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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in Administrative Order No. 2019-6. I certify that this document contains 5,998 countable words (excluding the table of contents, index of authorities, signature block and listing of counsel at the end of the brief, certificate of compliance, proof of service, exhibits, and appendices). The document is set in Century Schoolbook, and the text is in 12-point type with 17-point line spacing and 12 points of spacing between paragraphs.

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PROOF OF SERVICE

I hereby certify that on March 28, 2022, I electronically filed the foregoing Supplemental Brief in Support of Application for Leave to Appeal, with accompanying Appendix, with the Clerk of the Supreme Court using the TrueFiling system, which will automatically send notice of electronic filing (NEF) of the foregoing to counsel for Plaintiff-Appellant:

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APPENDIX 18

HUD/DOJ Joint Statement on Reasonable Accommodations Under the Fair Housing Act (May 17, 2004)

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act[1] (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.[2] One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.[3] HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

[2] The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See* Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.[4]

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them[5] and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."[6] The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

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[4] Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. *See* U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and "Section 504: Frequently Asked Questions," (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

[5] The Fair Housing Act's protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). *See also* H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) ("The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities."). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

[6] 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.[7] With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

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[7] This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.[8] This list of major life activities is not exhaustive. *See e.g.*, Bragdon v. Abbott, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.[9] Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

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[8] The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. See Toyota Motor Mfg, Kentucky, Inc. v. Williams, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See* Sutton v. United Airlines, Inc., 527 U.S. 470, 492 (1999).

[9] *See*, *e.g.*, United States v. Southern Management Corp., 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

> **Example 1:** An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.
>
> **Example 2:** A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.
>
> **Example 3:** An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits[10] or a credible statement by the individual). A doctor or other

[10] Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;

- By completing the "on-line" complaint form available on the HUD internet site: http://www.hud.gov; or

- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at http://www.usdoj.gov/crt/housing/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

APPENDIX 19

HUD/DOJ Joint Statement on Reasonable Modifications Under the Fair Housing Act (March 5, 2008)

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
March 5, 2008

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act[1] (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.[2] One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.[3] HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.[4]

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[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

[2] The Act uses the term "handicap" instead of "disability." Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that the definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. § 3604(f)(3)(A).

[4] This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at www.hud.gov/offices/fheo/disabilities/index.cfm. Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: http://www.fairhousingfirst.org.

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against housing applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability. The Act makes it unlawful for any person to refuse "to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."[5] The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions[6],

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Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at www.hud.gov/offices/fheo/disabilities/index.cfm and http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

[5] 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

[6] The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing

placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

2. What is a reasonable modification under the Fair Housing Act?

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. Further, the modification must be "reasonable." Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive.

3. Who is responsible for the expense of making a reasonable modification?

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

4. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other

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account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking. This list of major life activities is not exhaustive.

5. Who is entitled to a reasonable modification under the Fair Housing Act?

Persons who meet the Fair Housing Act's definition of "person with a disability" may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

Example 1: A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant's disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant's expense.

Example 2: A homeowner with a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. There is no evidence that the shingles permitted by the homeowner's association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner's association is not required to permit the homeowner's modification because the homeowner's request is not reasonable and there is no nexus between the request and the disability.

6. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested reasonable modification?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability. However, in response to a request for a reasonable modification, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed modification, and (3) shows the relationship between the person's disability and the need for the requested modification. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual herself (e.g., proof that an individual under 65 years of age receives Supplemental Security

Income or Social Security Disability Insurance benefits[8] or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

7. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable modification?

A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the modification.

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

Example 1: An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.

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[8] Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a disability under the Fair Housing Act, although the converse may not be true. See, e.g., Cleveland v. Policy Management Systems Corp, 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Example 2: A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

8. Who must comply with the Fair Housing Act's reasonable modification requirements?

Any person or entity engaging in prohibited conduct – i.e., refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 2d 703, 710 (D. Md. 2001), aff'd, 2002 WL 2012545 (4th Cir. 2002).

9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?[9]

Under the Fair Housing Act, a reasonable *modification* is a structural change made to the premises whereas a reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. See Reasonable Accommodation Statement, Questions 7 and 8.

Example 1: Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.

[9] Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of l973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. See Question 31.

Example 2: Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.

Example 3: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

Example 4: Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

10. Are reasonable modifications restricted to the interior of a dwelling?

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: www.hud.gov/offices/fheo/disabilities/index.cfm and the Fair Housing Accessibility FIRST website at: http://www.fairhousingfirst.org.

Example 1: A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

Example 2: A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

Example 3: A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

Example 1: Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

Example 2: Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

Example 3: A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

15. When and how should an individual request permission to make a modification?

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

An applicant or resident is not entitled to receive a reasonable modification unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does

not need to mention the Act or use the words "reasonable modification." However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.

Although a reasonable modification request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

16. Does a person with a disability have to have the housing provider's approval before making a reasonable modification to the dwelling?

Yes. A person with a disability must have the housing provider's approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

17. What if the housing provider fails to act promptly on a reasonable modification request?

A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

Example: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.

19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

Example 1: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

Example 2: As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

20. What if the housing provider wants a more costly design for the requested modification?

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

22. May a housing provider or homeowner's association condition approval of the requested modification on the requester obtaining special liability insurance?

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

Example: Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable

wear and tear. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

Example 1: Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

Example 2: Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

Example 3: Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?

No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

Example 1: Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

Example 2: Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

Example 3: A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

Example 1: If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

Example 2: If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

Example 3: If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?

If the dwelling unit is not subject to the design and construction requirements (i.e., a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

Example 1: A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

Example 2: A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

Example 3: A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

Example 1: A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

Example 2: A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant's disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504's requirements. See www.hud.gov/offices/fheo/disabilities/sect504.cfm.

32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for a reasonable modification, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: http://www.hud.gov; or
- By mailing a completed complaint form or letter to:

  Office of Fair Housing and Equal Opportunity
  Department of Housing & Urban Development
  451 Seventh Street, S.W., Room 5204
  Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application

and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at http://www.usdoj.gov/crt/housing/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

APPENDIX 20

Legislative Analysis, Misrepresentation of Emotional Support Animals Act (March 6, 2020)

Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

Analysis available at
http://www.legislature.mi.gov

MISREPRESENTATION OF EMOTIONAL SUPPORT ANIMALS ACT

House Bill 4910 (H-3) as reported from committee
Sponsor: Rep. Matt Hall

House Bill 4911 as reported from committee
Sponsor: Rep. Sara Cambensy

1st Committee: Regulatory Reform
2nd Committee: Judiciary
Complete to 3-6-20

BRIEF SUMMARY: House Bill 4910 would create the Misrepresentation of Emotional Support Animals Act, which would prohibit individuals from falsely representing to a landlord that they have a disability or are using an emotional support animal. The bill would also prohibit health care providers from falsely representing that an individual has a diagnosis requiring use of an emotional support animal. House Bill 4911 would make complementary changes to provisions of the Revised Judicature Act (RJA) concerning tenant eviction.

FISCAL IMPACT: House Bill 4910 would have an indeterminate fiscal impact on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Under Michigan Law, renters of housing are allowed to have animals in their dwellings—regardless of their housing provider's rules against it—if the animals are emotional support animals prescribed by a doctor. There are few mechanisms in place, however, for housing providers to ask for and gain evidence that such animals are for emotional support, and doing so may put them at risk of being sued for violation of civil rights legislation such as the federal Fair Housing Act. Some feel that, as a result, abuse of the system is widespread, with many individuals lying about their pets being emotional support animals in order to get them into a dwelling where they otherwise would not be allowed. Legislation has been proposed that would, among other things, prohibit a renter from falsely representing that his or her pet is an emotional support animal.

THE CONTENT OF THE BILLS:

House Bill 4910 would prohibit an individual from falsely representing either of the following to a ***housing provider***:

- That he or she has a disability.
- That he or she is in possession of and requires the assistance of an ***emotional support animal***.

Housing provider would mean a person that is subject to fair housing laws and that offers, provides, or regulates the use of a ***dwelling***. It would include private and public businesses.

Dwelling would mean all or part of a building or structure that is occupied or intended to be occupied as a residence. It would include a building or structure that is part of an apartment, manufactured home, or condominium community, a group home or nursing home, or a seasonal residential facility.

Emotional support animal would mean a common domestic animal that a ***health care provider*** has determined is necessary to alleviate the disabling effects of a mental, emotional, psychological, or psychiatric condition or illness for a person with a disability who, in the absence of such an animal, would otherwise not have the same housing opportunities provided by a housing provider as those provided to a nondisabled person. Emotional support animal would not include a service animal as that term is defined in section 502c of the Michigan Penal Code.[1]

Health care provider would mean a mental health professional licensed under the Mental Health Code or licensed in another state, a health facility or agency licensed under Article 17 of the Public Health Code, or a local health department as defined in section 1105 of the Public Health Code.

Unless a disability and a disability-related need for an emotional support animal were readily apparent, a housing provider could request reliable documentation from an individual's health care provider to confirm that the individual has a disability and to specifically explain the relationship between his or her disability and the need for an emotional support animal. An emotional support animal registration—such as an identification card, patch, certificate, or similar registration obtained for a service animal—would not satisfy this documentation requirement.

If an individual living in a dwelling provided or regulated by a housing provider falsely represented that an animal kept on the leased premises was an emotional support animal, the housing provider could terminate the individual's lease or tenancy and recover possession of the premises (i.e., evict the individual).

Health Care Providers

The bill would prohibit a health care provider that determines an individual's need for an emotional support animal from falsely representing that an individual has been diagnosed with a disabling mental, emotional, psychological, or psychiatric condition or illness and must use an emotional support animal to alleviate their disabling effects.

A health care provider that determines the need for an emotional support animal would have to meet the following requirements:

- The provider must be licensed in this state or in another state.
- The provider must maintain a physical office space where patients are regularly treated and where the individual seeking certification of the need for an emotional support animal has been examined and treated. If the provider's primary office is in another state, the provider must have provided treatment to the individual seeking an emotional support animal during the previous 180 days.

[1] "Service animal" is defined in that act as any guide dog, signal dog, miniature horse, or other animal that has been individually trained to do work or perform tasks for the benefit of an individual with a disability, including guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

- The provider cannot receive a fee or other compensation from any source solely for certifying an individual's need for an emotional support animal. Documentation issued by a health care provider who received compensation solely for providing the documentation would be invalid.
- Upon request by a housing provider, the health care provider must provide documentation, in the form of a notarized letter or completed and notarized questionnaire, establishing the following:
    - That the health care provider has treated the individual and meets the conditions for a bona fide physician-patient relationship provided in section 3(a)(1) and (2) of the Michigan Medical Marihuana Act.[2]
    - The dates and locations where the health care provider provided treatment to the individual.
    - That the individual is a person with a disability.
    - The disabling effects of the condition or illness.
    - The relationship between those disabling effects and the need for the emotional support animal.
    - The manner in which the emotional support animal provides the individual with the same opportunity to use and enjoy the dwelling as a nondisabled person would have.
    - That the health care provider did not receive a fee or other compensation solely for providing the documentation.
- If requested by a housing provider, provide the above documentation annually.

The documentation described above would be subject to the privacy provisions of the federal Health Insurance Portability and Accountability Act (HIPAA).

Penalties

An individual or health care provider who knowingly violated the new act would be guilty of a misdemeanor punishable by one or more of the following:

- Imprisonment for up to 90 days.
- A fine of up to $500.
- Community service for up to 30 days.

Department of Civil Rights Hotline

Under the bill, the Michigan Department of Civil Rights (MDCR) would have to establish a telephone complaint hotline, either currently existing or specifically created for the purposes of the act, to receive any of the following:

- Reports of an individual who is falsely representing that he or she is in possession of an emotional support animal.
- Reports of a health care provider that is falsely representing that an individual is in need of an emotional support animal.
- Complaints from a tenant or prospective tenant in regard to obtaining permission from a housing provider to keep an emotional support animal on the leased premises.

[2] Namely, it would have to be a treatment or counseling relationship between a physician and patient in which (1) the physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient, and (2) the physician has created and maintained records of the patient's condition in accord with medically accepted standards.

MDCR could then refer an alleged violation of the act to the appropriate law enforcement agency for investigation.

House Bill 4911 would amend the RJA to allow housing providers to recover possession of residential property after the termination of a lease under HB 4910. The bill would also add the violation of HB 4910 by a tenant or a member of the tenant's household to the statutory list of "just causes" for the termination of tenancy in a mobile home park.

MCL 600.5714 and 600.5775

Each bill is tie-barred to the other, which means that neither could take effect unless both were enacted.

BACKGROUND INFORMATION:

House Bill 4910 is similar to Senate Bill 663 of the 2017-18 legislative session, which was passed by the Senate. That bill, however, amended 1981 PA 82, which prohibits falsely purporting to have a service animal in public, to add emotional support animals to the scope of that act and to prohibit falsely representing the need for a service or emotional support animal to a current or prospective landlord.

FISCAL INFORMATION:

House Bill 4910 would have an indeterminate fiscal impact on local units of government. The number of convictions that would result under provisions of the bill is not known. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

The bill would not have a significant fiscal impact on MDCR. The anticipated use of the proposed hotline for reporting misrepresentation of emotional support animals would likely be able to be supported by current resources and staffing for MDCR's existing reporting hotline. The bill would also not have an appreciable fiscal impact on the Department of State Police or on other law enforcement agencies.

House Bill 4911 would have no fiscal impact on state or local government.

ARGUMENTS:

For:

Supporters of the bills argue that they represent a necessary fix to combat a growing problem for housing providers. People who fraudulently claim that their pets are emotional support animals are taking advantage of the system, causing headaches—and sometimes even property damage and lost business—for housing providers. This abuse also puts people who actually need these animals in a tough spot, as they are often accused of being frauds themselves and may have difficulty finding housing as a result. Supporters of the bills argue that providing a

clear, simple process to confirm the validity of prescriptions for emotional support animals would address these problems.

Against:

Opponents of the bills do not disagree that there are problems with people fraudulently claiming that their pets are emotional support animals. Rather, they argue that the bills would violate federal fair housing laws and undermine the rights of the disabled. The bills would impose conditions on verification of prescriptions for health care providers for disabled people, which could increase their premiums and make it more difficult for them to obtain coverage. Opponents of the bills argue that they are an overreaction to a relatively small problem that would in the process create barriers to finding housing for the disabled.

POSITIONS:

Representatives of the Property Management Association of Michigan testified in support of the bills. (12-10-19)

The following entities indicated support for the bills:

Rental Property Owners Association of Michigan (3-3-20)
Apartment Association of Michigan (3-3-20)
Home Builders Association of Southeastern Michigan (12-10-19)
National Federation of Independent Business (12-10-19)
Community Association Institute – Michigan Chapter (10-22-19)
Detroit Metropolitan Apartment Association (12-10-19)
Washtenaw Area Apartment Association (3-3-20)
PMA Mid-Michigan (3-3-20)
Central Park Apartments (3-3-20)
Runaway Bay Apartments (10-22-19)
Club Meridian Apartments (10-22-19)
Delta River Senior Village (10-22-19)
Somerset Park Apartments (10-22-19)
KMG Prestige, Inc. (3-3-20)
Central Park Place Apartments (10-22-19)
DTN Management (10-22-19)
Smart Moves (10-22-19)
AMP Residential (3-3-20)
Midtown Apartments (10-22-19)
Legacy, LLC (10-22-19)
Hagan Realty, Inc. (10-22-19)
Byrum and Fisk (10-22-19)
Woodbridge Manor (10-22-19)
Fountain Place Apartments (10-22-19)
Land and Company Apartments (3-3-20)
Michigan Manufactured Housing Association (12-10-19)
Princeton Enterprises (3-3-20)
Smart Apartment Solutions (3-3-20)
Monarch Investment Group (3-3-20)

The Department of Civil Rights indicated a neutral position on the bills. (12-10-19)

Representatives of the following entities testified in opposition to the bills (12-10-19):

Michigan Poverty Law Program
Humane Society of Huron Valley
Attorneys for Animals

A representative of the Michigan Academy of Family Physicians testified in opposition to HB 4910. (12-10-19)

The following entities indicated opposition to the bills:

Michigan Elder Justice Initiative (12-9-19)
Michigan State Medical Society (3-3-20)
Michigan Disability Rights Coalition (12-9-19)
National Association of Social Workers – Michigan Chapter (12-9-19)
Brain Injury Association of Michigan (12-10-19)
Michigan Academy of Family Physicians (3-3-20)
Center for Civil Justice (3-3-20)
Fair Housing Center of Metropolitan Detroit (12-9-19)
Fair Housing Center of Southeast-Mid Michigan (12-9-19)
Fair Housing Center of West Michigan (12-9-19)
The Arc Michigan (3-3-20)
Michigan Protection & Advocacy Service, Inc. (12-9-19)
Mental Health Association of Michigan (12-10-19)
Humane Society of the United States (12-10-19)
Michigan Academy of Physician Assistants (12-10-19)
Michigan Pet Fund Alliance (12-10-19)
Detroit Disability Power (12-9-19)
Disability Advocates of Kent County (12-9-19)
Disability Network Southwest Michigan (12-9-19)
Fair Housing Center of Southwest Michigan (12-9-19)
Michigan Developmental Disabilities Council (12-9-19)
Washtenaw County Shelter Association (12-10-19)
Michigan Coalition Against Homelessness (12-10-19)
Michigan Psychiatric Society (3-3-20)
Michigan Osteopathic Association (3-3-20)

Legislative Analyst: Rick Yuille
Fiscal Analysts: Robin Risko
Michael Cnossen
Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

APPENDIX 21

Senate Bill 663 (2018)

SENATE BILL No. 663

November 28, 2017, Introduced by Senator MACGREGOR and referred to the Committee on Local Government.

A bill to amend 1981 PA 82, entitled

"An act to prohibit a person from representing that he or she is in possession of a service animal in public places, unless that person is a person with a disability; and to prescribe penalties,"

by amending sections 1, 2, 3, and 4 (MCL 752.61, 752.62, 752.63, and 752.64), sections 1, 2, and 3 as amended and section 4 as added by 2015 PA 147.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(A) "EMOTIONAL SUPPORT ANIMAL" MEANS AN ASSISTANCE ANIMAL THAT PROVIDES EMOTIONAL SUPPORT TO A PERSON WITH A DISABILITY WHO HAS A DISABILITY-RELATED NEED FOR THAT SUPPORT.

(B) "HEALTH CARE PROVIDER" MEANS 1 OF THE FOLLOWING:

SENATE BILL No. 663

(*i*) A HEALTH PROFESSIONAL LICENSED OR OTHERWISE AUTHORIZED TO ENGAGE IN THE PRACTICE OF MEDICINE OR THE PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO 333.18838.

(*ii*) A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO 333.22260.

(*iii*) A LOCAL HEALTH DEPARTMENT AS THAT TERM IS DEFINED IN SECTION 1105 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.1105.

(C) ~~(a)~~ "Person with a disability" means a person who has a disability as defined in section 12102 of the Americans with disabilities act of 1990, 42 USC 12102 and 28 CFR 36.104.

(D) ~~(b)~~ As used in subdivision ~~(a),~~ **(C),** "person with a disability" includes a veteran who has been diagnosed with 1 or more of the following:

(*i*) Post-traumatic stress disorder.

(*ii*) Traumatic brain injury.

(*iii*) Other service-related disabilities.

(E) ~~(c)~~ "Service animal" means all of the following:

(*i*) That term as defined in 28 CFR 36.104.

(*ii*) A miniature horse that has been individually trained to do work or perform tasks as described in 28 CFR 36.104 for the benefit of a person with a disability.

(F) ~~(d)~~ "Veteran" means any of the following:

(*i*) A person who performed military service in the armed forces for a period of more than 90 days and separated from the armed forces in a manner other than a dishonorable discharge.

(*ii*) A person discharged or released from military service

because of a service-related disability.

(*iii*) A member of a reserve branch of the armed forces at the time he or she was ordered to military service during a period of war, or in a campaign or expedition for which a campaign badge is authorized, and was released from military service in a manner other than a dishonorable discharge.

Sec. 2. **(1)** A person shall not falsely represent that he or she is in possession of **AN EMOTIONAL SUPPORT ANIMAL,** a service animal, or a service animal in training, in any public place **OR TO A CURRENT OR PROSPECTIVE LANDLORD OR OTHER HOUSING PROVIDER.**

(2) A PERSON WHO CERTIFIES THE NEED FOR A PERSON WITH A DISABILITY TO POSSESS AN EMOTIONAL SUPPORT ANIMAL OR A SERVICE ANIMAL SHALL NOT FALSELY REPRESENT THAT NEED AND SHALL SATISFY ALL OF THE FOLLOWING:

(A) THE PERSON SHALL BE A HEALTH CARE PROVIDER LICENSED IN THIS STATE OR IN ANOTHER STATE.

(B) THE PERSON SHALL MAINTAIN A PHYSICAL OFFICE SPACE WHERE HE OR SHE REGULARLY TREATS PATIENTS.

(C) THE PERSON SHALL DOCUMENT THAT HE OR SHE HAS TREATED THE PERSON WITH A DISABILITY FOR AT LEAST 6 MONTHS BEFORE THE DATE ON WHICH A PUBLIC OR PRIVATE ENTITY REQUESTS DOCUMENTATION ESTABLISHING THE VALIDITY OF THE PERSON WITH A DISABILITY'S ALLEGED DISABILITY AND THE NEXUS BETWEEN THAT DISABILITY AND THE NEED FOR THE EMOTIONAL SUPPORT ANIMAL OR SERVICE ANIMAL.

(D) THE PERSON SHALL, UPON REQUEST, PROVIDE THE PERSON WITH A DISABILITY OR A PUBLIC OR PRIVATE ENTITY REQUESTING THE DOCUMENTATION DESCRIBED IN SUBDIVISION (C) WITH A NOTARIZED LETTER

CERTIFYING THAT THE PERSON WITH A DISABILITY IS DISABLED AND THAT THE EMOTIONAL SUPPORT ANIMAL OR SERVICE ANIMAL IS NECESSARY TO ALLEVIATE THE EFFECTS OF THE DISABILITY THAT WOULD OTHERWISE PREVENT THE DISABLED PERSON FROM HAVING THE SAME OPPORTUNITIES TO USE A PUBLIC PLACE OR RESIDENCE AS A NONDISABLED PERSON.

(E) THE PERSON SHALL PROVIDE THE DOCUMENTATION DESCRIBED IN SUBDIVISION (D) ON AN ANNUAL BASIS, UPON REQUEST.

Sec. 3. **(1)** A person who knowingly violates this act is guilty of a misdemeanor punishable by 1 or more of the following:

(a) Imprisonment for not more than 90 days.

(b) A fine of not more than $500.00.

(c) Community service for not more than 30 days.

(2) A LANDLORD OR OTHER HOUSING PROVIDER WHO RENTS HOUSING TO A PERSON WHO KNOWINGLY VIOLATES THIS ACT SHALL EVICT THAT PERSON AS PROVIDED IN SECTION 5714(1)(C)(*i*) OR 5775(2)(K) OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 263, MCL 600.5714 AND 600.5775.

Sec. 4. The department of civil rights shall use its existing telephone complaint hotline to receive reports of a person falsely representing that he or she is in possession of **AN EMOTIONAL SUPPORT ANIMAL,** a service animal, or a service animal in training, **OR REPORTS OF A HEALTH CARE PROVIDER WHO IS FALSELY CERTIFYING THE NEED FOR AN EMOTIONAL SUPPORT ANIMAL OR A SERVICE ANIMAL**. The department may refer an alleged violation of this act to the appropriate law enforcement agency for investigation.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

APPENDIX 22

HB 5750 (2020)

HOUSE BILL NO. 5751

February 15, 2022, Introduced by Reps. Cambensy, Steenland and Hood and referred to the Committee on Regulatory Reform.

A bill to regulate the certification of a person with a disability's need for an emotional support animal by a health care provider; to require certain disclosures; and to prohibit certain acts and prescribe civil sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act may be cited as the "emotional support animal act".

Sec. 3. As used in this act:

(a) "Emotional support animal" means a common domestic animal that a health care provider has determined is necessary to

alleviate the disabling effects of a mental, emotional, psychological, or psychiatric condition or illness for a person with a disability who, in the absence of such animal, would otherwise not have the same housing opportunities provided by a housing provider as those provided to a nondisabled person. Emotional support animal does not include a service animal.

(b) "Health care provider" means any of the following:

(*i*) A physician or physician's assistant licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(*ii*) A nurse practitioner licensed as a registered professional nurse under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242, and granted a specialty certification as a nurse practitioner by the Michigan board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210.

(*iii*) A clinical nurse specialist licensed as a registered professional nurse under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242, and granted a specialty certification as a clinical nurse specialist by the Michigan board of nursing under section 17210 of the public health code, 1978 PA 368, MCL 333.17210.

(*iv*) A mental health professional as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(c) "Person with a disability" means an individual who has a disability as that term is defined in section 3 of the Americans with disabilities act of 1990, 42 USC 12102, and 28 CFR 36.105.

(d) "Provider-patient relationship" means a treatment or counseling relationship in which a health care provider does all of the following:

(*i*) Reviews the patient's relevant medical records and completes a full assessment of the patient's medical history and current medical condition, including a relevant medical evaluation of the patient either in person or via telehealth.

(*ii*) Creates and maintains records of the patient's current medical condition in accordance with medically accepted standards.

(*iii*) Reasonably expects that he or she will provide the patient with follow-up medical care to monitor the efficacy of the use of an emotional support animal as a treatment of the patient's disability.

(e) "Service animal" means that term as defined in section 502c of the Michigan penal code, 1931 PA 328, MCL 750.502c.

(f) "Telehealth" means that term as defined in section 16283 of the public health code, 1978 PA 368, MCL 333.16283.

Sec. 5. (1) A health care provider may certify a person with a disability's need for an emotional support animal. To certify a person with a disability's need for an emotional support animal, a health care provider shall meet both of the following requirements:

(a) The health care provider has an established provider-patient relationship with the person with a disability for at least 30 days before the health care provider certifies the person with a disability's need for an emotional support animal.

(b) The health care provider determines that the person with a disability has a need for an emotional support animal.

(2) A health care provider shall not receive a fee or any other form of compensation solely in exchange for certifying a person with a disability's need for an emotional support animal under subsection (1). A certification issued by a health care provider who receives compensation solely for providing the

certification is invalid.

(3) A health care provider shall not falsely certify a person with a disability's need for an emotional support animal under subsection (1).

(4) The certification issued under subsection (1) must be in the form of a letter or a completed questionnaire and is subject to the privacy provisions of the health insurance portability and accountability act of 1996, Public Law 104-191.

Sec. 7. (1) A person that sells or offers for sale a registration of any kind, including, but not limited to, an identification card, patch, tag, vest, harness, or certificate in this state indicating that an animal is an emotional support animal shall provide written notice to a buyer upon purchase that states both of the following:

(a) That the registration does not qualify the animal as a service animal.

(b) That falsely representing an animal as a service animal or a service animal in training violates 1981 PA 82, MCL 752.61 to 752.64.

(2) A written notice provided under subsection (1) must be in at least 12-point, bold type.

Sec. 9. (1) A person that knowingly violates this act may be ordered to pay a civil fine as follows:

(a) For a first offense, a civil fine of not more than $1,000.00.

(b) For a second or subsequent offense, a civil fine of not more than $2,000.00.

(2) A violation of this act may be prosecuted by the prosecutor of the county in which the violation occurred or by the

attorney general.

APPENDIX 23

Transcript, Motion to Stay Writ (52-2 District Court, Oct 9, 2018)

STATE OF MICHIGAN

IN THE 42-2 DISTRICT COURT FOR THE COUNTY OF MACOMB

RIVERBROOK,
c/o Swistak & Levine, PC,

Plaintiff,

V Case Number 18-1698 LT

ABIMBOLA FABODE
and all other occupants,

Defendants.
_____/

MOTION TO STAY WRIT

BEFORE THE HONORABLE WILLIAM H. HACKEL III, DISTRICT JUDGE

New Baltimore, Michigan - Tuesday, October 9, 2018

APPEARANCES:

For the Plaintiff: MS. JANET E. SWISTAK P24831
Swistak & Levine PC
30833 Northwestern Highway
Suite 120
Farmington Hills, Michigan 48334
(248)851-8000

Appearing in Pro Per: MS. ABIMBOLA FABODE

RECORDED BY: Lisa A. Carroll, CER 3359
TRANSCRIBED BY: Certified Electronic Recorder
(586)493-0661

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New Baltimore, Michigan

Tuesday, October 9, 2018 - at 2:13 p.m.

THE COURT: Let's--I guess we're doing this one again. Riverbrook versus Abimbola Fabode 1816--181698 LT. Who are you--who do I got?

THE DEFENDANT: I am Abimbola Fabode, this is Anthony Fabode he is an occ--a tenant in the--

THE COURT: Oh, is there an attorney here for Riverbrook?

UNIDENTIFIED SPEAKER: Yes, Swistak Levine.

THE COURT: Where?

UNIDENTIFIED SPEAKER: She just stepped out.

THE COURT: Oh, okay. Could you let her know I want to do this case? Thanks. All right I've got to go find her. Take a seat till we find the attorney.

(At 2:14 p.m., court in recess)

(At 2:30 p.m., court reconvened)

THE COURT: All right, let's call Riverbrook versus Abimbola Fabode and, I guess, occupants, 181698 LT. Who do I have here?

MS. SWISTAK: Janet Swistak appearing on behalf of Riverbrook.

THE COURT: All right. And what's your name?

THE DEFENDANT: Abimbola Fabode.

THE COURT: We were here not too long ago on

another case and it looks like we picked up this case and I've got an application to have them evicted. Why do you want me to evict these people?

MS. SWISTAK: They're in violation of the terms of their consent judgment. They were to get rid of the dog, they did not get rid of the dog. After the fact he claimed that it was some type of an assistance animal. We, as landlords have a right to get reasonable, credible information that establishes the right to have an assistance animal. We did not get that kind of information. What he did is he bought a certificate online and got an online psychologist to write a note. She's associated with the online service animal registration service. It didn't show any length of treatment or any true disability that would entitle him to have that dog. We believe that he is using the Fair Housing Assistance Animal to circumvent the community rules that prohibit certain types of dogs. His dog is still there and we want the tenancy terminated.

THE COURT: All right, well, let me start with this. Are they at a building which has four or fewer dwelling units?

MS. SWISTAK: No.

THE COURT: And is--this is not a single family rental or sold without a real estate?

MS. SWISTAK: No. Fair Housing Laws apply, they just haven't complied with the requirement to have an accommodation request granted.

THE COURT: So, you're saying this was just printed offline?

MS. SWISTAK: Yeah. No, you--well, you register online.

THE COURT: Okay.

MS. SWISTAK: And there is no need to have any kind of medical documentation. Those certificates have absolutely no meaning. He pays, 80, 90 doll--bucks. There's--there's nothing that those--those online registries require that establish a true disability or the nexus between the disability and the need for the assistance animal to allow him tenancy.

THE COURT: So, I got this letter from Anne Venet?

MS. SWISTAK: And she is associated with the online registry. She is not his treating physician, she saw him on one occasion and that is not sufficient to show that he has a disabling emotional condition.

THE COURT: Who said--who says that is not enough to show?

MS. SWISTAK: Case law. She is--she's associated with the online registry.

THE COURT: There's no question, yeah, she's got a Michigan license from what I guess. She's a counselor.

MS. SWISTAK: And that's a form letter.

THE COURT: Oh, I understand. I do a lot of form orders, it doesn't mean they're not right.

MS. SWISTAK: Your Honor, he didn't have a disability until we were in court here on the termination case. All of a sudden this dog that he sneaked into the community is now an assistance animal. After the fact, then he goes online and buys a certificate. And when we said that's not enough then he goes back to the same online registry and says I need a doctor's letter. If you go online the registry says for an extra fee we'll send you a doctor's letter we have them written by our--by our attorneys and signed by a psychologist or a social worker. That doesn't establish an existence of a disability.

THE COURT: Oh, this is--this is online stuff?

MS. SWISTAK: Yeah.

THE COURT: Did you guys get this online?

MR. FABODE: No, sir.

THE DEFENDANT: No.

MS. SWISTAK: Yes.

THE COURT: I heard a yes and a no, all right.

MS. SWISTAK: Who do you believe the yes or the

no?

THE COURT: Well, I know, I guess I'm going to do this because it's kind of like a medical marijuana license, I guess. You just have to go in one time to see a doctor, give you a note. Did you guys actually meet this person?

MR. FABODE: I had a live conversation over the phone, I was already approved--

THE COURT: Oh, over the--

MS. SWISTAK: See.

THE COURT: --over the phone you didn't go in and--

MR. FABODE: I was already previously--

THE COURT: Stop. Did you go into the office and meet with this person?

MR. FABODE: No.

THE DEFENDANT: He's already been diagnosed with the disorder before this.

THE COURT: I don't disagree, I'm not disagreeing with that. I'm asking, but the person that says you know what, this animal might be able to help this person, you usually like to go see that person, okay. Because I don't do anything, I don't do search warrants online because I don't see the officer that's asking me to do it. I like to talk, look at the guy face-to-face. So,

I have the same issue with like community service, I don't make people do it online because you don't get to see the person, right. So, let's do this, it's more of my education than anything else. Let's see if we can--

MR. FABODE: Excuse me, sir?

THE COURT: Go ahead.

MR. FABODE: Also I wanted to add that I have turned in two veterinary paperworks stating my dog's breed from two different vets before any of this ESA issue even occurred they knew he was a registered dog.

THE COURT: Well, there's--there's a difference, okay. There's service animals which are totally protected by the Americans with Disabilities Act but service animals have to work.

MR. FABODE: Yes.

THE COURT: Okay, emotional support animals don't really have to do a whole lot other than hang around the owner and make the owner feel better. Congress has passed a law saying while in certain places this is okay and the State has to follow it but they've got to reach certain requirements. I don't know if going online--

MR. FABODE: I didn't purchase it online they referred me to a service.

THE COURT: Okay, well, I tell you what, I got--I got this person's name. So, I'm going to adjourn this

two weeks, we're going to subpoena this Anne Venet in here because I got some questions for this person before I decide. Now, it may be right and it may be you may meet the qualifications and that's not a reason to evict. It may not meet it and that will be a reason to evict, okay?

THE DEFENDANT: I would like to make a point here, she said that all of this came up after we came to court, that's not true.

THE COURT: Well, I don't, at this point I don't really care where it started and where it ended, okay. I'm being asked to have you evicted because you have an animal. I got some information in front of me that says, well, under the laws they may have to just deal with it, okay. So, I'm going to dig into finding out whether or not this is really an emotional support animal and whether you need the animal or not. That's my decision.

THE DEFENDANT: Okay.

THE COURT: So, I just need the people here. If it's just something--if it's just something they run online, I am not going to be happy with them, okay. Because before you start telling, making decisions on whether someone is disabled or whether an animal would help that person, I think you should meet the person. But, we'll see if Miss. Venet actually met you or not.

THE DEFENDANT: Is there any way I can say one

more thing here?

THE COURT: Go ahead.

THE DEFENDANT: I just wanted to note that she-- because she mentioned that the dog had been there and that we didn't do anything--

THE COURT: I don't care about any more of that.

THE DEFENDANT: Okay. You said that--

THE COURT: I'm just dealing with you asked me to stop the writ to have you evicted because you're saying--

MR. FABODE: The original eviction--

THE COURT: Stop. You saying the animal, the reason they want to evict you is--

THE DEFENDANT: Animal is not there anymore.

THE COURT: --not a legal reason.

THE DEFENDANT: The animal is not even there.

THE COURT: I'm going to check into whether this animal is legal or not.

MR. FABODE: The animal hasn't been there--

THE DEFENDANT: It's not there.

MR. FABODE: --since the eviction, that's what we're trying--

MS. SWISTAK: Well, except that he farmed it out to a neighbor and we've got pictures of this dog.

THE COURT: Well, we'll deal with that too,

okay. Let's deal with step one and we'll get to step two, okay. If the animal is not there the problem is solved, I guess, and we have to go and deal with--

MR. FABODE: Can I ask why I was denied--

THE COURT: --the other neighborhood, but if the dog is doing house visits between one apartment and the next apartment, I'm like a lot of people, a lot of judges here, I have no problems getting rid of dogs. And if the dog isn't supposed to be where he's supposed to be, I get rid of the dog. It's unfortunate I have to do that. I hope people find a good place for the dog where the dog will be able to stay and not be unwanted. But if the rules are no pets, no one is supposed to have pets and if I've got your neighbor in here next--

MR. FABODE: No, it is--

THE COURT: --week, because they got--

MS. SWISTAK: It's a breed issue and like what people are doing they're saying oh, I know I can't have dogs that are mixed breeds that have this breed, that breed, that breed. But, guess what, if I call it an assistance animal, then you can't use your breed restriction on me.

MR. FABODE: I went to a veterinarian.

THE COURT: I understand and I'm going to see if it's an assistant animal.

MS. SWISTAK: Okay. Right.

THE COURT: See everybody in about two weeks. We'll see everybody in two weeks, we'll get a subpoena issued and have this person show and get it served on this person, have them show up.

MS. SWISTAK: Okay, thank you.

THE COURT: Good luck.

(At 2:40 p.m., proceedings concluded)

STATE OF MICHIGAN)
)
COUNTY OF MACOMB)

I certify that this transcript, consisting of 13 pages, is a complete, true, and correct record of the proceedings and testimony taken in this case on Tuesday, October 9, 2018.

12-3-18

Lisa A. Carroll

Lisa A. Carroll, CER 3359
Certified Electronic Recorder
35071 23 Mile Road
New Baltimore, Michigan 48047
586-493-0661

APPENDIX 24

Limited Licensed Counselor 6451008217

Department of Licensing and Regulatory Affairs

Home Search New Help

Register for an Account Login

NOTE: If you would like to Renew your license follow these instructions:

- You must use a desktop or laptop computer to complete the registration and renewal process.
- Login to MiPLUS.
- Click on the “My Records” tab.
- Find your License Number under the “Record Number” column. Click on the "Click Here to Renew License" link located under the "Action" column. Do NOT click the checkbox.

Home Licenses Enforcement

Advanced Search

Licensed Professional Information:
Limited Licensed Counselor 6451008217

Licensee Detail

License Type: Limited Licensed Counselor
License Number: 6451008217
Name: Anne Mary Venet
License Issue Date: 02/08/2002
License Expiration Date: 05/31/2021
License Status: Lapsed
County: Macomb

<--- Click to view Public Documents

NOTE: If you would like to Renew your license follow these instructions:

- You must use a desktop or laptop computer to complete the registration and renewal process.
- Login to MiPLUS.
- Click on the “My Records” tab.
- Find your License Number under the “Record Number” column. Click on the "Click Here to Renew License" link located under the "Action" column. Do NOT click the checkbox.

Search for Licensee

Enter information below to search for a Licensee.

Disclaimer: Licensing and registration records are made available on this website by LARA to provide immediate access to information for the convenience of interested persons. This information is updated once a day. All users have the responsibility to determine whether information obtained from this site is still accurate, current, and complete. LARA assumes no responsibility for any errors or omissions, or for the use of information obtained from this site.

A status of “**Temporary Foreign Waiver**” indicates that the license was issued during the COVID-19 emergency to someone holding a license in a foreign country and the license will be null and void when the emergency is over despite the expiration date listed in this search.

A status of “**Temporary Emergency**” indicates the license was issued during the COVID-19 emergency to someone who was unable to take the required exam for licensure and the license will be null and void 6 months after the emergency is declared over, unless they meet all the requirements for licensure during that 6 month time period, despite the expiration date listed in this search.

To request a certified license verification click here

Search for Licensee

License Type: --Select--

License Number:

Former License Number: 6401008217

First Name: Middle Initial: Last Name:

Organization Name:

DBA/Trade Name:

County:

Search Clear

APPENDIX 25

Transcript, Motion to Stay Writ (52-2 District Court, Oct 23, 2018)

STATE OF MICHIGAN

IN THE 42-2 DISTRICT COURT FOR THE COUNTY OF MACOMB

RIVERBROOK,
c/o Swistak & Levine, PC,

Plaintiff,

V Case Number 18-1698 LT

ABIMBOLA FABODE
and all other occupants,

Defendants.
_____/

MOTION TO STAY WRIT

BEFORE THE HONORABLE WILLIAM H. HACKEL III, DISTRICT JUDGE

New Baltimore, Michigan - Tuesday, October 23, 2018

APPEARANCES:

For the Plaintiff: MS. JANET E. SWISTAK P24831
Swistak & Levine PC
30833 Northwestern Highway
Suite 120
Farmington Hills, Michigan 48334
(248)851-8000

Appearing in Pro Per: MS. ABIMBOLA FABODE

RECORDED BY: Lisa A. Carroll, CER 3359
TRANSCRIBED BY: Certified Electronic Recorder
(586)493-0661

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New Baltimore, Michigan

Tuesday, October 23, 2018 - at 1:30 p.m.

THE COURT: Let's call up, let's see, Riverbrook versus Abimbola Fabode, that's 18-1698 LT. All right, who do I have here?

MS. SWISTAK: Janet Swistak appearing on behalf of Riverbrook.

THE DEFENDANT: Abimbola Fabode and Anthony Fabode.

THE BAILIFF: Be seated, sit here.

THE COURT: All right and my understanding is the reason we want to--the reason Riverbrook is requesting this individual be removed is because of a pet?

MS. SWISTAK: Well we say it's a pet he says it's an emotional support animal.

THE COURT: All right, but that's the only reason?

MS. SWISTAK: Pardon?

THE COURT: That's the only reason?

MS. SWISTAK: Well, there are other reasons but what prompted the writ was violation of a consent judgment.

THE COURT: And I had--I just wanted to make sure. And I subpoenaed Anne, is it Venet?

MS. VENET: Venet.

THE COURT: Venet, I apologize. Come on up. You're not going to be here that long.

MS. VENET: That's okay, I apologize.

THE COURT: I can tell you that.

Raise you right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

MS. VENET: I do.

ANNE VENET

(At 1:31 p.m., sworn as a witness, testified as follows)

EXAMINATION

BY THE COURT:

Q What is your name?

A Anne Venet.

Q Could you spell that for us, please?

A A-N-N-E. Venet, V like Victor, E-N-E-T.

Q All right, Miss. Venet, do you have a profession?

A Yes.

Q What is that?

A I have several, which were--where would you like me to start?

Q Well, we're here for a particular interest involving an animal, so, are you a counselor or a psychiatrist or psychologist?

A I am a counselor licensed by the State of Michigan since February of 2002.
Q And just, all right, any particular specialty in counseling or--
A Mental health.
Q Okay. And you're here because you--we got something, looks like a letter, I got a to whom it may concern letter.
A I need my glasses.
Q That's okay. I got MA LLPC on Hall Road.
A Yes.
Q Is that your letter?
A Yes.
Q Did you write that letter?
A Yes.
Q And did you make the opinion that's in that letter?
A Yes.
Q And your opinion is, I guess, the emotional support animal would help this individual?
A Yes.
Q Did you ever meet Mr. Fabode?
A I met him over the phone.
Q How did you--were you able to identify him?
A He called United Support Animals and they gave me his phone number and his name and I called him back.

Q Oh, you called him?
A Yes.
Q And--
A Do you want me to step back or no?
Q That's fine, you're fine you're near a mic here. And did--were you provided information other than him talking to you?
A No.
Q So, just based on what he told you you made this determination?
A Yes.
Q Okay.

THE COURT: Any limited questions to this young lady?

MS. SWISTAK: Yes.

THE COURT: Well, I mean, you're not going to--I'm not going to allow you to get into medical decisions.

MS. SWISTAK: Oh, I'm--no.

THE COURT: I mean it's just the statute is pretty clear counselor writes the letter, makes a determination. So, if you--

MS. SWISTAK: Well, it's not--it's not as clear as that and I do have some questions for her.

THE COURT: Well, we'll see what they are, go ahead.

MS. SWISTAK: Would you like to take the stand?

THE COURT: No, she can stand right here.

MS. SWISTAK: Okay.

CROSS-EXAMINATION

BY MS. SWISTAK:

Q What is your educational background?

A I have a master of arts in counseling.

Q What is your previous employment? You said you got your limited license in '92, is that your full time job?

A In 2002. No, I'm a retired police officer from Macomb County Sheriff. I spent 25 years there. I went to grad school while I was a police officer, earned my master's degree not thinking--or not wanting to be a police officer for 25 years. After that I did forensic interviewing on more than 600 children that were abused and neglected sexually. I was the mental health director at the Macomb County Jail. I was a crisis screening therapist at the guidance center where I did evaluations on 3 year olds up to 17 year old for inpatient psychiatric treatment. I have a private practice on my own. I work now for the Salvation Army as a case manager for victims of human trafficking.

Q Okay.

A And a couple of other things in between if you would to know those.

Q You have a limited license as a professional counselor?
A Yes.
Q Why is it still limited after 16 years? Didn't you have to do 3000 hours of supervised--
A No. I don't--I didn't take those--the test.
Q Okay, so you never took the test?
A No.
Q Who's your supervisor because you're not allowed under a limited license to treat people without supervision?
A I know that. I have a supervisor.
Q Did your supervisor talk to Mr. Fabode?
A No.
Q So, you get referrals from the--the US Animal Service Dog Registry?
A No.
Q How did you get his number?
A US Support Animals.
Q Oh, okay. But still they refer you people so you can have a telephone conversation and write the letter?
A Not necessarily. I could do teletherapy, I could do in person, I can do telephone, it's whatever I choose to do.
Q Okay, but in this case you just talked to him on the phone?
A Yes, I did.
Q Did you review any of his prior medical records?

A No, I did not.
Q Did you do any physical exams? You're not a doctor.
A Beyond my scope of practice.
Q Did you refer him for a physical exam?
A That's beyond my scope of practice.
Q You saw him for the first time when?
A In court today, if that's him.
Q Oh, you don't even know if it's him?
A No, I don't.
Q Wouldn't you say that making a diagnosis as far as somebody who has a disabling mental condition that maybe it would be helpful to look at them, see what their effect is, see if they're able to look you in the eyes, see how they talk, how articulate they are, how energetic or plathered their effect is?
A No.
Q You don't think that's important?
A No.
Q You think that somebody telling you something over the phone you can render a diagnosis?
A Yes.
Q Did you refer him for additional counseling?
A That's beyond my scope of practice.
Q Is he getting additional counseling?
A I do not know that.

Q If he is so disabled by his emotional condition, do you think he should be receiving additional treatment?
A Beyond my scope of practice.
Q Did you administer the PHQ-9 Test?
A It's beyond my scope of practice.
Q Did you administer the BDI, Beck Depression Inventory Test?
A Beyond my scope of practice.
Q Did you administer any tests that would give you objective evidence of his--
A Beyond my scope of practice.

THE COURT: And I don't know if any of those tests are required under the Rehab Act.

THE WITNESS: They're not. They're not.

THE COURT: I mean under this statute. The statute says licensed counselor sees, makes a determination.

MS. SWISTAK: Based on a phone call that she's referred to from an internet certificate preparer.

THE COURT: I don't--I didn't say I like it, okay. I don't say I agree with this and I think the statute is horribly written and I don't think there's any standards given to it. And if it's this easy to get, it's incredible to me. But it's kind of like the same way the statute is written for medical marijuana, okay, you need a

physician-client relationship. Five minutes is a physician-client relationship. Someone walks into an attorney's office and says I got a question, you know, whether you get money or not, it could be possibly a relationship. All right, so whether all this other stuff whether she did or dug into is irrelevant the way the statute's written.

MS. SWISTAK: It is not irrelevant when you consider that it has to be credible evidence of a disabling medical condition. We have no credible evidence. If I can get social security disability based on a telephone conversation, no one in the world would work.

THE COURT: This is not social security, this is different. This is the--this is the--this is the way Congress wrote this act. And--

MS. SWISTAK: Your Honor?

THE COURT: Maybe they gave in to a political group to get some points for it to get campaign funding and run on it and I allowed it, okay, but that's Congress' call not mine.

MS. SWISTAK: Your Honor, there is case law that would say that the information supplied to the landlord has to be credible and I don't believe her--her testimony, her letter is credible evidence of a disabling mental

condition and that's what is required by the statute, not simply a letter from any old person.

THE COURT: Well, I disagree at this point. So, thank you. You're free to leave.

(At 1:40 p.m., witness excused)

At this point, and like I said, I'm not happy with the way this is done and these certificates I think are really bogus considering there is no real registration out there because all you really need is the letter from the counselor.

MS. SWISTAK: A credible letter from the counselor.

THE COURT: Well, I don't--I found nothing uncredible about her, especially, given her background, information as provided, and what the statute limits us to. Okay, you're--I don't disagree with you, I'm just stuck with the law.

MS. SWISTAK: But you're allowed to look into the facts of the situation. He didn't have any treatment, he has never had treatment.

THE DEFENDANT: That's not true.

THE COURT: No, no, no, no. And I think that's beyond the scope of this hearing, okay. The hearing, my purpose for this hearing is more of this is not whether this was issued correctly or incorrectly, that's not my

call. My call is to make sure that the counselor done it, met the requirements of. Now, if you want to challenge licensing issues, you want to challenge his state, I guess that's for somewhere else. But here, it's just a simple, did it meet the requirements of the statute--

MS. SWISTAK: So--

THE COURT: --I think it did. All right, I didn't--I didn't say I'm happy with my decision, okay, because this opens it up for all kinds of stuff and it opens up for this whole internet thing they've got going which, you know, but--

MS. SWISTAK: But--

THE COURT: --they allow it.

MS. SWISTAK: Well, you allow it, not all courts allow it.

THE COURT: No, no. I allow it because everybody else allows it.

MS. SWISTAK: I don't think so.

THE COURT: Well, then--

MS. SWISTAK: There--I mean there's case law and that the info--the information has to be credible. I don't think that based on a phone call from some unknown person, she can say oh, yes, his condition is disabling and he needs a dog.

THE COURT: They don't require--the statute

doesn't require meeting. The statute doesn't require treatment. The statute doesn't require an ongoing relationship.

MS. SWISTAK: How can she--

THE COURT: The statute doesn't require any of that, okay. And you're asking me to say, Congress, you need--you really meant to say this, okay. I don't think it does. And the reason I do that is because the way they wrote the--some of these other--they didn't think this through, all right, but I'm stuck with what I got. Now, so I'm going to deny the writ. You certainly, everybody has a right to appeal and go from there. Good luck.

(At 1:42 p.m., proceedings concluded)

STATE OF MICHIGAN)
)
COUNTY OF MACOMB)

I certify that this transcript, consisting of 15 pages, is a complete, true, and correct record of the proceedings and testimony taken in this case on Tuesday, October 23, 2018.

11-7-18

Lisa A. Carroll, CER 3359
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APPENDIX 26

Williams-Inner v Liberty Mutual Ins Co, No 320677
(Mich App, May 12, 2015)

STATE OF MICHIGAN

COURT OF APPEALS

LITTRELL WILLIAMS-INNER, Plaintiff-Appellant, v LIBERTY MUTUAL INSURANCE COMPANY, Defendant-Appellee.	UNPUBLISHED May 12, 2015 No. 319217 Wayne Circuit Court LC No. 11-003613-NI
LITTRELL WILLIAMS-INNER, Plaintiff-Appellant, v LIBERTY MUTUAL INSURANCE COMPANY, Defendant-Appellee.	No. 320677 Wayne Circuit Court LC No. 11-003613-NI

Before: TALBOT, C.J., and CAVANAGH and METER, JJ.

PER CURIAM.

In these consolidated appeals,[1] Littrell Williams-Inner appeals as of right from two orders of the trial court. In the first order, the trial court, as a discovery sanction, ordered that Williams-Inner could not present expert opinion testimony at trial. In the second order, the trial court awarded Liberty Mutual Insurance Company ("Liberty") $149,711 in attorney fees. For the reasons discussed below, we vacate the trial court's award of attorney fees and remand for redetermination of the award. In all other respects, we affirm.

[1] *Williams-Inner v Liberty Mutual Ins Co*, unpublished order of the Court of Appeals, entered November 12, 2014 (Docket No.'s 319217, 320677).

I. BACKGROUND

On November 26, 2010, Williams-Inner was a passenger in a vehicle that was struck by another motorist. On March 25, 2011, Williams-Inner filed a complaint alleging that Liberty, her no-fault insurer, unreasonably refused to pay her personal protection benefits for injuries arising out of the accident. Approximately one month before trial was scheduled to begin, the trial court granted Liberty's motion to preclude Williams-Inner from presenting the opinions of expert witnesses as a discovery sanction. The matter proceeded to trial. The jury found that Williams-Inner was not entitled to benefits and that her claim against Liberty was at least partially fraudulent or excessive. Liberty then filed a motion seeking attorney fees and costs of approximately $190,000. A hearing was held, at which the trial court expressed some concern over the hourly rates sought by Liberty for its lead counsel, Karen Magdich, and a paralegal, Kristen Kairys. The trial court asked Liberty to submit a supplemental brief with reduced hourly rates for these individuals. Liberty did so, and after a second hearing, the trial court accepted Liberty's new calculations and entered an order awarding Liberty $149,711 in attorney fees. The trial court did not award Liberty its requested costs.

II. DISCUSSION

A. DISCOVERY SANCTION

Williams-Inner first argues that the trial court abused its discretion when it precluded her from presenting expert witness testimony at trial. We disagree. "Discovery sanctions are reviewed for an abuse of discretion."[2] An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes.[3]

In a discovery request served on Williams-Inner in April 2011, Liberty asked Williams-Inner to "[s]tate the names and addresses of any and all proposed expert witnesses and the names and addresses of all witnesses you intend to have testify in [sic] your behalf in this case[,] whether in person or by deposition." Liberty also requested that Williams-Inner disclose the qualifications of proposed experts, the subject matter of any expert's testimony, the substance of their opinions, the facts upon which these opinions were based, and the identity and location of any reports prepared by each expert. When Williams-Inner did not timely respond to its interrogatories, Liberty filed a motion to compel her responses. The trial court then entered a stipulated order requiring Williams-Inner to respond to the requests "on or before July 21, 2011." Despite stipulating to this order, Williams-Inner did not provide her responses until July 28, 2011. In response to Liberty's request for information regarding her expert witnesses, Williams-Inner stated only, "Plaintiff will file [a] Witness List in accordance with the Court's Scheduling Order." On April 17, 2012, the day her witness list was due, Williams-Inner filed a witness list

[2] *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990).

[3] *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

which named over 20 treating physicians by name or description, along with approximately 60 other witnesses. However, this witness list did not identify any witnesses as expert witnesses.

Largely based on a mistaken belief that Williams-Inner had never filed a witness list, on April 26, 2013, Liberty filed a motion seeking dismissal of the suit.[4] This motion also noted that Williams-Inner had not timely responded to Liberty's interrogatories or identified any expert witnesses, and asked that as an alternative sanction, the trial court preclude Williams-Inner from "calling expert witnesses at trial for [her] failure to disclose potential experts as well as any opinions they may hold and the basis for said opinions . . . ." Williams-Inner filed a response in which she asserted that she would supplement any interrogatory responses as needed, but that no such supplementation was necessary at that time because she had not "identified and/or retained any experts regarding this matter." She asserted that she would supplement her interrogatory responses if any experts were retained.

The motion was heard on May 3, 2013. At the hearing, Liberty acknowledged that Williams-Inner had timely filed a witness list, but noting that trial was set to begin on June 3, 2013, asked the court to preclude Williams-Inner from presenting expert opinion testimony. Williams-Inner stated that she had not retained any "outside independent experts," but argued that the treating physicians identified in her witness list could be presented as expert witnesses if the court found them qualified. The trial court ruled that because Williams-Inner had yet to identify any expert witnesses, she could not present expert opinion testimony at trial. On May 28, 2013, less than a week before trial was scheduled to begin, Williams-Inner provided complete responses to Liberty's interrogatory requests.

Under the Michigan Court Rules, "A party may through interrogatories require another party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter about which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion."[5] "[T]he purposes of pretrial discovery regarding experts to be used as witnesses at trial [are] narrowing the issues, preparation of cross-examination[,] and the elimination of surprise at trial . . . ."[6] As this Court has explained:

> Pursuant to MCR 2.302(E)(1)(a)(*ii*), a party has "a duty seasonably to supplement" his or her responses to discovery requests to include the identity of additional expert witnesses. The court may, in its discretion, sanction a party under MCR 2.313(B)(2) for failing to reveal the identity of an expert witness in a

[4] This belief was the result of the court clerk having docketed Williams-Inner's witness list as a "miscellaneous pleading." When Magdich and her firm substituted for Liberty's former counsel in March 2013, Magdich apparently relied only on the register of actions, and seeing no witness list filed by Williams-Inner, filed the motion.

[5] MCR 2.302(B)(4)(a)(*i*).

[6] *Nelson Drainage Dist v Bay*, 188 Mich App 501, 506-507; 470 NW2d 449 (1991).

> timely fashion. As a sanction under that subrule, the court may prohibit the party from "introducing designated matters into evidence . . . ."[7]

However, before sanctioning a party for a discovery violation, the trial court must consider several factors:

> Among the factors that should be considered in determining the appropriate sanction are: (1) whether the violation was wilful or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, (4) actual notice to the defendant of the witness and the length of time prior to trial that the defendant received such actual notice, (5) whether there exists a history of plaintiff engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. This list should not be considered exhaustive.[8]

Under the circumstances, the trial court's sanction was not an abuse of discretion. Williams-Inner's refusal to provide appropriate responses to Liberty's interrogatories was no accident. Rather, she agreed to respond by a certain date, filed responses a week after that date passed, and when she did, answered only that she would file a witness list in the future. Once it was filed, this witness list identified no witnesses as experts.[9] This conduct left Liberty to guess which witnesses, if any, might be called as experts, and provided absolutely no insight into the substance of any potential expert testimony. It also prevented Liberty from deposing, investigating, or otherwise preparing to defend against these witnesses. Williams-Inner only attempted to cure the error the week before trial was to begin, an effort that was far from timely, particularly given that the trial court had already ordered that she could not present expert witness testimony. Moreover, the trial court imposed a narrow sanction. The trial court only prohibited Williams-Inner's treating physicians from providing expert opinion testimony. The witnesses remained free to testify to the existence of Williams-Inner's injuries and what treatment she was provided. This sanction was proportionate to Williams-Inner's failure to

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[7] *Dorman v Twp of Clinton*, 269 Mich App 638, 655-656; 714 NW2d 350 (2006) (citations omitted).

[8] *Dean*, 182 Mich App at 32-33 (citations omitted).

[9] Williams-Inner argues that her identification of witnesses as treating physicians in her witness list was sufficient to put Liberty on notice that any of these witnesses could be called as experts. Yet in her response to Liberty's motion, a response filed a year after she filed her witness list, Williams-Inner explained her failure to supplement her interrogatory responses by asserting that she had yet to identify any expert witnesses herself. We fail to understand how Liberty could be expected to know the identity of Williams-Inner's expert witnesses during a time when Williams-Inner apparently did not.

divulge the existence or nature of any potential expert testimony. Under the circumstances, the trial court's sanction was not an abuse of discretion.[10]

Williams-Inner presents several arguments on appeal, all of which lack merit. She first argues that the record does not reflect that the trial court gave any consideration to the *Dean* factors. With regard to discovery sanctions, "the record should reflect that the trial court gave careful consideration to the factors involved and considered all of its options in determining what sanction was just and proper in the context of the case before it."[11] At the motion hearing, the trial court did not explicitly reference any particular factor. However, it did explicitly deny the motion to dismiss, demonstrating that the court considered other options with regard to the appropriate sanction. Given the nature of the discovery violation at issue here, the narrow sanction imposed demonstrates that the trial court considered the particular circumstances of this case before determining what sanction was appropriate. Thus, while not explicit, the record demonstrates that the trial court considered the relevant factors and its options before it decided the appropriate sanction.

Further, if a trial court fails to adequately address the *Dean* factors, the proper remedy is to remand to the trial court for reconsideration.[12] Such a remedy would not be appropriate here because the record reflects that the trial court also considered the relevant factors in response to Williams-Inner's motion for reconsideration. Williams-Inner's motion addressed each of the *Dean* factors. The trial court allowed oral argument on the motion, where both parties extensively discussed Williams-Inner's discovery responses and whether these responses gave Liberty an adequate opportunity to prepare with regard to Williams-Inner's potential experts. The trial court noted that Williams-Inner had not identified any of her treating physicians as experts. The trial court stated that this conduct left Liberty to guess which witnesses might be called as experts, and found that this was "neither fair nor appropriate." On the whole, the record reflects that the trial court considered the relevant factors and potential options when deciding the issue.

Relying on the Federal Rules of Civil Procedure and cases of the federal courts interpreting these rules, Williams-Inner next argues that identifying her witnesses as treating physicians was sufficient to put Liberty on notice that she intended to call any of these witnesses as experts. Under the Michigan Court Rules, when filing a witness list, parties must specify

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[10] See *Dorman*, 269 Mich App at 654-655 (the trial court did not abuse its discretion by refusing to allow the plaintiff to present an expert witness not disclosed until two months before trial); *Bellok v Koths*, 163 Mich App 780; 415 NW2d 18 (1987) (the trial court did not abuse its discretion by dismissing the plaintiffs' action as a discovery sanction; the plaintiffs failed to provide complete responses to interrogatory requests regarding expert witnesses until the day of the hearing on the defendants' motion to dismiss for failure to respond to the requests).

[11] *Dean*, 182 Mich App at 32.

[12] *Adams v Perry Furniture Co (On Remand)*, 198 Mich App 1, 17-18; 497 NW2d 514 (1993), overruled in part on other grounds *Allied Electric Supply Co, Inc v Tenaglia*, 461 Mich 285, 289 (1999).

"whether the witness is an expert, and the field of expertise."[13] It is Michigan's court rules, not the federal rules, which apply here. Moreover, the federal cases cited do not stand for the proposition that identifying witnesses as treating physicians is akin to identifying them as experts. Rather, these cases hold that treating physicians need not file mandatory disclosures pursuant to FR Civ P 26(a)(2) because, among other reasons, the testimony of a treating physician regarding the cause of injuries is not necessarily expert opinion testimony.[14] Williams-Inner explicitly asked the trial court to admit the testimony of her treating physicians as expert opinion testimony. Regardless, even if identifying her treating physicians could be considered adequate to identify them as experts, Williams-Inner still failed to provide any information beyond the names of these witnesses, such as their qualifications, areas of expertise, expected testimony, or basis for their opinions, until the week before trial was to begin. Liberty requested and was entitled to this information.[15] Identifying her treating physicians was an insufficient response to Liberty's interrogatory request, and accordingly, sanctions were permissible.[16]

Williams-Inner points out that Liberty similarly identified her treating physicians in its witness list without identifying those witnesses as experts. The explanation for this is quite simple: Liberty did not intend to call Williams-Inner's treating physicians as expert witnesses. Rather, Liberty specifically identified over 30 potential expert witnesses in its witness list, as was required.[17] Williams-Inner also suggests that the trial court held Liberty to a different standard by denying her motion for a default judgment premised on a purported discovery violation, a motion filed the same day the trial court heard Liberty's motion. As the trial court noted, Williams-Inner never filed a motion to compel discovery. Liberty's failure to respond appeared to be an inadvertent mistake. Once Liberty was made aware of the problem by the motion, it provided appropriate responses. Williams-Inner also provided little explanation of how she was prejudiced by the failure. Indeed, she suggested that the trial court could order Liberty to provide responses within seven days as an alternative to a default judgment. Williams-Inner has not demonstrated that the trial court treated the parties differently.

Williams-Inner argues that she was denied a fair opportunity to litigate the issue because, at the motion hearing, Liberty changed the thrust of its motion from one arguing that no witness list had been filed to one arguing for exclusion due to the failure to respond to interrogatories. Liberty's motion specifically noted that Williams-Inner had not provided complete answers to

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[13] MCR 2.401(I)(1)(b). Pursuant to MCR 2.401(I)(2), "The court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except on good cause shown."

[14] See, e.g., *McCloughan v City of Springfield*, 208 FRD 236, 240-242 (2002). There also appears to be a split of authority in the federal courts on this issue, with some courts holding that treating physicians are experts who must file mandatory disclosures pursuant to FR Civ P 26(a)(2). See *id*. at 241-242 (collecting cases).

[15] MCR 2.302(B)(4)(a)(*i*).

[16] *Dorman*, 269 Mich App at 655-656.

[17] MCR 2.401(I)(1)(b).

the interrogatory requests. Williams-Inner responded that her interrogatory responses needed no supplementation because she did not intend to call any expert witnesses. Williams-Inner was clearly aware of this issue, and was not denied an opportunity to fairly litigate it. Moreover, Williams-Inner was given ample opportunity to argue the issue when the trial court heard arguments on her motion for reconsideration. On the whole, Williams-Inner's arguments fail to demonstrate that the trial court abused its discretion.[18]

B. ATTORNEY FEES[19]

Williams-Inner next argues that the trial court erred by awarding attorney fees to Liberty. We agree. "This Court generally reviews for an abuse of discretion a trial court's decision to award attorney fees and the determination of the reasonableness of the fees."[20] A trial court's factual findings are reviewed for clear error.[21] "There is clear error when there is no evidentiary support for the factual findings or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake."[22]

The trial court committed several errors in its award of attorney fees. In *Smith v Khouri*, our Supreme Court articulated a list of six factors to be considered when making such a determination (the *Wood* factors):

> (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client.[23]

In addition, trial courts may rely on the factors provided by the Michigan Rules of Professional Conduct, some of which overlap the *Wood* factors:

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[18] Finding no abuse of discretion in this regard, we also reject Williams-Inner's contention that the award of attorney fees must be reversed due to this alleged error.

[19] Williams-Inner also argues that the trial court erred by awarding Liberty costs in addition to the award of attorney fees. Liberty sought $149,711 in attorney fees and approximately $8,500 in taxable costs. The trial court only awarded $149,711 in attorney fees. As the trial court did not award Liberty any amount in taxable costs, Williams-Inner's argument is without merit. And as Liberty has not raised the issue on appeal, we are not faced with the question of whether the trial court's decision not to award costs was correct.

[20] *Augustine v Allstate Ins Co*, 292 Mich App 408, 424; 807 NW2d 77 (2011).

[21] *Id*.

[22] *Id*. (quotation marks, brackets, and citation omitted).

[23] *Smith v Khouri*, 481 Mich 519, 529; 751 NW2d 472 (2008), quoting *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982).

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
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> (3) the fee customarily charged in the locality for similar legal services;
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> (4) the amount involved and the results obtained;
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> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.[24]

In *Smith*, our Supreme Court refined the process required when determining an award of attorney fees in an effort to "lead to greater consistency in awards."[25] As our Supreme Court explained:

> We hold that a trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services, i.e., factor 3 under MRPC 1.5(a). In determining this number, the court should use reliable surveys or other credible evidence of the legal market. This number should be multiplied by the reasonable number of hours expended in the case (factor 1 under MRPC 1.5[a] and factor 2 under *Wood*). The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee. . . . Thereafter, the court should consider the remaining *Wood*/MRPC factors to determine whether an up or down adjustment is appropriate. And, in order to aid appellate review, a trial court should briefly discuss its view of the remaining factors.[26]

In this case, rather than begin by determining what "fee [was] customarily charged in the locality for similar legal services,"[27] the trial court began with the hourly fees requested by Liberty, fees that were far above the average fees charged by similarly situated attorneys.[28] The

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[24] *Id*. at 529-530, quoting MRPC 1.5(a).

[25] *Id*. at 530-531.

[26] *Id*.

[27] *Id*. at 530.

trial court also failed to adequately discuss the relevant factors that would warrant a deviation from the customary fee in the locality. As this Court has explained:

> A meaningful application of the factors is more than a recitation of those factors prefaced by a statement such as "after careful review of the criteria the ultimate finding is as follows . . . ." Similarly, an analysis is not sufficient if it consists merely of the recitation of the factors followed by a conclusory statement that "the trial court has considered the factors and holds as follows . . ." without clearly setting forth a substantive analysis of the factors on the record. The trial court should consider the interplay between the factors and how they relate to the client, the case, and even the larger legal community.[29]

The trial court did not specifically reference any of the factors discussed above. Rather, it made only conclusory statements regarding Magdich and her co-counsel, Allison Lazette, that seem to refer to a few relevant factors.[30] Liberty also asserted that 10 other associate attorneys worked on the case and sought fees for their work. The trial court never discussed any of these attorneys, yet it accepted Liberty's request that the hours worked by these attorneys be charged to Williams-Inner at the same rate as Lazette, $300 an hour. The trial court's failure to make specific findings regarding the reasonableness of the hourly fee charged by each attorney was erroneous.[31]

The trial court also erred with respect to its determination of how many hours were reasonably spent by Liberty's attorneys defending the case. When Williams-Inner challenged the reasonableness of the number of hours claimed by Liberty, Liberty asserted that its billing records were protected by the attorney-client privilege. The trial court made no explicit ruling on this assertion of privilege, but chose to review the billing records *in camera*. After reviewing the records submitted by Liberty, the trial court made only a conclusory statement that the number of hours claimed was reasonable. This procedure was insufficient. As our Supreme Court has explained:

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[28] In support of its motion for attorney fees, Liberty attached the State Bar of Michigan's 2010 Economics of Law Practice Attorney Income and Billing Rate Summary Report. According to this report, the median hourly rate for managing partners, such as Magdich, was $250, while the median hourly rate for associates was $195. This same report indicated that the median hourly rate for attorneys in the field of insurance law was $175. Attorneys in the county where Magdich's practice is located had a median hourly rate of $200. The trial court awarded fees based on an hourly rate of $400 for Magdich and $300 for all other associate attorneys.

[29] *Augustine*, 292 Mich App at 436.

[30] For example, regarding Magdich, the trial court stated, "you do remarkable work." With regard to Lazette's requested hourly fee of $300, the trial court asked her how long she had been in practice, and after Lazette stated she had been practicing for 7 years, stated, "Okay. That's not unreasonable."

[31] See *Augustine*, 292 Mich App at 439 (directing the trial court, on remand, "to make specific findings, consistent with *Smith*, for each attorney whose fees plaintiff sought to recover.").

> In considering the time and labor involved (factor 1 under MRPC 1.5[a] and factor 2 under *Wood*) the court must determine the reasonable number of hours expended by each attorney. The fee applicant must submit detailed billing records, which the court must examine and opposing parties may contest for reasonableness. The fee applicant bears the burden of supporting its claimed hours with evidentiary support. If a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing the fee request is entitled to an evidentiary hearing to challenge the applicant's evidence and to present any countervailing evidence.[32]

The trial court's *in camera* review of billing records denied Williams-Inner any meaningful opportunity to challenge the reasonableness of the hours Liberty claimed. This procedure also deprives this Court of any meaningful review of the trial court's finding that the hours expended were reasonable. Moreover, the trial court's conclusory finding that these hours were reasonable was insufficient. The trial court's analysis must do more than state that it has considered the issue and made a particular finding.[33] For all of these reasons, the trial court's determination that the number of hours claimed by Liberty was reasonable was an abuse of discretion.

Moreover, Liberty's claim of privilege was insufficient to prevent Williams-Inner from viewing any portion of the billings. The attorney-client privilege is narrow in scope, "attaching only to confidential communications by the client to his advisor that are made for the purpose of obtaining legal advice."[34] "Confidential client communications, along with opinions, conclusions, and recommendations based on those communications, are protected by the attorney-client privilege because they are at the core of what is covered by the privilege."[35] Those parts of the billing records containing privileged information could be redacted.[36] However, the remainder should have been made available to Williams-Inner. "The trial court's failure to even entertain such a procedure seems highly unreasonable and therefore an abuse of discretion."[37]

The trial court also erred with respect to its award of paralegal fees. "An award of attorney fees may include an award for the time and labor of any legal assistant who contributed

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[32] *Smith*, 481 Mich at 532 (citation omitted).

[33] *Augustine*, 292 Mich App at 436.

[34] *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 618-619; 576 NW2d 709 (1998).

[35] *McCartney v Attorney General*, 231 Mich App 722, 735; 587 NW2d 824 (1998) (quotation marks and citation omitted).

[36] See *Augustine*, 292 Mich App at 421-422 (to allow a meaningful opportunity to contest a claim for attorney fees, records supporting the claim of fees could be "sanitized" to remove privileged information).

[37] *Id*. at 422.

nonclerical, legal support under the supervision of an attorney, provided the legal assistant meets the criteria set forth in Article 1, § 6 of the Bylaws of the State Bar of Michigan."[38] At the first hearing regarding attorney fees, Williams-Inner questioned whether Kairys met these requirements. Lazette stated that Kairys held a degree in paralegal studies and was a certified paralegal.[39] However, Liberty offered no evidence to support this assertion. Because there was no evidence to support Lazette's assertion, any factual finding regarding Kairys's qualifications was clearly erroneous.[40] Liberty also claimed hours for another paralegal that worked on the case, Thomas Pattee, but provided no proof of his qualifications. As the claimant, Liberty had the burden of establishing entitlement to the fees it claimed.[41] Without evidence that these paralegals met the qualifications stated in Article 1, Section 6 of the Bylaws of the State Bar of Michigan, the trial court could not include their hours in its award of attorney fees to Liberty.[42]

Williams-Inner raises several additional arguments that are without merit. Williams-Inner did not raise any of these arguments below, rendering the arguments unpreserved.[43] Accordingly, our review is limited to review for plain error affecting substantial rights.[44] To be entitled to relief, Williams-Inner must demonstrate that an error occurred, that the error was plain, and that the error affected substantial rights, meaning that the error was outcome-determinative.[45]

Williams-Inner first argues that the trial court's award must be reversed because it exceeded the amount Liberty actually paid its attorneys in this matter. We agree that Liberty's recovery for attorney fees may not exceed the amount it actually paid.[46] However, the record contains no evidence of what Liberty actually paid in attorney fees. Thus, we cannot determine whether such an error occurred in this instance.

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[38] MCR 2.626.

[39] Williams-Inner raised the issue again at the second hearing, noting that no proof of Kairys's qualifications had ever been presented. Magdich offered no proof, stating only that Kairys was "the best paralegal" she had "ever seen."

[40] *Augustine*, 292 Mich App at 424.

[41] *Smith*, 481 Mich at 528-529.

[42] MCR 2.626.

[43] *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005).

[44] *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

[45] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[46] See *McAuley v Gen Motors Corp*, 457 Mich 513, 519-520; 578 NW2d 282 (1998) (generally, an award of attorney fees is compensatory in nature; "Because the purpose of compensatory damages is to make the injured party whole for the losses actually suffered, the amount of recovery for such damages is inherently limited by the amount of the loss . . . .").

Williams-Inner next argues that paralegal fees are not recoverable at all in this matter because the recovery of paralegal fees is not specifically authorized by statute. Once the trial court determined that Williams-Inner's claim was fraudulent or excessive, it could award Liberty "a reasonable sum against [Williams-Inner] as an attorney's fee . . . ."[47] Our Legislature did not define the term "attorney's fee." However, the Michigan Court Rules explicitly allow the inclusion of an award for the time and labor of legal assistants in an award of attorney fees.[48] Where their language does not conflict, statutes and court rules relating to the same subject matter should be read harmoniously.[49] The statute and court rule relate to the same subject matter, attorney fees, and are not in conflict. Reading the statute and court rule in harmony leads to the inexorable conclusion that paralegal fees are recoverable as attorney fees in this matter, provided that the requirements of MCR 2.626 are satisfied.

Williams-Inner asserts that Liberty has waived its claim for attorney fees entirely by failing to support it with detailed billing statements. Waiver is the intentional relinquishment of a known right.[50] It can hardly be said that Liberty waived its claim for attorney fees when it filed a motion and multiple briefs requesting attorney fees, the trial court held two hearings on the issue, and ultimately awarded the fees.[51]

Finally, Williams-Inner raises a novel argument. She asserts that in order to recover attorney fees, Liberty was required to file a counter-complaint, and a jury was required to decide the issue. Generally, "every final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings."[52] Because the trial court determined Williams-Inner's claim was at least partially fraudulent or excessive, the trial court could award Liberty its reasonable attorney fees.[53] Liberty was not required to file a separate pleading to obtain this relief.[54] Nor was a jury required to determine the issue. Quite the contrary, it was for the trial court to determine whether an award

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[47] MCL 500.3148(2).

[48] MCR 2.626.

[49] See *Lapeer Co Clerk v Lapeer Circuit Court*, 469 Mich 146, 165; 665 NW2d 452 (2003).

[50] *Sweebe v Sweebe*, 474 Mich 151, 156-157; 712 NW2d 708 (2006).

[51] See *Greater Bible Way Temple of Jackson v City of Jackson*, 268 Mich App 673, 688; 708 NW2d 756 (2005), rev'd on other grounds 478 Mich 373 (2007) (rejecting an argument that the plaintiff waived any claim for attorney fees by failing to state such a request in its complaint or incorporating it into the final order; the issue was "briefed by the parties, a hearing on the issue took place, and the trial court's written opinion awarding the fees show[ed] that it thoroughly considered the matter.").

[52] MCR 2.601(A).

[53] MCL 500.3148(2).

[54] MCR 2.601(A). See also *Greater Bible Way*, 268 Mich App at 688.

of attorney fees was warranted and to determine the amount of that award.[55] Williams-Inner's argument lacks merit.

We vacate the trial court's award of attorney fees and remand for redetermination of the award. On remand, Liberty "must submit detailed billing records, which the court must examine and opposing parties may contest for reasonableness."[56] If the billing records contain information protected by the attorney-client privilege, this information may be redacted.[57] However, Liberty bears the burden of establishing its claim, and "[i]f a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing the fee request is entitled to an evidentiary hearing to challenge the applicant's evidence and to present any countervailing evidence."[58] The trial court must first "determin[e] the fee customarily charged in the locality for similar legal services," using "reliable surveys or other credible evidence of the legal market."[59] The trial court must "make specific findings, consistent with *Smith*, for each attorney whose fees plaintiff sought to recover."[60] Regarding paralegal fees, the trial court must determine whether the paralegals meet the requirements of MCR 2.626, and if they do, must similarly determine the customary fee in the locality for their services.[61] The trial court must then determine the number of hours reasonably expended by each attorney and paralegal, including whether it was reasonably necessary for multiple attorneys to attend to the same matter.[62] After it has done so, the trial court must multiply the hourly fee for each attorney and paralegal by the number of reasonable hours billed by that individual to establish a baseline figure.[63] Once this baseline figure has been established, the trial court may then "consider the other factors and determine whether they support an increase or decrease in the base number."[64] Affirmed in all other respects. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

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[55] See *Smith*, 481 Mich at 530-533 (outlining the procedure for a trial court to follow to determine the amount of an attorney fee award).

[56] *Id*. at 532.

[57] See *Augustine*, 292 Mich App at 421-422.

[58] *Smith*, 481 Mich at 532.

[59] *Id*. at 530-531.

[60] *Augustine*, 292 Mich App at 439.

[61] *Smith*, 481 Mich at 530-531.

[62] *Id*. at 532, 534.

[63] *Id*. at 533.

[64] *Id*.

APPENDIX 27

HUD Conciliation Agreement, No. 06-18-99998-8
(Feb 3, 2022)

U.S. Department of Housing and Urban Development
Office of the Assistant Secretary
for Fair Housing and Equal Opportunity
451 7th Street, S.W.
Washington, D.C. 20410-2000

February 03, 2022

Sarah Carthen Watson, Legal Director
Louisiana Fair Housing Action Center
1340 Poydras Street, Suite 710
New Orleans, LA 70112

Dear Representative of Louisiana Fair Housing Action Center:

Subject: Housing Discrimination Complaint
GNOFHAC v. Sailboat Bay Apartments, LLC., et al.
HUD Case No. 06-18-9998-8

Attached is a copy of a closure document sent to your client, relating to the subject housing discrimination complaint.

Sincerely,

Robert Doles, Director
Department of Housing and Urban Development
FHEO, Office of Systemic Investigations

Enclosures

U.S. Department of Housing and Urban Development
Office of the Assistant Secretary
for Fair Housing and Equal Opportunity
451 7th Street, S.W.
Washington, D.C. 20410-2000

February 03, 2022

Louisiana Fair Housing Action Center
1340 Poydras Street, Suite 710
New Orleans, LA 70112

Dear Complainant:

Subject: Housing Discrimination Complaint
GNOFHAC v. Sailboat Bay Apartments, LLC., et al.
HUD Case No. 06-18-9998-8

The above-referenced housing discrimination complaint, which was filed with the U.S. Department of Housing and Urban Development (HUD), on October 27, 2017, has been resolved by the execution of a HUD Conciliation Agreement (Agreement), as provided under §810(b) of the Fair Housing Act of 1968, (Act) as amended [42 U.S.C. §3601 et seq.].

On **February 03, 2022**, the Conciliation Agreement was signed and approved on behalf of the Secretary, as required under §810(b)(2) of the Act and §103.310 of HUD's regulations implementing the Act. By executing this Agreement, the parties have agreed that all issues that were raised in the above-referenced complaint are resolved. By approving this Agreement, HUD has concluded that its provisions will adequately vindicate the public interest. Accordingly, HUD has terminated its investigation, and has administratively closed the complaint, effective as of **February 03, 2022**. A copy of the HUD-approved Agreement is enclosed for your records.

This closure is not a determination on the merits of the allegations contained in the HUD complaint.

By executing this Conciliation Agreement, the parties have committed to comply with the provisions specifically designed to resolve the issues raised in the complaint, and to further the public interest in fair housing.

Retaliation is a violation of the Fair Housing Act. Section 818 of the Act makes it unlawful to retaliate against any person because he or she has filed a housing discrimination complaint; is associated with a complainant; has counseled or otherwise assisted any person to file such a complaint; or has provided information to HUD during a complaint investigation. Section 818 also protects complainants against retaliatory acts that occur after a complainant has withdrawn, settled, or conciliated a housing discrimination complaint. Any person who believes that he or

she has been a victim of retaliation for any of the reasons listed above may file a housing discrimination complaint with HUD within one (1) year of the date on which the most recent alleged retaliatory act(s) occurred or ended.

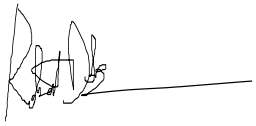
Enforcement by the Attorney General. Section 810(c) of the Act provides that whenever HUD has reasonable cause to believe that a respondent has breached a Conciliation Agreement, HUD shall refer the matter to the Attorney General with a recommendation that a civil action be filed on behalf of the complainant. Section 814(b)(2) of the Act authorizes the Attorney General to file a civil action in an appropriate United States District Court for appropriate relief with respect to the breach of a HUD Conciliation Agreement.

If an aggrieved person believes that a respondent has breached a HUD Conciliation Agreement, he or she should promptly report the alleged breach to the HUD Office that investigated the complaint.

Public Disclosure. Section 103.330(b) of HUD's regulations implementing the Act provides that Conciliation Agreements shall be made public, unless the aggrieved person and the respondent request nondisclosure and HUD determines that disclosure is not required to further the purposes of the Act. Notwithstanding a determination that disclosure of an Agreement is not required, HUD may publish tabulated descriptions of the results of all conciliation efforts.

If you have any questions regarding this case, please contact Danielle Sievers, Equal Opportunity Specialist, at (202) 394-2551 for assistance.

Sincerely,



Robert Doles, Director
Department of Housing and Urban Development
FHEO, Office of Systemic Investigations

Enclosures

cc: Sarah Carthen Watson, Legal Director
1340 Poydras Street, Suite 710
New Orleans, LA 70112

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIATION AGREEMENT

Between

Louisiana Fair Housing Action Center
(Complainant)

and

Sailboat Bay Apartments, LLC
Realty Ventures, Inc.
Christopher Hodgins
(Respondents)

HUD CASE NAME: *GNOFHAC v. Sailboat Bay Apartments, LLC, et al.*
HUD CASE NUMBER: 06-18-9998-8

HUD Date Filed: **October 27, 2017**

Effective Date of Agreement: February 3, 2022

Expiration Date of Agreement: February 3, 2025

A. PARTIES AND SUBJECT PROPERTY

Complainant

Louisiana Fair Housing Action Center[1]
1340 Poydras Street, Suite 710
New Orleans, LA 70112

Respondents

Sailboat Bay Apartments, LLC
Realty Ventures, Inc.
Chris Hodgins[2]
8600 Pontchartrain Boulevard, Suite 209
New Orleans, LA 70124

Subject Property

Sailboat Bay Apartments
8600 Pontchartrain Boulevard
New Orleans, LA 70124

B. STATEMENT OF FACTS

A complaint was filed on October 27, 2017, with the United States Department of Housing and Urban Development ("Department") alleging that the Complainant was injured by Respondents' discriminatory acts. Complainant alleged that the Respondents violated subsections 804(a) and 804(b) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 ("Act").

While the investigation was ongoing, Complainant changed its name from the Greater New Orleans Fair Housing Action Center to the Louisiana Fair Housing Action Center and broadened its mission to eradicate housing discrimination in the state of Louisiana.

Respondents deny having discriminated against Complainant but agree to settle the complaint by entering into this Conciliation Agreement.

C. TERM OF AGREEMENT

1. This Conciliation Agreement ("Agreement") shall govern the conduct of the parties to it for a period of three (3) years ("Term") from the Effective Date of the Agreement.

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[1] Complainant changed its name from the Greater New Orleans Fair Housing Action Center (GNOFHAC) to the Louisiana Fair Housing Action Center during the investigation. Louisiana Fair Housing Action Center will be used throughout the Agreement, except for the case name.

[2] A typographical error is contained in the complaint, which names Chris Hodges rather than Chris Hodgins as a Respondent. Chris Hodgins will be used throughout the Agreement.

D. EFFECTIVE DATE

1. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the Office of Fair Housing and Equal Opportunity ("FHEO") Deputy Assistant Secretary for Enforcement and Programs or her designee.

2. This Agreement shall become effective on the date on which it is approved by the FHEO Deputy Assistant Secretary for Enforcement and Programs or her designee ("Effective Date").

E. GENERAL PROVISIONS

1. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

2. It is understood that Respondents deny any violation of law and this Agreement does not constitute an admission by Respondents or evidence of a determination by the Department of any violation of the Act or any other law.

3. Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory violation of the Act.

4. This Agreement, after it has been approved by the FHEO Deputy Assistant Secretary for Enforcement and Programs, or her designee, is binding upon Respondents, their employees, heirs, successors and assigns.

5. It is understood that, pursuant to subsection 810(b)(4) of the Act, upon approval of this Agreement by the FHEO Deputy Assistant Secretary for Enforcement and Programs or her designee, it is a public document.

6. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents made pursuant to the Act, or any other complaint within the Department's jurisdiction.

7. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved

and signed by the FHEO Deputy Assistant Secretary for Enforcement and Programs or her designee.

8. The parties agree that the execution of this Agreement may be accomplished by separate executions of consent to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document.

9. Complainant hereby forever waives, releases, and covenants not to sue the Department or Respondents, their heirs, executors, successors, assigns, agents, officers, board members, employees, or attorneys with regard to any and all claims, damages, or injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number 06-18-9998-8, or which could have been filed in any action or suit arising from said subject matter.

10. Respondents hereby forever waives, releases, and covenants not to sue the Department or Complainant, its heirs, executors, successors, assigns, agents, officers, board members, employees, or attorneys with regard to any and all claims, damages, or injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number 06-18-9998-8, or which could have been filed in any action or suit arising from said subject matter.

F. RELIEF FOR COMPLAINANT

1. Respondents agree to pay Complainants $35,000.00 within a year of the Effective Date of this Agreement through installment payments as outlined below. Each installment payment will be in the form of a certified check or business check made payable to Louisiana Fair Housing Action Center and mailed to Cashauna Hill, Executive Director, Louisiana Fair Housing Action Center, 1340 Poydras Street, Suite 710, New Orleans, LA 70112. Respondents will provide a copy of the check to the Department within ten (10) days of each installment payment.

    a. Installment Payment Schedule

Amount	Due Date
$10,000.00	Within 60 days of the Effective Date
$12,500.00	Within 180 days of the Effective Date
$12,500.00	Within 365 days of the Effective Date

G. RELIEF IN THE PUBLIC INTEREST

1. Respondents agree to comply with all the provisions of the Act. Respondents acknowledge that the Act makes it unlawful to discriminate on the basis of race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, or disability, and further makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford people with disabilities an equal opportunity to use and

enjoy a dwelling.

2. Within thirty (30) days of the Effective Date of this Agreement, Respondents shall prominently post a fair housing poster and fair housing brochures where notices are normally posted at all properties owned, managed, or operated by Respondents. A poster that comports with 24 C.F.R. Part 110 will satisfy the requirement for the poster. Either of the following brochures are acceptable:
   a. https://www.hud.gov/sites/documents/FHEO_BOOKLET_ENG.PDF; or
   b. https://www.hud.gov/sites/documents/ARE_YOU_A_VICTIM_ENG.PDF

3. Within thirty (30) days of the Effective Date of this Agreement, Respondents shall add the following phrase to its rental application(s), lease(s), lease renewal(s), and website(s) for all properties owned, managed, or operated by Respondents:

   > We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex (including sexual orientation or gender identity), national origin, religion, disability, or familial status. A copy of our Non-Discrimination Policy can be obtained on our website or at any of our rental offices.

4. Within sixty (60) days of the Effective Date of this Agreement, Respondents shall include the words "Equal Housing Opportunity" and/or the fair housing logo in all rental advertising conducted by Respondents, or their agents or employees, in all media, including, but not limited to, newspapers, flyers, handouts, telephone directories, websites, and other written materials; on radio, television, online, or other media broadcasts; and on all billboards, signs, pamphlets, brochures, and other promotional literature. The words and/or logo shall be prominently displayed and easily readable. For site signs, this can be accomplished by adding a plate to the sign.

5. Respondents agree that within ninety (90) days of the Effective Date of this Agreement and annually for the Term of this Agreement, all leasing and management staff who work with tenants at all properties owned, managed, or operated by Respondents shall attend a live training session on fair housing (minimum of three (3) hours) provided by a fair housing agency or other qualified trainer, subject to prior approval by the Department and Complainant. The training must include sections on race and national origin discrimination, criminal records, disparate impact, and a question/answer portion. At least thirty (30) days prior to the training date, Respondents will send the Department and Complainant the name and qualifications of the selected trainer as well as the training materials for review and approval. Respondents will provide the Department written certification that the training has been completed, along with a list of the attendees, within one hundred (100) days of the Effective Date of this Agreement and ten (10) days after completion of annual training in subsequent years.

6. Within one hundred and twenty (120) days of the Effective Date of this Agreement, Respondents shall develop a Non-Discrimination Policy for all properties owned, managed, or operated by Respondents. Respondents shall submit the policy to the Department for review prior to implementation.

7. Within one hundred and twenty (120) days of the Effective Date of this Agreement, Respondents will revise its Admissions Guidelines and Criteria Sheet for all properties owned, managed, or operated by Respondents to comport with the following laws and guidance:
   a. The Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988;
   b. HUD's Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions;
   c. The DOJ/HUD Joint Statement on Reasonable Accommodations;
   d. FHEO Notice FHEO-2020-01: Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act.

   Respondents shall notify the Department of all modifications resulting from such revisions and receive feedback from the Department prior to finalizing either document.

   Specifically, for the criminal history policy, the following criteria will be included:
   a. Arrests, charges, expunged convictions, convictions reversed on appeal, vacated convictions, misdemeanors, offenses where adjudication was withheld or deferred, pardoned convictions, sealed records, and criminal activity beyond the period specified in subparagraph c. will not be considered as they are not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual.
   b. Types of crimes that will be considered are felony criminal convictions related to property offenses, drug manufacturing and distribution offenses, fraud offenses, major violent offenses against persons, and sex offenses. Each type of crime shall be defined in the policy.
   c. The timeframe of felony criminal convictions that will be considered are those where the criminal activity occurred in the past five (5) years (based on date of the offense).
   d. Those applicants that are determined to have a covered type of crime in the timeframe for consideration ("covered criminal conduct") will be provided written notice that includes the specific information from the background check that creates a concern and be provided with the opportunity to provide additional information for the property to consider. The timeframe to provide additional information will be at minimum fourteen (14) days.
   e. Individualized assessments of those with covered criminal conduct will consider when the conviction occurred, what the underlying conduct entailed, whether the prior conduct took place at the person's prior residence and disturbed others' quiet enjoyment or the operation of the property, whether the prior conduct related to the

applicant being a survivor of domestic violence, and what the convicted person has done since the conviction (good tenant history, evidence of rehabilitation efforts, etc.). If an individual does not submit additional information, the assessment will be based on the information available to the property.

f. If, after the individualized assessment, the property decides to deny the applicant, a written notice of the determination will be sent to the applicant describing the information reviewed in the assessment and the reason for the denial (why the property believes the covered criminal conduct is evidence that its decision will protect resident safety and/or property). Respondents shall notify denied applicants that they can file a complaint with the U.S. Department of Housing and Urban Development if they feel they have been discriminated against in the application review process by providing the following language in the written notice:

   Any applicant who believes that they have experienced housing discrimination may contact the U.S. Department of Housing and Urban Development at 1-800-669-9777 or file a complaint online at: www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint.

8. Within thirty (30) days of the Department's approval of the Non-Discrimination Policy and revised Admissions Guidelines and Criteria Sheet (collectively, "Policies"), Respondents shall take the following actions:
   a. Prominently post the Policies where notices are normally posted at all properties owned, managed, or operated by Respondents;
   b. Add the Policies to the website(s) for all properties owned, managed, or operated by Respondents, including a link to the policies on the Respondents' "Rental Applications" page of the website(s);
   c. Send notice of the Policies to all current tenants and employees of all properties owned, managed, or operated by Respondents. New employees shall be provided the Policies within 30 days of their start date.
   d. Include the Policies with all rental applications provided to prospective tenants. For electronic applications, this can be accomplished by the link to the Policies provided on the "Rental Applications" page of the website(s) as outlined in 8.b. For instances where prospective applicants do not have access to the internet, Respondent will provide a hard copy on request.

9. During the term of this Agreement, Respondents shall provide quarterly reports to the Department of any application denied due to criminal history or criminal record for any property owned, managed, or operated by Respondents. The report shall include the application, tenant scorecard, denial letter, a written statement of the reason(s) for denial, and the following information on the applicant, if provided by the applicant: name, address, telephone number, email address, race, and the race of any individual applying with the applicant.

10. During the term of this Agreement, Respondents shall provide quarterly reports to the Department of any evictions due to criminal history or criminal record for any property

owned, managed, or operated by Respondents. The report shall include the eviction notice, lease violation letter, written statement of the reason(s) for eviction, and the following information on the tenant, if provided by the tenant: name, address, telephone number, email address, race, and the race of any individual residing with the tenant.

H. MONITORING

1. The Department shall determine compliance with the terms of this Agreement. During the Term of this Agreement, the Department may review compliance with this Agreement. As part of such review, the Department may inspect Respondents' property, examine witnesses, and copy pertinent records of Respondents. Respondents agree to provide their full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

I. REPORTING AND RECORDKEEPING

1. All required certifications and documentation of compliance must be submitted electronically to:

   U.S. Department of Housing and Urban Development
   Office of Fair Housing and Equal Opportunity
   Office of Systemic Investigations
   ATTENTION: Danielle Sievers, Equal Opportunity Specialist
   Danielle.L.Sievers@hud.gov

J. CONSEQUENCES OF BREACH

1. Whenever the Department has reasonable cause to believe that Respondents have breached this Agreement, the matter shall be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to subsections 810(c) and 814(b)(2) of the Act.

2. In the event Respondents fail to comply in a timely fashion with any requirement of this Agreement, the Department will provide Respondents with written notice and a reasonable opportunity to cure any alleged breach with this Agreement, not to be less than thirty (30) days, prior to acting to enforce the terms of the Agreement as outlined in J.1.

COMPLAINANT SIGNATURE

This signature attests to the approval and acceptance of this Conciliation Agreement.

1/25/2022

Cashauna Hill — Date
Executive Director, Louisiana Fair Housing Action Center

RESPONDENTS' SIGNATURES

These signatures attest to the approval and acceptance of this Conciliation Agreement.

Leo M. Hodgins, 8600 Pontchartrain Blvd., Str. 209 — Date 1/28/22
New Orleans, La. 70124, 504-283-8800
Realty Ventures, Inc., Licensed under LA
Real Estate Commission
Managing Member, Sailboat Bay Apartments, LLC
President, Realty Ventures, Inc.
On Behalf of Respondents:
Sailboat Bay Apartments, LLC
Realty Ventures, Inc.

Chris Hodgins — Date 1/28/2022
Manager, Sailboat Bay Apartments, LLC

APPROVAL

This signature attests to the approval and acceptance of this Conciliation Agreement.

Danielle Sievers 2/2/2022

Danielle Sievers Date
Equal Opportunity Specialist, Office of Systemic Investigations
Office of Fair Housing and Equal Opportunity

Robert Doles 2/3/2022

Robert Doles Date
Director, Office of Systemic Investigations
Office of Fair Housing and Equal Opportunity

APPENDIX 28

Post-Determination Settlement Agreement, *Shurter v City of Earling* (Iowa Civil Rights Comm'n, Nov 30, 2021)

Shurter v City of Earling Iowa - 72563

11/30/2020

Shurter v City_of_Earling_Iowa - 72563.pdf

Document Text Content:

POSTDETERMINATION SETTLEMENT AGREEMENT

CP# 09-18-72563
HUD# 07-18-0259-8

PARTIES TO THE SETTLEMENT AGREEMENT

RESPONDENT

CITY OF EARLING
P.O. Box 147
Earling, Iowa 51530

Appendix Pg 433

COMPLAINANT

DAVID SHURTER
P.O. Box 92
Harlan, Iowa 51537

and

IOWA CIVIL RIGHTS COMMISSION
400 East 14th Street
Des Moines, Iowa 50319

Description of the Parties: Complainant is a person with a disability who has three assistance animals. Two of his assistance animals are pit bulls. When Complainant moved to Earling, Iowa, he learned of Earling's animal control ordinance, which banned the presence of certain breeds of dogs, including pit bulls, from city limits. Complainant then applied for a variance to the animal control ordinance to allow him to keep his dogs at his home as a reasonable accommodation for his disability. Respondent initially granted the variance in January 2018, but then cited Complainant for holding dogs of a prohibited breed within city limits in August 2018. The Commission found there was probable cause to believe denial of the requested variance constitutes a failure to make a reasonable accommodation and has resulted in different terms and conditions of rental based on disability.

Terms of Settlement: A complaint having been filed by Complainant against Respondent with the Commission under Iowa Code Chapter 216 and there having been a probable cause finding, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondent agrees there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the "Iowa Civil Rights Act of 1965" (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).

2. Respondent acknowledges the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status.
Iowa Code § 216.8(1)(b).

Respondent acknowledges that the Federal Fair Housing Act, as amended, makes it unlawful to discriminate in the terms, conditions or privileges of le or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of the person's race, color, religion, sex, bility, familial status, national origin, or disability.
04(b), 3604(f)(2) (§ 804 of the Fair Housing Act).

Respondent acknowledges the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling and to the extent that the accommodation does not cause undue financial or administrative burden or fundamentally alter the nature of the provider's operations. 42 U.S.C. 3604(f)(3)(b) (§ 804(f)(3)(b) of the Fair Housing Act); Iowa Code § 216.8A(3)(c)(2).

4. Respondent acknowledges the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability.

   42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).

5. Respondent acknowledges their obligation under the FHA and ICRA to allow assistance animals as a reasonable accommodation when necessary to permit an individual with a disability equal opportunity to use and enjoy a dwelling. See Iowa Code §§ 216.8B, .8C.

   Assistance animals are often referred to as service animals, emotional support animals, therapy animals, companion animals or support animals. Under the FHA and ICRA, "assistance animals are not pets. They are animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities." *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,* U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2020-01, January 28, 2020, at 3; Iowa Code § 216.8B.
   Some examples of work, tasks, assistance or support provided by assistance animals include "[h]elping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors; [r]eminding a person with mental illnesses to take prescribed medication, [t]aking action to calm a person with post-traumatic stress disorder (PTSD) during an anxiety attack, . . . [or] [p]roviding emotional support that alleviates at least one identified symptom or effect or a physical or mental impairment." *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,* U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2020-01, January 28, 2020, at 19.

   After receiving a request, housing providers must consider the following:

   (1) Does the person seeking to use and live with the animal have a disability (a physical or mental impairment that substantially limits one or more major life activities)?

   (2) Does the person making the request have a disability-related need for an assistance animal? (afford a person with disabilities an equal opportunity to use or enjoy the dwelling).

A request for accommodation can be denied if the accommodation would impose an undue financial and administrative burden or if it would fundamentally alter the essential nature of the housing provider's services. "The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs." JointStatementoftheDepartmentofHousingandUrbanDevelopmentandtheDepartment ofJustice,*Reasonable AccommodationsUnderTheFairHousingAct,*May17,2004, at 7.

The request may also be denied if "the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (e.g., keeping the animal in a secure enclosure)." *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,* U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2020-01, January 28, 2020, at 14.

Housing providers may not limit the breed or size of a dog used as a service animal or support animal just because of the size or breed, but can limit based on specific issues with the animal's conduct because it poses a direct threat or a fundamental alteration. *Id.*

Respondent acknowledges it will consider each occupant or prospective occupant's situation and accommodation request individually to determine if the requested accommodation is reasonable. The parties acknowledge that if the disability is not known or obvious, Respondent may make a reasonable inquiry and request documentation from a health care provider that verifies the occupant/prospective occupant's disability, without seeking or collecting information regarding the nature of the disability. In addition, Respondent may make reasonable inquiry and request documentation from a health care provider that verifies the occupant or prospective occupant's need for the accommodation, i.e., the relationship between the person's disability and the need for the requested accommodation.

Assistance animals cannot be subjected to monthly pet fees since they are not considered pets under the FHA and ICRA. Iowa Code § 216.8B(2). Housing providers cannot require special tags, equipment, certification or special identification of assistance animals.

Apart from the variance agreed to in this agreement, Respondent retains the ability to neutrally enforce its ordinances against Complainant's assistance animals in the same manner as it does against all animals within city limits.

Voluntary and Full Settlement

6. The parties acknowledge this Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

7. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.

8. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

9. Respondent agrees the Commission may review compliance with this Agreement. As part of such review, Respondent agrees the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.

Disclosure

10. Because, pursuant to Iowa Code § 216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code § 22.13.

Release

11. Complainant hereby waives, releases, and covenants not to sue Respondent with respect to any matters which were, or might have been alleged as charges filed with the Iowa Civil Rights Commission, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

12. The Iowa Civil Rights Commission agrees to dismiss Shelby County case number CVCV020211, Iowa Civil Rights Commission ex rel D.S. v. City of Earling within seven days after the issuance of the Closing Letter by the Iowa Civil Rights Commission.

Relief in the Public Interest

13. Respondent's Mayor Janice Gaul and City Clerk Lori Ahart will receive training on the requirements of State and Federal Fair Housing Laws within 90 days of their receipt of a Closing Letter from the Commission. Respondent further agrees subsequent city clerks will receive training on the required of the Iowa Civil Rights Act and Federal Fair Housing Act regarding requests for reasonable accommodation by individuals with disabilities. The training will include an overview of fair housing laws, but will emphasize the law regarding how to handle requests for reasonable accommodations from individuals with a disability. The training shall be conducted by a qualified person, approved by the Commission or the U.S. Department of Housing and Urban Development.

Respondent also agrees to send documentation to the Commission verifying the fair housing training has been completed within ten (10) days of completing the training.

Relief for Complainant

Respondent agrees to grant Complainant's request for a variance to the animal control ordinance as a reasonable accommodation for his disability. Specifically, Respondent agrees Complainant's assistance animals, Moonshine, a pitbull, and Brigette, a pit bull, shall not be subject to the animal control

ordinance in that they are allowed to be present within Earling's city limits. Respondent shall allow Complainant to register Moonshine and Brigette with the city. Complainant affirmatively states he has voluntarily constructed a six-foot fence around his yard. Complainant further acknowledges he retains all liability for damages caused by his assistance animals.

Reporting and Record-Keeping

15. Respondent shall forward to the Commission objective evidence of the successful completion of fair housing training in the form of a Certificate or a letter from the entity conducting the training within ten (10) days of the completion of the training, as evidence of compliance with Term 13 of this Agreement.

All required documentation of compliance must be submitted via email or U.S. Mail to:

Amy Quail
Iowa Civil Rights Commission
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
amy.quail@iowa.gov
Telephone: 515-725-1082

City of Earling, RESPONDENT Date

David Shurter, COMPLAINANT Date

Elizabeth Johnson, EXECUTIVE DIRECTOR
IOWA CIVIL RIGHTS COMMISSION Date

8/2022 1:43:54 PM

APPENDIX 29

HUD Conciliation Agreement, No. 09-21-3085-8
(Nov 4, 2020)

CONCILIATION AGREEMENT

Between

U.S. Department of Housing and Urban Development

and

Redacted Name
(Complainant)

and

G Davi Properties

Guido A. Davi II
(Respondents)

Under

Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act)

Approved by the FHEO Regional Director on behalf of the United States Department of Housing and Urban Development

FHEO CASE NUMBER: 09-21-3085-8
FHEO CASE NAME: Redacted Name *v. G Davi Properties and Guido A. Davi II*

HUD DATE FILED: November 4, 2020

Effective Date of Agreement: _____

Expiration Date of Agreement: _____

- **Parties and Subject Property**

Complainant

Redacted Name
Monterey, CA 93940

Respondents

G Davi Properties
484 Washington Street, Suite D
Monterey, CA 93940

Guido A. Davi II
10344 East Filaree Lane
Scottsdale, AZ 85262

Subject Property

Redacted Name
Pacific Grove, CA 93950

B. Statement of Facts

On November 4, 2020, Redacted ("Complainant") filed a complaint with the United

States Department of Housing and Urban Development ("the Department") alleging that G Davi Properties and Guido A. Davi II (Owner), (jointly, “Respondents”), violated subsections 804(f)(1), 804(f)(2), and 804(f)(3)(B) and Section 818 of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. §3601 *et seq.)* (“the Act”). Complainant alleged that Respondents discriminated against him based on disability by failing to grant a reasonable accommodation request for an assistance animal, which resulted in a lost opportunity for housing.

Respondents deny having discriminated against Complainant but agree to settle the complaint referenced above by entering into this Conciliation Agreement.

C. Term of Agreement

1. This is a Conciliation Agreement between Complainant, named above, and Respondents, named above. As specifically stated herein, this Conciliation Agreement (“Agreement”) shall govern the conduct of the parties to it for a period of one (1) year from the effective date of the Agreement.

D. Effective Date

2. The parties expressly agree that this Agreement will not constitute a binding contract under state or federal law, nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the Regional Fair Housing and Equal Opportunity ("FHEO") Director or her designee.

2. This Agreement shall become effective on the date on which it is approved by the FHEO Regional Director or her designee.

E. General Provisions

2. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

2. It is understood that Respondents deny any violation of law and this Agreement does not constitute an admission by Respondents or evidence of a determination by the Department of any violation of the Act or any other law.

2. This Agreement, after it has been executed and approved by the FHEO Regional Director or her designee, is binding upon Respondents, their employees, heirs, successors and assignees and on all others in active concert with Respondents in the ownership or operation of the subject property.

2. The Parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document.

- It is understood that the signature of Respondent Guido A. Davi II is made with the authority of and on behalf of Respondent G Davi Properties.

2. It is understood that, pursuant to Section 810(b) of the Act, upon approval of this Agreement by the FHEO Regional Director or her designee, it is a public document.

9. This Agreement does not in any way limit or restrict the Department's authority

to

investigate any other complaint involving Respondents made pursuant to the Act or any other complaint within the Department's jurisdiction.

10. No amendment to, modification of, or waiver of any provisions of this Agreement

shall be effective unless: (a) all signatories or their successors to the Agreement

agree in writing to the amendment, modification or waiver; (b) the amendment,

modification or waiver is in writing; and (c) the amendment, modification or

waiver is approved and signed by FHEO Regional Director or her designee.

F. Mutual Releases

11. Complainant hereby forever waives, releases, and covenants not to sue the Department

or Respondents, their heirs, executors, assigns, agents, employees, or attorneys with

regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of HUD Case Number 09-21-3085-8, or which could have been filed in any action or suit arising from said subject matter.

- Respondents hereby forever waive, release, and covenant not to sue the Department or
  Complainant, their heirs, executors, successors, assigns, agents, officers, board members, employees, or attorneys with regard to any and all claims, damages,

or injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of HUD Case Number 09-21-3085-8, or which could have been filed in any action or suit arising from said subject matter.

G. Non-Retaliation

- Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act.

F. Relief for Complainant

- Respondents agree to pay Complainant the sum total of ten thousand dollars ($10,000) within fourteen (14) calendar days of the effective date of this Agreement. Payment will be in the form of a business check made payable to [redacted]" and mailed to [redacted] Monterey, CA 93940 via U.S. certified mail or other delivery service with tracking capability.

To show compliance with paragraph F14, Respondents will provide a copy of the check and the tracking information to the Department within twenty-one (21) calendar days of the effective date of this Agreement. The copies shall be sent to the Department at the email address specified in paragraph I24 of this Agreement.

G. Relief in the Public Interest

15. Respondents agree to comply with all of the provisions of the Act, which prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status, and disability, and HUD's implementing regulations at 24 C.F.R. part 100 *et seq*.

16. Respondents acknowledge that:

a. Subsection 804(f)(1) of the Act makes it unlawful to discriminate in the rental, or to otherwise make unavailable or deny, a dwelling to any renter because of disability;
b. Subsection 804(f)(2) of the Act makes it unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of disability;
c. Subsection 804(f)(3)(B) of the Act makes it unlawful to refuse to make reasonable accommodations in the rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling; and
d. Section 818 makes it illegal to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of the Act.

17. Respondents agree not to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of race, color, religion, sex, familial status, national origin, or disability.

18. Respondents agree to make reasonable accommodations in rules, policies, practices,
or services, when such accommodations may be necessary to afford a person a
with disability equal opportunity to use and enjoy housing.

19. Respondents agree to not discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, national origin, or disability.

20. Respondents agree not to coerce, intimidate, threaten, or interfere with any

person in the exercise or enjoyment of any right granted or protected by Section 803, 804, 805, or 806 of the Act.

21. Respondents agree to, within ninety (90) calendar days from the effective date of this Agreement, create and implement a written Reasonable Accommodation Policy ("Policy") and modify any associated forms or materials, consistent with the Act, the

Department's implementing regulations at 24 CFR Part 100 *et seq*., and the Joint Statement of HUD and the Department of Justice on "Reasonable Accommodations under the Fair Housing Act" located here: https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf and FHEO Notice 2020-01, "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act," located here: https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf.

The Policy must explicitly acknowledge and advise employees, tenants and prospective tenants that an assistance animal may qualify as a reasonable accommodation under the Act. The Policy shall acknowledge that medical verification may be necessary only if the disability and/or need for the accommodation or modification is not obvious and apparent. The Policy shall further acknowledge that such verification may come from a doctor or other medical professional, such as a therapist, physician's assistant, nurse, counselor, social worker, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability. The Policy shall also specify that Respondents will provide timely responses in writing to all requests for reasonable accommodation. The Policy shall require the tracking of each reasonable accommodation request, including, but not limited to, the date of receipt, the name and address of the requester, whether verification of disability and need were requested, whether the request was approved or denied, and when the accommodation was fully implemented.

To show compliance with paragraph G21, Respondents agree to submit a copy of the Policy to the Department within ninety-five (95) calendar days of the effective date of this Agreement. This documentation shall be provided to

the Department at the address specified in paragraph I24 below.

22. Respondents agree that within thirty-five (35) calendar days of the effective date of this Agreement, Respondent Guido A. Davi II, along with any other persons involved in the management of the subject property, will attend at least three (3) hours of training on fair housing, including coverage of the Act, with an emphasis on reasonable accommodations, conducted by the Department. It is understood that the next such training being offered by the Department will take place on March 31, 2021 from 10:00 a.m. to 2:00 p.m. via a live online training. There is no cost to attend the training. Respondents will contact the Department by email at the email address set forth in paragraph I24 of this Agreement to register for the training within fifteen (15) calendar days of the effective date of this Agreement.

To show compliance with paragraph G22, Respondent Guido A. Davi II and any other staff as set forth above will be present at the beginning of said training and attend the entire training. The Department will provide certificates of completion via email to all such attendees.

H. Monitoring

23. The Department shall determine compliance with the terms of this Agreement. As

part of such monitoring, the Department may inspect the subject property identified

in Section A of this Agreement, examine witnesses, and copy pertinent records of Respondents. Respondents agree to provide full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

I. Reporting and Recordkeeping

24. All required certifications and documentations of compliance with the terms of this Agreement shall be submitted by email to: janice.m.mcconico@hud.gov.

J. Consequences of Breach

25. The Parties understand that if the Department has reasonable cause to believe that Respondents have breached this Agreement, the Department shall refer the matter to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to

subsections 810(c) and 814(b)(2) of the Act.

COMPLAINANT'S SIGNATURE PAGE

This signature attests to the approval and acceptance of this Agreement.

_____

Redacted Name
Complainant

Date

RESPONDENTS' SIGNATURE PAGE

These signatures attest to the approval and acceptance of this Agreement.

_____

Redacted Name Date

Respondent

_____

_

[redacted] Date

Respondent

APPROVAL and Execution of Conciliation Agreement

This signature attests to the approval and acceptance of this Conciliation Agreement.

Anné Quesada Date
Regional Director
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development

APPENDIX 30

HUD Conciliation Agreement, No. 09-22-7271-8 (Oct 18, 2021)

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIAITON AGREEMENT

Between

REDACTED
(Complainant)

and

Ahmad Sharif-Yazdi
Anwar Malik
(Respondents)

Approved by the FHEO Regional Director on behalf of the
United States Department of Housing and Urban Development

HUD CASE NAME: **REDACTED** *v. Sharif-Yazdi / Malik*
HUD CASE NUMBER: 09-22-7271-8

HUD Dates Filed: October 18, 2021

Effective Date of Agreement:
Expiration Date of Agreement:

A. PARTIES AND SUBJECT PROPERTY

Complainant

REDACTED
REDACTED
North Las Vegas, NV 89031

Respondents

Ahmad Sharif-Yazdi
5580 W. Flamingo Road, Suite 108
Las Vegas, NV 89103

Anwar Malik
REDACTED
Pikeville, KY 41501

Subject Property

6331 Blue Twilight Court
Las Vegas, NV 89108

B. STATEMENT OF FACTS

A complaint was filed on October 18, 2021, with the United States Department of Housing and Urban Development ("the Department") alleging that the Complainant was injured by Respondents' discriminatory acts. Complainant alleged that Respondents violated subsections 804(f)(1), 804(f)(2), and 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988 ("the Act") because of her disability. Respondents deny having discriminated against Complainant but agree to settle the complaint by entering into this Conciliation Agreement.

C. TERM OF AGREEMENT

1. This Conciliation Agreement ("Agreement") shall govern the conduct of the parties to it for a period of one (1) year from the effective date of the Agreement.

D. EFFECTIVE DATE

2. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the Office of Fair Housing and Equal Opportunity ("FHEO") Regional Director, or his designee.

3. This Agreement shall become effective on the date on which it is approved by the FHEO Regional Director, San Francisco Region, or his designee.

E. GENERAL PROVISIONS

4. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

5. It is understood that Respondents deny any violation of law and this Agreement does not constitute an admission by Respondents or evidence of a determination by the Department of any violation of the Act or any other law.

6. Respondents acknowledge that they have an affirmative duty not to discriminate under the Act, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory violation of the Act.

7. This Agreement, after it has been approved by the FHEO Regional Director, or his designee, is binding upon Respondents, their employees, heirs, successors and assigns.

8. It is understood that pursuant to subsection 810(b)(4) of the Act, upon approval of this Agreement by the FHEO Regional Director, or his designee, it is a public document.

9. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents made pursuant to the Act, or any other complaint within the Department's jurisdiction.

10. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the FHEO Regional Director, or his designee.

11. The parties agree that the execution of this Agreement may be accomplished by separate executions of consent to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document.

12. Complainant hereby forever waives, releases, and covenants not to sue the Department or Respondents, their heirs, executors, successors, assigns, agents, officers, board members, employees, or attorneys with regard to any and all claims, damages, or injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number 09-22-7271-8, or which could have been filed in any action or suit arising from said subject matter.

13. Respondents hereby forever waive, release, and covenant not to sue the Department or Complainant, their heirs, executors, successors, assigns, agents, officers, board members, employees, or attorneys with regard to any and all claims, damages, or injuries of

whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Number 09-22-7271-8, or which could have been filed in any action or suit arising from said subject matter.

F. RELIEF FOR COMPLAINANT

14. Respondent Anwar Malik agrees to pay Complainant the sum total of six thousand, five hundred dollars ($6,500.00) within fifteen (15) days of the effective date of this Agreement. Said payment will be in the form of a certified or business check made payable to "REDACTED" and mailed to Complainant via first class mail delivery with tracking capability to: REDACTED North Las Vegas, NV 89031. Respondents will provide a photocopy of said check and delivery tracking information to the Department within thirty (30) days of the effective date of this Agreement to the address specified in paragraph I 19 of this Agreement.

G. RELIEF IN THE PUBLIC INTEREST

15. Respondents agree to complete the following actions within ninety (90) days of the effective date of this Agreement:

    a) Read and comply with the "Joint Statement on Reasonable Accommodation," issued by HUD and the Department of Justice. The Joint Statement on Reasonable Accommodations can be found at:
    https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra. pdf.
    b) Read and comply with the "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act" Memorandum", issued by HUD. The memorandum can be found at:
    https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf.

16. Respondents agree to have Ahmad Sharif-Yazdi and Anwar Malik attend and complete the next Fair Housing Training class to be conducted by the Department at its Region IX office. This training is scheduled as follows:

    Date: Tuesday, January 25, 2022
    Time: 10:00 a.m. to 2:00 p.m.
    Location: Microsoft TEAMS (Online)

    To show compliance with this paragraph, Respondents agree to submit all required staff members' email address before the training and further agree that all staff members who attend the training will complete and return a form with codes provided during the Fair Housing training class, which will serve as their certificate of completion provided by the Department.

17. Respondents agree to comply with all the provisions of the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988. Respondents acknowledge that the Fair Housing Act makes it unlawful to discriminate on the basis of race, color, national origin, religion, sex, familial status, or disability, and further makes it unlawful

to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford people with disabilities an equal opportunity to use and enjoy a dwelling.

H. MONITORING

18. The Department shall determine compliance with the terms of this Agreement. During the term of this Agreement, the Department may review compliance with this Agreement. As part of such review, the Department may inspect Respondents' property, examine witnesses, and copy pertinent records of Respondents. Respondents agree to provide their full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

I. REPORTING AND RECORDKEEPING

19. All required certifications and documentation of compliance must be submitted to:

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity (FHEO)
ATTENTION: Ana Gutierrez
ana.l.gutierrez@hud.gov

J. CONSEQUENCES OF BREACH

20. Whenever the Department has reasonable cause to believe that Respondents have breached this Agreement, the matter shall be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to subsections 810(c) and 814(b)(2) of the Act.

COMLAINANT'S SIGNATURE

This signature attests to the approval and acceptance of this Conciliation Agreement.

_____

REDACTED Date

RESPONDENTS' SIGNATURES

These signatures attest to the approval and acceptance of this Conciliation Agreement.

_____

Anwar Malik Date
Property Owner

_____

Ahmad Sharif-Yazdi Date
Property Manager

APPROVAL

This signature attests to the approval and acceptance of this Conciliation Agreement.

_____

Kenneth J. Carroll Date
Regional Director
Office of Fair Housing and
Equal Opportunity