

# Recognizing Service Dogs & Understanding Disability Rights Inside Your Park



**Date & Time:** October 12, 2021 / 9:00 a.m. – 10:00 a.m.

**2021 WMA Convention and Expo**

**Presented By:**

Robert Williamson, Ryan Egan – Hart King

Thomas Pacelli – J&H Asset Property Mgt. Inc.

# Who are Robert, Thomas & Ryan?



**Robert Williamson** has been a member of Hart King's litigation and land use practice since 1998. He has substantial experience representing property owners in land use matters, takings claims, and regulatory compliance. Robert represents property owners in state and federal courts defending premises liability, and mass tort claims, discriminatory housing practices, and regulatory violation claims. In rent control jurisdictions, he serves as either a liaison or advocate for property owners before county and city agencies. Robert has assisted with drafting proposed state and local legislation affecting housing issues.



**Thomas Pacelli**, Vice President of Operations, has been with J & H Asset Property Mgt., Inc. since 2008. He is a regional property manager and California real estate broker with 13 years of experience in mobilehome and apartment management. His direct oversight of 27 mobilehome/manufactured communities in CA allows him to look after responsibilities which include; property management, rule enforcement, Mobile Home Residency Law and Title 25 compliance, employee relations, tenant relations and legal compliance including but not limited to proper drafting and servicing of legal notices, the care of warehouse lien process and denying and approving tenant applicants.

# Who are Robert, Thomas & Ryan?



**Ryan Egan** is an associate with Hart King and has been with the firm since 2013. He is a member of the litigation and manufactured housing practices. He focuses on real estate and land use matters. Ryan has successfully litigated dozens of court trials respecting possessory rights and regularly handles land use matters in bankruptcy court. He regularly handles landlord-tenant disputes and discrimination claims on behalf of land owners.

# Core Jurisdiction Constraints Affecting “Service Animals”

- Federal Housing Act (FHA) – Allows for Service Animals and Emotional Support Animals
- Americans Disability Act (ADA) – addresses only Service Animals; ADA only applies to areas & businesses open to the public



# What is a Disability?

- “A Disabled Person” – under either FHA or ADA means the person has:
  - A physical or mental impairment that substantially limits one or more major life activities.
  - Includes people who have a record of such an impairment, and
  - Includes people who do not have a disability but are regarded as having a disability.

# What is a Reasonable Accommodation & What Does it Mean to a Landlord?

- Tenant Must Make a Request
- Tenant Must be an actual Disabled person
- The requested Accommodation must be necessary to accommodate that disability i.e. allow the resident/homeowner to enjoy and use the facilities
- Law requires request to be “Reasonable Accommodation.”
- After request Burden Shifts to Community Owner to address the issue

# “Service” Animals – Collateral Issues

- Pet Regulations – What impact?
- Any official Registration of Service Animals?
- Where Can They Go?
  - Swimming Pool?
  - Homeowners Association Meetings?
  - Clubhouse?
  - Restrooms?



# Service Animals

- Cases and statutes



# Service Animals

HYPOTHETICAL: A tenant in a community acquired a pit bull that is very aggressive to anyone who comes near him.

The dog chased a golf cart in the community when the dog was off leash. The person on the golf cart had a dog with him who jumped off the golf cart and was injured by the pit bull.

The park-initiated eviction proceedings against the man for the dangerous animal, violating the rules and because it is a pit bull.

The tenant is obese and asserts that he is “disabled” and needs the dog to assist him in getting out of bed and from a sitting position. He is requesting a reasonable accommodation for the dog due to his disability.

ISSUES?

# The Basics of the Fair Housing Act for Landlords and Others

The Fair Housing Act prohibits discrimination in housing based on the following seven factors:

- Color
- Disability
- Familial status (i.e., having children under 18 in a household, including pregnant women)
- National origin
- Race
- Religion
- Sex

# ADA Issues

- Enforcement Mechanism
  - ADA provides for Injunctive Relief
  - Penalties and attorney fees
    - Not nationally, but based on state law

**Fix It NOW!**

# Things to Watch Out For:

- Accessible Path of Travel
  - Trace footsteps from parking for community to restrooms, office.
  - Accessibility issues along path of travel
  - Path width
  - Obstructions
  - Doors
  - Rain Mats
  - Ramps



# Hud Issues Guidance on Reasonable Accommodations Under the Fair Housing Act Relating to Assistance Animals

- On Jan. 28, 2020 HUD issued a new notice that provides housing providers with a set of best practices to assess requests for reasonable accommodations to keep animals in housing while complying with the Fair Housing Act (FHA).
- The notice states that FHA complaints involving requests for reasonable accommodations for assistance animals are on the rise. One of the purposes of this guidance is to help housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who wants to have a pet (or otherwise circumvent a rule applicable to a pet).

# Hud Issues Guidance on Reasonable Accommodations Under the Fair Housing Act Relating to Assistance Animals

The guidance does several things:

- 1) It provides a framework for identifying service animals;
- 2) It provides a framework to analyze reasonable accommodation requests under the Fair Housing Act for assistance animals other than service animals (There are two types of assistance animals—“service animals” and “support animals”; the latter are trained or untrained animals that do work, perform tasks, provide assistance, or emotional support for individuals with disabilities that do not fall under the service animals category);
- 3) The guidance provides criteria for assessing whether to grant a requested accommodation;
- 4) The guidance provides information on which types of animals (i.e., species of animals) are acceptable in which situations; and
- 5) The guidance provides additional considerations that must be taken into account.

# Assembly Bill 468 - Signed Into Law September 2021

- Addresses growing online sale of fraudulent emotional support and service animal certifications that promise consumers access for their pets equal to that of people with legitimate service animals.
- Current law: Misdemeanor to falsely represent a dog as a guide, signal, or service dog. No counterpart for false claims related to Emotional Support/Comfort Animals (non-service animals)



# New Law: Three changes

- **Person/Business Selling Emotional Support Dogs:** person or business that sells or provides emotional support dog will have to provide a 12 point bold font notice on a receipt/separate paper that (1) the dog does not have the special training required to qualify as a guide, signal, or service dog; (2) the dog is not entitled to the rights and privileges accorded by law to a guide, signal, or service dog; and (3) knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor.
- **Person/Business Selling Emotional Support Accessories:** person or business that sells or provides a certificate, identification, tag, vest, leash, or harness for an emotional support animal will also be required to provide the same written notice to the buyer or recipient.

# New Law: Three changes

- **Healthcare Practitioner Letters: prohibits health care practitioners from providing documentation relating to an individual's need for an emotional support dog unless the health care practitioner:**
  - (1) holds a valid, active, license to provide professional services within the scope of the license in the jurisdiction where the documentation is provided;
  - (2) establishes a client-provider relationship with the individual for at least 30 days prior to providing the documentation,
  - (3) completes a clinical evaluation of the individual regarding the need for an emotional support dog, and
  - (4) provides notice to the individual that knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor.

# Questions?



# *Thank you!*

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