

## Florida Adopts Legislation to Limit Abuse of Fair Housing Act Relative to Emotional Support Animals

By Sarah E. Spector

While many housing providers, including community associations, have been required to allow individuals to bring emotional support animals into their communities even though pets are not permitted, recently adopted legislation aims at limiting abuse of this type of reasonable accommodation. As of July 1, 2020, the Florida Statutes have been amended to differentiate between emotional support animals, governed by the Fair Housing Act, and service animals, governed by the Americans with Disabilities Act. Emotional support animals do not require specialized training and, in recognition of this, the statute as amended specifically provides that no emotional support animal registration of any kind is, by itself, sufficient to establish that a person has a disability-related need for such an animal.

In addition to finally providing a definition of “emotional support animal,” the legislation identifies when a request for a reasonable accommodation to a housing provider’s pet rules can be denied, and when additional information can be requested. A reasonable accommodation request can be denied if the animal identified in the request poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others where the threat cannot be reduced or eliminated by another reasonable accommodation.

A housing provider may request additional information when the requesting party’s disability or disability-related need for the emotional support animal is not readily apparent. However, the housing provider may not require that the requesting party provide the actual diagnosis or severity of the disability or any medical records related to the disability, but the requesting party may voluntarily provide it. Additional information may also be requested when a request is submitted for more than one emotional support animal but information regarding the specific need for each animal is not provided. Notwithstanding the right to specifically request this information, the housing provider cannot require the requesting party to fill out a particular form or notarized statement or pay extra compensation for the animal. A request cannot be denied for failure to follow the housing provider’s routine method.

Guidance relative to the adequacy of the information supplied has previously been lacking. The new legislation fills in this gap by identifying the following as sufficient for establishing the presence of a disability:

- A determination of disability from a federal, state, or local government agency.
- Receipt of disability benefits or services from any federal, state, or local government agency.
- Proof of eligibility for housing assistance or a housing voucher received because of disability.
- Information from a health care practitioner or other similarly licensed or certified practitioner or provider, which may be an out-of-state practitioner only if the out-of-state practitioner has provided in-person care or services on at least one occasion.

- Information from any other source that the housing provider reasonably determines to be reliable.

A health care practitioner or other similarly licensed or certified practitioner or provider can also provide the requested information relative to the disability-related need for the emotional support animal (as can a telehealth provider), and there is no need to establish that the practitioner provided in-person care or services. Rather, it is only necessary to show that the practitioner has personal knowledge of the person's disability and is acting within the scope of his or her practice in providing the requested information.

A person who falsifies, or knowingly provides false, information or written documentation required by this new legislation, or otherwise knowingly or willfully misrepresents himself or herself as having a disability or disability-related need for an emotional support animal commits a misdemeanor of the second degree. In addition to the statutorily prescribed punishment applicable to second degree misdemeanors, those who are found guilty must perform 30 hours of community service for an organization that serves persons with disabilities or for another entity identified by the court within 6 months after conviction.

Though the statute provides much needed guidance, it is still recommended that you consult with the association's legal counsel before denying a request for reasonable accommodation of any kind, including one for an emotional support animal. The penalties associated with wrongfully denying such a request can be harsh.

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