 - Sleeping
 - Thinking
 - Communicating

In other words, any activity that relates to a person's normal functioning of life

Types of Physical or Mental Impairments

- Orthopedic impairments
- Visual impairments
- Speech impairments
- Hearing impairments
- Cerebral palsy
- Autism
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- Human Immunodeficiency Virus
- AIDS
- Mental retardation
- Emotional or mental illness
- Organ Brain Syndrome
- Specific Learning Disabilities
- Drug addiction (limited to past use)
- Chronic alcoholism

“Request for Reasonable Accommodation”

- No obligation to provide a reasonable accommodation unless the request is made
- May be made at any time and for any timeframe
- May be made for:
 - The disabled owner or tenant of the residence
 - A family member of the owner or of the tenant
 - A guest of the owner or of the tenant
- Requested accommodation considered “reasonable” when:
 - Does not impose an undue hardship upon the Housing Provider
 - Does not undermine the purpose that the requirement seeks to achieve

Housing Provider Considerations

Request for Reasonable Accommodations

- After receiving a request for reasonable accommodation, the housing provider is to consider the following factors:
 - Does the person seeking to use and live with an assistance animal have a “disability” as defined under federal laws?
 - Does the person making a request have a disability-related need for an assistance animal?
- If the answers to one or both questions are:
 - NO, Housing Provider is NOT obligated to modify its “no pets” policy
- If the answers to both questions are:
 - YES, Fair Housing Act obligates the Housing Provider to modify or provide an exception to its “no pets” policy
- NOTE: A Housing Provider’s delay in responding to a reasonable accommodations request could be construed as a constructive denial

Assistance Animals

- U.S. Department of Housing and Urban Development defines as:
 - An animal that works, provides assistance or performs tasks for the benefit of a person with a disability
 - An animal that provides emotional support, which alleviates one or more identified symptoms or effects of a person's disability
 - Not a "Pet"
- Types include:
 - Service Animals
 - Other Animals
- Training:
 - FHA has no requirement for training or certification
 - Used in the privacy of one's home

Service Animals

- Defined under American with Disabilities Act
- Must be:
 - A Dog
 - Individually trained to do work or perform tasks
 - For the benefit of the disabled person
- Work or task must be directly related to assisting with the symptoms of the disability
- While not under the ADA, a miniature horse may sometimes qualify provided that certain factors are met
- Requirement for training since Service Animals not just used in privacy of home but also in the public arena such as restaurants, grocery stores and hotels
- General assumptions about a certain dog breed may not be considered

Service Animals

- Provides the disabled owner with safety and independence
- Examples of tasks may include a Service Animal's ability to:
 - Sense that an anxiety attack is about to happen and to take a specific action to help avoid the attack or lessen its impact
 - Alert a person with diabetes when the disabled owner's blood sugar reaches high or low levels
 - Remind the disabled owner when to take his or her medication
 - Detect the onset of a seizure and then help the person remain safe during the seizure
 - Guide disabled owners who are blind
 - Alert disabled owners who are deaf or hard of hearing

Emotional Support Animals

- Defined by the U.S. Department of Housing and Urban Development
- Must be:
 - An animal
 - No training or certification needed
 - For the benefit of the disabled person
- Provides emotional support that alleviates one or more identified symptoms or effects of the disability
- No requirement for training since Emotional Support Animals, by their nature, relieve the effects of an emotionally disabled person
- Not trained to perform a specific job or task so they do not qualify as Service Animals under the Americans with Disabilities Act
- Not permitted in the public arena
- Breed, size and weight restrictions may not be considered

Emotional Support Animals

- Examples of types of animals used as Emotional Support Animals:
 - A bearded dragon lizard used for anxiety relief
 - A pig used for comfort
 - A turkey used for therapeutic companionship
 - A chicken used for emotional support
 - A rabbit used for bringing about a calm demeanor
 - A squirrel used to treat post traumatic stress disorder
 - A goat used for depression
 - A peacock used for emotional support

Housing Provider Obligations - Fair Housing Act

- If a request for reasonable accommodation is made, may be made verbally or in writing
- A Housing Provider's denial due to uncertainty as to whether the accommodation is needed, not a defense
- If disability is not readily apparent, Housing Provider may ask for reliable documentation, which shows that the person making the request:
 - Has a disability as defined under federal laws
 - Needs the assistance animal to alleviate one or more identified symptoms or effects of the person's disability
- If disability is apparent but the need for a disability-related assistance animal is not, Housing Provider may ask for reliable documentation, which shows that the person making the request:
 - Needs the assistance animal to alleviate one or more identified symptoms or effects of the person's disability
- If disability and the need for a disability-related assistance are readily apparent:
 - The housing provider is prohibited from requesting any documentation and is obligated to provide the accommodation

Reliable Documentation - Fair Housing Act

- If needed, documentation is required to establish:
 - That the person has a disability under applicable federal laws
 - That the animal will provide some type of disability-related assistance to the person
 - If the person has a mental disability, that the animal will provide emotional support, which alleviates or helps the symptoms or the effects of the disability
 - In other words, there must be a nexus between the disability and the assistance needed to help the symptoms or the effects of the disability
- Examples of acceptable documentation:
 - A letter from a physician, psychiatrist, social worker or other licensed mental health professional
 - A short form questionnaire completed by a physician, psychiatrist, social worker or other licensed mental health professional
 - A short form questionnaire completed by the disabled person
- Documentation may not:
 - Establish the nature or severity of the disability
 - Provide access to the disabled person's medical records
 - Include any information not needed to properly evaluate the requested accommodation
 - Be shared with any third parties unless needed to evaluate the requested accommodation or unless required law

Request Made and Documentation Provided What Next?

- If the information provided establishes a need for the accommodation requested, Housing Provider obligated to:
 - Reasonably accommodate the disabled person
 - Permit the assistance animal to live with the disabled person in the dwelling even if there is a no pet policy in place
 - Waive any pet deposit or pet rent fees
 - Exception: The Housing Provider is entitled to request for the payment of any damages or destruction to property caused by the animal

Housing Provider No Obligation to Accommodate

- If the person does not have a disability
- If there is no nexus between the disability and the requested accommodation
- If the disability isn't apparent and the person does not request an accommodation
- If the disability isn't apparent and the person refused to provide reliable documentation
- If the requested accommodation is unreasonable
- If the requested accommodation would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services
- If the assistance animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation
- If the assistance animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation

Undue Financial and Administrative Burden

- Determined on a case-by-case basis
- Various factors should be considered, such as:
 - The cost of the requested accommodation
 - The financial resources of the Housing Provider
 - The benefits the requested accommodation would provide to the requester
 - Whether there are any alternative accommodations available
- Example:
 - An insurance policy restriction
 - May be used as a basis for denial for a request for a reasonable accommodation
 - Applies if a Housing Provider's insurance carrier would cancel, substantially increase the costs or adversely change the insuring terms based on the presence of a certain dog breed or type of animal
 - HUD has found that this would impose an undue financial and administrative burden

Direct Threat of Damage to Property or of to Safety of Others

- A determination is made that a specific assistance animal poses a direct threat to:
 - The health or safety of others
 - Substantial damage to the property
- Must be based on an individualized assessment
- Must rely on objective evidence about the specific animal's actual conduct
- Mere speculation about the types of damages animal may cause, not good enough
- Fear about the harm an animal may cause, not good enough
- Belief based on harm caused by other animals of the same breed, not good enough
- Prior bad acts by an animal, may not be relied on
- "Restricted breeds" may not be denied

Direct Threat of Damage to Property or of to Safety of Others

- Examples:
 - Incessant barking and whining, which disrupts the quiet enjoyment of the other residents
 - The animal's menacing and aggressive nature towards other residents
 - Obnoxious animal odor that is offensive to other residents
 - Repeated rule violations
 - Failure of the disabled person to properly care for the animal
 - Failure of the disabled person to clean up after the animal
 - Inability to properly control the animal and thereby placing the safety of others at risk
- Bottom Line:
 - Assistance animal must be under the owner's control
 - Owner responsible for the assistance animal's care, such as grooming, feeding and bathroom breaks
 - Owner is required to take effective actions to control the animal's behavior
 - If the assistance animal is exhibiting threatening behavior to the owner or the public, the animal must be asked to leave, not the owner
- NOTE: Even if the one of the above-listed categories applies, a Housing Provider is still obligated to explore alternative accommodations with the disabled person

Denial of a Reasonable Accommodations Request

- If a reasonable accommodation is requested and the Housing Provider denies the requested accommodation based on its assessment of the request made and the documentation provided, it is important to:
 - Ensure the reason for denial is used across the board
 - Provide the denial in writing
 - Provide a clear explanation concerning the facts behind the denial
 - Document your file to support the facts relating to the denial
 - Offer to meet with the resident to explore alternate solutions or accommodations
 - Document any communications with the resident in exploring alternative solutions

Complaint Filed with HUD What next?

- HUD will alert the Tenant when the Complaint has been accepted
- HUD will notify the Housing Provider of the Complaint
- HUD will permit the Housing Provider a specific amount of time to respond to the Complaint
- HUD will investigate the Complaint
- During the investigation period, HUD will offer the parties the opportunity to voluntarily resolve the Complaint by entering into a Conciliation Agreement
- If no Conciliation Agreement is entered into, HUD will make a determination as to whether there is reasonable cause to believe that the Housing Provider violated the Fair Housing Act

Conciliation Agreement

- A Conciliation Agreement is meant to:
 - Provide relief to the Complainant
 - Create anti-discriminatory obligations for the Housing Provider for the purpose of protecting the public
- Once HUD approves and a Conciliation Agreement is fully executed, the obligations under the Conciliation Agreement will need to be complied with by the parties
- HUD reserves the right to request follow up documentation or evidence to ensure that the Conciliation Agreement is being complied with
- In the event that HUD determines that there is reasonable cause to show that the Housing Provider violated the Conciliation Agreement, HUD will request for the U.S. Department of Justice to file suit to enforce the terms of the Conciliation Agreement
- Any Conciliation Agreement entered into between the parties will be deemed a matter of public record and can be easily located on the internet; however, the actual investigative file would not be a matter of public record

HUD Complaint Process

- A finding of “Reasonable Cause”:
 - HUD has reasonable cause to believe that Housing Provider violated the Fair Housing Act
 - HUD will issue a Determination of Reasonable Cause and a Charge against the Housing Provider
 - The Complainant will then have up to 20 days to decide whether to have the case heard by an Administrative Law Judge or to have a Civil Trial in Federal Court
- Potential remedies HUD may have against Housing Provider:
 - Pay a Civil Penalty to HUD to vindicate the public interest in the amounts of:
 - \$16,000 for a first time violation
 - \$37,500 if a previous violation has occurred within the last 5 years
 - \$65,000 if two or more violations have occurred within the last 7 years
- Potential remedies disabled person may have against Housing Provider:
 - Actual damages such as out of pocket costs and emotional distress damages
 - Injunctive relief
 - Equitable relief (e.g., make the housing available)
 - Reasonable attorney’s fees

Best Practices for Housing Providers – In General

- Document Everything
- Why?
 - Documentation may provide a defense against claims that fair housing laws have been violated
- Resident files should contain records of all complaints against the resident and what has been done in response to each of the complaints
- Housing Providers should document and include in resident files the following information:
 - Warning letters/eviction notices
 - Written complaints by third parties
 - Written logs kept by management
 - Police records
 - Photographs
- Resident file documentation needs to be consistent for all residents
- Documentation may prove there was a legitimate reason, unrelated to any fair housing claims, for evicting the resident

Best Practices for Housing Providers – In General

- Attend and become certified in Fair Housing training
- Become well versed in Fair Housing laws
- If the person is disabled ensure that the resident has an equal opportunity to enjoy housing
- Put procedures in place with respect to Fair Housing
- Do not eliminate the availability of any particular unit because someone is disabled
- When requested, allow reasonable accommodations for persons with disabilities
- Develop written standard procedures on how to handle disabled persons who request reasonable accommodations
- Make all decisions based on identical criteria and any deviations should be documented
- Treat all residents the same
- Make sure that any resident rules are basic, unbiased and non-discriminatory

Best Practices for Housing Providers – Prospective Tenants

- Establish written criteria to qualify prospective tenants before advertising the unit for rent and make the information available to all applicants (e.g., credit and background checks should be across the board)
- Avoid advertising that could be construed as an attempt to select or discourage persons on the basis of any protected class
- Let the prospective tenant tell you their criteria in searching for a residence
- Never misrepresent the availability of housing
- Treat all prospective tenants the same
- Avoid “steering” or attempting to direct a prospective tenant to a specific area of the property
- When you are in receipt of any application, place the date and time on application
- When screening prospective tenants, do so in the order that the applications are received, use the screening criteria in place to make an individual assessment for each applicant and those who meet the established criteria should be accepted in the order that the completed applications were provided to the owner or the property manager

HB 721: Emotional Support Animals

- Addressed:
 - Equal access to housing
 - Prohibition against the payment of extra fees for emotional support animal
 - The requirement for documentation if disability or need not readily apparent
 - Criminal penalties for any falsified documentation provided
- Verdict:
 - Did Not Pass

THE END

“The Fair Housing Act and its Applicability to Assistance Animals”

Michelle Gomez Hinden, Esq., B.C.S.

Nishad Khan, P.L.

617 East Colonial Drive

Orlando, Florida 32803

MHinden@NishadKhanLaw.com

www.NishadKhanLaw.com

NISHAD || KHAN P.L.

REAL ESTATE AND BUSINESS LAW

SERVING CLIENTS THROUGHOUT FLORIDA
FOR ALL OF THEIR REAL ESTATE MATTERS