

Service Animals: The ADA vs. The Fair Housing Act





August 27, 2020

Presented By:

**Bill Dahlin (moderator) – Hart King
John Pentecost – Hart King
David Eastman – Lutz, Bobo & Telfair
Matthew Paletz – Paletz Law**

Who are Bill, John, David and Matthew?



Bill Dahlin has been practicing law and helping manufactured housing community owners and managers since 1988. He has been trial counsel in multiple cases involving the protection of property rights, including disputes over rent control, including the 9th circuit Guggenheim v. City of Goleta case. Bill assists in issues arising out of mobilehome park closures, subdivisions, park sales and purchases, ground lease disputes and failure to maintain. Bill understands the needs and goals of park owners. Rent control, utility billings and residency issues are the primary basis of Bill's practice.



John Pentecost is the Managing Partner of Hart King and has been with the firm since 1988. He is the leader in the firm's manufactured housing practice. With over 30 years of experience dealing with manufactured housing and mobilehome park communities, John has handled numerous eviction and other landlord-tenant based dispute trials. John defends Park owners in all actions ranging from lease disputes to state and federal discrimination issues, Americans with Disabilities Act (ADA) matters, easements, and title and failure to maintain lawsuits.

Who are Bill, John, David and Matthew?



David Eastman graduated from Florida State University Law School in 1983 and received a Master of Science degree in Urban and Regional Planning in 1988 from Florida State University. He joined the law firm of Lutz Bobo & Telfair, PA in 1998. Mr. Eastman is active in local, state and federal government regulation of manufactured homes, manufactured housing communities and RV parks as General Counsel to the Florida Manufactured Housing Association, Inc. and the Florida-Alabama Association of RV Parks and Campgrounds.



Matthew Paletz Matthew Paletz is the CEO of Paletz Law, which specializes in the representation of landlords and property owners throughout Michigan and Ohio, with a strong emphasis on fair housing defense. He has long-been an aggressive advocate for the rights of manufactured housing community operators. He has also customized training manuals and internal policies for his clients, and taught on best practices and the technology that is offered through *PaletzTrack*, the Firm's online platform and mobile app. Matthew has also been a peer selected Leading Lawyer since 2018.

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?



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!

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.

QUESTIONS?

Bill Dahlin

Phone: 714-432-8700 ext. 306

Email: bdahlin@hartkinglaw.com

John Pentecost

Phone: 714-432-8700 ext. 363

Email: jpentecost@hartkinglaw.com

David Eastman

Phone: 877-521-0890

Email: eastman@floridahousinglaw.com

Matthew Paletz

Phone: 248.593.9090 ext. 21

Email: mpaletz@paletzlaw.com

MHI Website: www.ManufacturedHousing.org
Follow us on Facebook and Twitter (@MHIUpdate)