

Pitbulls, Pot and Fair Housing

Prepared and Presented By

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In Conjunction With

**Manufactured Housing
Communities of Oregon**

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The Lecture Framework

- **Part One: HUD FHEO Notice: FHEO-2013-01**
 - Background
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 - Analysis of the FHEO Notice
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Part One:

FHEO-2013-01



OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**

Issued: April 25, 2013

Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

Background

- **The FHEO:** The Office of Fair Housing and Equal Opportunity (FHEO) is part of the Department of Housing and Urban Development (HUD)
- **April 25, 2013:** On April 25, 2013, FHEO announced that it issued a “Notice on Service Animals and Assistance Animals for People with Disabilities in Housing and HUD–Funded Programs”

The Conclusion, First

- **Reasonable Accommodations:** The definition of *service animal* contained in the ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for *assistance animals* in housing under the FHA....
- **Modifications:** Policies or practices must be modified to permit *assistance animals* as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common area of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

What The Notice Does

- The Notice explains the circumstances under which housing providers may be required to allow tenants to live with “service” and “assistance” animals, per...
 - (1) the Fair Housing Act (FHA),
 - (2) Section 504 of the Rehabilitation Act (Section 504), and
 - (3) the Americans with Disabilities Act (ADA)

How The Notice is Used

- The Notice will be used by HUD staff to enforce federal fair housing laws as they apply to persons with disabilities who have a disability-related need to live with animals in both public and private housing.
- Note: The Oregon Bureau of Labor and Industries (“BOLI”) is the local investigatory agent for HUD

Three Laws

The Notice explains reasonable accommodation obligations, regarding assistance animals for people with disabilities, under three laws:

- The Fair Housing Act (the “FHA”)
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act (the “ADA”)

Today's Lecture Does *Not* Focus on Section 504 of the Rehabilitation Act of 1973

- Section 504 states, in part:
 - No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

- **Quick Summary of Section 504 (Before We Move On...)**
 - **What It Does:** Prohibits discrimination on the basis of disability in any program or activity.
 - **What It Covers:** Covers housing providers that receive federal financial assistance from HUD.
 - **Impact of Federal Financial Assistance:** Pertains only to recipients of federal financial assistance.

The FHA and ADA

◦ The FHA

- **What It Does:** Prohibits discrimination in residential housing and housing related transactions based on race, color, religion, sex, national origin, disability and familial status.
- **What It Covers:** Covers most types of housing, including privately owned and federally assisted housing.
- **Impact of Federal Financial Assistance:** Applies to housing regardless of the presence of federal financial assistance.

The FHA and ADA

○ The ADA

- **What It Does:** Prohibits discrimination on the basis of disability in any housing provided by public entities, such as state and local governments.
- **What It Covers:** Applies to (a) public entities that provide housing, such as public housing agencies and state and local government entities, and (b) public accommodations, such as rental offices, shelters, and assisted living facilities.
- **Impact of Federal Financial Assistance:** None (sort of...)
- **Additional Comment:** Title 111 requires that public and common use areas at housing developments are accessible.

FHEO NOTICE

SECTION I:

Reasonable Accommodations For Assistance Animal Under the FHA

○ Under the Fair Housing Act:

- **Allowed Use:** A disabled person must be allowed to use an “assistance animal” in housing that otherwise prohibits pets (*unless an exception supports the denial*).
- **Not Pets:** Assistance animals are *not* pets.
- **Emotional Support Animals:** Assistance animals may include animals that provide emotional support for people with disabilities. (*You and I have long known these to be “companion animals.” Pay attention to the difference between assistance animals under the FHA and service animals under the ADA, as the slides progress.*)
- *Continued, next slide...*

◦ Definition of “Assistance Animal” Under the Fair Housing Act

- It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.
- *Continued, next slide...*

○ Definition of Assistance Animal Under the Fair Housing Act:

- Assistance animals perform many disability-related functions, including but not limited to:
 - Guiding individuals who are blind or have low vision
 - Alerting individuals who are deaf or hard of hearing to sounds
 - Providing protection or rescue assistance
 - Pulling a wheelchair
 - Fetching items
 - Alerting persons to impending seizures
 - Providing **emotional support** to persons with disabilities who have a disability-related need for such support.
- *Continued, next slide...*

○ Definition of “Assistance Animal” Under the Fair Housing Act

- **No Training:** Does not need to be individually trained or certified.
- **Various Animals:** Animals other than dogs can be assistance animals.

Requests For Reasonable Accommodation

- **Evaluation:** Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests.
- **Considerations:** After receiving the request, the housing provider must consider the following two items (*see next slide*):

Requests For Reasonable Accommodation (Two Considerations)

- **(1) Disability?** Does the person seeking to use and live with the animal **have a disability** – i.e., a physical or mental impairment that substantially limits one or more major life activities;
- **(2) Need?** Does the person making the request **have a disability-related need** for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?



Requests For Reasonable Accommodation (Outcome of the Two Considerations)

- **Did You Answer “No” to Either Question?** If the answer to questions (1) or (2) is “no,” then:
 - The FHA does not require you to modify a “no pets” policy, and
 - You may deny the requested reasonable accommodation.
- **Did You Answer “Yes” to Both Questions?** If the answer to questions (1) and (2) is “yes,” then:
 - You must modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal in all areas of the premises where persons are normally allowed to go, unless one of the exceptions apply.



Requests For Reasonable Accommodation Exceptions and Reasons For Denials

- **Basic Reasons For Denials:** The request for reasonable accommodation may be denied if granting the same would...
 - Impose an undue financial and administrative burden, or
 - Would fundamentally alter the nature of the housing provider's services.



Requests For Reasonable Accommodation Exceptions and Reasons For Denials

- **Additional Reasons For Denials:** The request may also be denied if:
 - The *specific assistance animal* in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
 - The *specific assistance animal* in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Does the tenant have a disability?

If “no,” the landlord can **deny** the request

If “yes,” then **proceed** to next question

Does the tenant have a disability-related need?

If “no,” the landlord can **deny** the request

Exceptions (Basic Reasons For Denials): The request for reasonable accommodation may be denied if granting the same would... (a) impose an undue financial and administrative burden, or (b) would fundamentally alter the nature of the housing provider’s services.

If “yes,” then the landlord must **modify or provide an exception** to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal in all areas of the premises where persons are normally allowed to go, **unless one of the exceptions apply.**

Exceptions (Additional Reasons For Denials – Animals): The request may also be denied if:

- (a) The **specific assistance animal** in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
- (b) The **specific assistance animal** in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Note: Landlord’s may request verification for non-obvious disabilities

Requests For Reasonable Accommodation Exceptions and Reasons For Denials

- **Impact on Your Policies and Procedures:**

- Breed, size, and weight limitations may *not* be applied to an assistance animal.
- A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on ***objective evidence about the specific animal's actual conduct*** – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.

Additional Rules

- **Disability Not Readily Apparent:** Housing providers may ask for reliable documentation of a disability and their disability-related need for an assistance animal.
- **Disability Need Not Be Readily Apparent:** Housing providers may ask for documentation of the disability-related need for an assistance animal.
- **Documentation:** May be sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.
- **No Fees or Deposits:** Housing providers cannot unreasonably deny requests for reasonable accommodation, or base them upon payment of a fee or deposit.

FHEO NOTICE SECTION II:

The ADA Definition of “Service Animal”

Why You Should Care About the ADA

- The Manager's office, recreation center, and other areas or buildings may be covered by the ADA, as opposed to the FHA.

The Definition(s)

- **Only Dogs Can Be Service Animals:** The Department of Justice (DOJ) revised ADA regulations to define “service animal” *narrowly* as any dog that is individually trained to work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability.
- **Companion Animals Excluded:** The provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.
 - *(A separate provision applies to miniature horses. See Notice page 4, footnote 9.)*

ADA vs. FHA

- **This is not the FHA:**

- Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHA and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHA or Section 504. Rather, ...
- In ADA-covered facilities, an animal **need only meet the definition of "service animal" to be allowed** into a covered facility.

What Can ADA-Covered Facilities Ask?

- To determine if an animal is a service animal, a covered entity...
 - Shall not ask about the nature or extent of a person's disability, but...
 - May make **two inquiries** to determine whether an animal qualifies as a service animal.
 - (1) Is this a service animal that is required, because of a disability? and
 - (2) What work or tasks has the animal been trained to perform?

What Can ADA-Covered Facilities Ask?

- **An ADA-covered entity:**
 - **Shall not require documentation**, such as proof that the animal has been certified, trained or licensed as a service animal.
 - **Cannot ask questions, if it is readily apparent** that the animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding a blind person or pulling a wheelchair).

Denying Animals

- The animal may not be denied access to the ADA-covered facility unless:
 - **Out of Control:** The animal is out of control and the handler does not take effective action to control it.
 - **Not Housebroken:** The animal is not housebroken.
 - **Threat:** The animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices or procedures.
- **Determination must be based upon the service animal's actual conduct – not on fears, stereotypes or generalizations.**

Where Can Service Animals Go?

- Service animals must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.

FHEO NOTICE SECTION III:

Applying Multiple Laws

○ Section Three of the Notice:

- Explains that *certain entities* will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHA and/or Section 504.
- These *certain entities* (aka, “*covered entities*”) include:
 - Public housing agencies, and
 - Some places of public accommodation, such as rental offices, shelters, residential homes, multifamily housing, and assisted living facilities.
- Covered entities must ensure compliance with all relevant civil rights laws, when multiple nondiscrimination laws exist.

- **Interaction of Multiple Laws**
 - The ADA regulations do not change the reasonable accommodation analysis under the FHA.
 - The FHA permits emotional support animals.
 - If all three statutes apply, apply the ADA service animal test first.

- **Applying the ADA Service Animal Test First**
- This is because the ADA-covered entity may ask only whether the animal is a service animal that is required because of a disability, and, if so, what work or tasks the animal has been trained to perform.
- If the animal meets the test for “service animal,” then the animal is permitted to accompany the individual any place other persons are normally allowed to go, unless....

○ Unless....

- (1) The animal is out of control and its handler does not take effective action to control it;
- (2) The animal is not housebroken; or
- (3) The animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.

What If The Animal Doesn't Meet the ADA Service Animal Test?

- If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidelines set forth in Section I.
- **Section 1 (Reasonable Accommodations Under the FHA):**
 - **“Allowed Use:** A disabled person must be allowed to use an “assistance animal” in housing that otherwise prohibits pets (*unless an exception supports the denial*)....”

Conclusion

- **Reasonable Accommodations:** The definition of “service animal” contained in the ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under the FHA or Section 504.
- **Modifications:** Policies or practices must be modified to permit assistance animals as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common area of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.





Part Two: Applying the Laws to Pit Bulls

Which Dog Breeds Bite Most Often?

- A study Performed By The Coalition for Living Safely with Dogs and the Colorado Veterinary Medical Association in 2009:
 - **Overall:** The five top breeds involved in bite incidents in the study, which aims to challenge breed bans for dogs like Pit Bulls, were Labrador Retrievers (13 percent), ***Pit Bulls*** (8.4 percent), German Shepherds (7.8 percent), Rottweilers (3.9 percent) and Chow-Chows (3.5 percent).
 - **Children:** Bites involving children brought similar results, with Labrador Retrievers responsible for 15.6 percent, ***Pit Bulls*** for 7.5 percent, German Shepherds for 6.8 percent, Smooth-Coated Chihuahuas for 4.2 percent and Rottweilers for 4.1 percent.

<http://veterinarynews.dvm360.com/dvm/article/articleDetail.jsp?id=613820>



“You talkin’ about *us*?”

ADA vs. FHA



← “Americans With Disabilities Act”



← “Fair Housing Act”

ADA vs. FHA



○ “Americans With Disabilities Act”



○ “Fair Housing Act”

Pets vs. Service/Assistance Animals

- **Service Animals:** The ADA defines a *service animal* as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. (Source: Fair Housing Council of Oregon)
 - **Examples:** Seeing eye dogs, hearing ear dogs, or dogs that alert owner of impending seizure
- **Assistance Animals:** I often hear this term used by people who have stress related disabilities
 - **Examples:** Cats, dogs, hamsters, and...

Breed Restrictions

- **Rental Agreements (Per the ORLTA):**

“A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties. (ORS 90.220(1).)”

Breed Restrictions

○ Sample Clause:

- “No aggressive dogs (including, without limitation, any dog that has bit or injured another animal or person) are allowed on the property, at any time. The following breeds, or dogs containing any portion of the following breeds, are prohibited anywhere on the property (including the Premises and common areas), at all times: Akitas, Alaskan Malamutes, American Bulldog, American Pit Bull Terrier, American Staffordshire, Argentino Fila, Belgian Malinois, Boerboel Dogo, Boxer, Brasileiro Japanese, Bull Mastiff, Cane Corso, Caucasion Shepherd, Chows (Chow Chow), Doberman Pinschers, Dogo de Argentina, Dogue du Bordeaux, English Mastiff, German Shepherds, Great Danes, Huskies, Malamute, Neapolitan Mastiff, Pit Bulls, Presa de Canario, Rottweilers, Saint Bernard, Siberian Huskies, Staffordshire Terriers, Tosa Inu, Wolf-Hybrids. Landlord reserves the right to deny Resident and guests from having any pet on the premises or common areas, which Landlord, at Landlord’s sole discretion, deems aggressive, dangerous or out of control.”

Breed Restrictions

- **Prohibited Provisions (ORS 90.245):**
- (1) A rental agreement may not provide that the tenant:
 - (a) Agrees to waive or forgo rights or remedies under this chapter;
 - (b) Authorizes any person to confess judgment on a claim arising out of the rental agreement;
 - (c) Agrees to the exculpation or limitation of any liability arising as a result of the other party's willful misconduct or negligence or to indemnify the other party for that liability or costs connected therewith; or
 - (d) Agrees to pay liquidated damages, except as allowed under ORS 90.302 (2)(e).

Breed Restrictions

- **Prohibited Provisions (ORS 90.245):**
- (2) A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by the landlord to be prohibited and attempts to enforce such provisions, the tenant may recover *in addition to the actual damages of the tenant an amount up to three months' periodic rent.*

Breed Restrictions Are Legal (...But Are Subject to the FHA)

- Be Specific, When Naming Breeds
- Insert Restrictions in the Rental Agreement/Addendum
- Apply Rules Consistently, *But...*
- Recognize Fair Housing Issues

Requests For Reasonable Accommodations

- **Evaluation:** Evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests.
- **Considerations:** After receiving the request, the housing provider must consider the following two items:
 - **(1) Disability?** Does the person seeking to use and live with the animal **have a disability** – i.e., a physical or mental impairment that substantially limits one or more major life activities?
 - **(2) Need?** Does the person making the request **have a disability-related need** for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?



REASONABLE ACCOMODATION REQUEST

(SAMPLE FORM – PAGE 1)

Date of Request: _____

Manufactured Home Park: _____

Resident: _____

Resident's Phone: _____

Resident's Address: _____

Name of disabled person
requesting accommodation: _____

Description of accommodation
being requested: _____

Explanation of why the above requested accommodation is necessary
for you to fully enjoy your dwelling unit and/or common areas: _____

REASONABLE ACCOMODATION REQUEST

(SAMPLE FORM – PAGE 2)

Release: I hereby authorize my health care provider, or other Qualified Individual, to provide to my landlord or its agents, all information reasonably requested in connection with this request for a reasonable accommodation. Information obtained under this consent is limited to information that is no older than 12 months. There are circumstances, which would require the Owner to verify information that is up to 5 years old, which would be authorized by me on a separate consent, attached to a copy of this consent.

Signature: _____ **Date:** _____

REASONABLE ACCOMODATION REQUEST

(SAMPLE FORM – PAGE 3)

Explanation: _____ (*insert Tenant's name*)
has requested that his/her Landlord change rules,
regulations, practices or procedures. Pursuant to Federal
Fair Housing Laws, we are required to make reasonable
accommodations when they will give a disabled person an
equal opportunity to use and enjoy the housing. We are
not required, on the other hand, to approve
accommodations that are a matter of convenience or
preference only, and we are not in the practice of doing
so.

REASONABLE ACCOMODATION REQUEST

(SAMPLE FORM – PAGE 4)

DEFINITIONS:

Disabled / Definition: Under Federal law, a person is defined as handicapped or disabled if they suffer from “a physical or mental impairment which substantially limits one or more major life activities,” or if they have a “record of such an impairment,” or are “regarded as having such an impairment.” This definition does not include current illegal use of controlled substances.

REASONABLE ACCOMODATION REQUEST

(SAMPLE FORM – PAGE 5)

Impairment / Definition: A physical or mental impairment means “(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito/urinary; hernic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” Such an 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.”

Major Life Activities / Definition: The term “major life activities” means “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.”

REASONABLE ACCOMMODATION REQUEST

(SAMPLE FORM – PAGE 6)

In order to determine if the tenant and the accommodation fit within the terms of the law, would you kindly verify the following:

I, _____, do hereby state that it is my professional opinion that the person listed above, who is requesting an accommodation, meets all of the following criteria:

- (1) The person listed above is disabled as that term has been defined above;
- (2) The requested accommodation relates to the disability; and
- (3) The requested accommodation is necessary for the person requesting the accommodation to fully enjoy his/her dwelling and/or common areas as any non-disabled person would.

Signed: _____ Title: _____
Organization: _____ Date: _____

Denials of Pitbulls

Reasons For Denials: Aside from the basic reasons for denial (Impose an undue financial and administrative burden, or would fundamentally alter the nature of the housing provider's services), the request may also be denied if:

- The **specific assistance animal** in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
- The **specific assistance animal** in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.



Does the tenant have a disability?

If “no,” the landlord can **deny** the request

If “yes,” then **proceed** to next question

Does the tenant have a disability-related need?

If “no,” the landlord can **deny** the request

Exceptions (Basic Reasons For Denials): The request for reasonable accommodation may be denied if granting the same would... (a) impose an undue financial and administrative burden, or (b) would fundamentally alter the nature of the housing provider’s services.

If “yes,” then the landlord must **modify or provide an exception** to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal in all areas of the premises where persons are normally allowed to go, **unless one of the exceptions apply.**

Exceptions (Additional Reasons For Denials – Animals): The request may also be denied if:

- (a) The **specific assistance animal** in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or
- (b) The **specific assistance animal** in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

Note: Landlord’s may request verification for non-obvious disabilities

No Deposits or Fees For Service or Assistance Animals

- ▶ A landlord may not charge a tenant a pet security deposit for keeping a service animal or service animal that a tenant with a disability requires as a reasonable accommodation under fair housing laws. (ORS 90.300(4))
- ▶ Fees prohibited by ORS 90.302
- ▶ Both deposits and fees violate the FHA

Potential Violations of the FHA

- ▶ Effect of Denials
- ▶ Ongoing conversation doesn't always equal a denial
- ▶ Complaints to HUD and BOLI
- ▶ Civil lawsuits
- ▶ Insurance providers

Part Three:

“Pot” and Medical Marijuana



The Controlled Substance Act (Federal Law)

- ▶ The Statutes: The term "**controlled substance**" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986. (21 U.S.C. §802(6))

The Controlled Substance Act (Federal Law)

- ▶ **Schedule 1 Controlled Substances:** Schedule I substances are those that have the following findings:
 - The drug or other substance has a high potential for abuse.
 - The drug or other substance has no currently accepted medical use in treatment in the United States.
 - There is a lack of accepted safety for use of the drug or other substance under medical supervision.
 - (21 USC §812)

The Controlled Substance Act (Federal Law)

- ▶ Drugs in This Schedule Include:
- ▶ Marijuana and its cannabinoids. Pure (–)-trans- Δ^9 -tetrahydrocannabinol is also listed in Schedule III for limited uses, under the trademark Marinol.

Marijuana vs. Medical Marijuana: Oregon Law

ORS 475.860 Unlawful delivery of marijuana.

- (1) It is unlawful for any person to deliver marijuana.
- (2) Unlawful delivery of marijuana is a: (a) Class B felony if the delivery is for consideration. (b) Class C felony if the delivery is for no consideration.
- (3) Notwithstanding subsection (2) of this section, unlawful delivery of marijuana is a: (a) Class A misdemeanor, if the delivery is for no consideration and consists of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae; or (b) Violation, if the delivery is for no consideration and consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this paragraph is a specific fine violation. The presumptive fine for a violation under this paragraph is \$650.
- (4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a: (a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at least 18 years of age and is at least three years older than the person to whom the marijuana is delivered; or (b) Class C misdemeanor, if the delivery: (A) Is for no consideration; (B) Consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae; (C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; and (D) Is to a person who is 18 years of age or older.

Marijuana vs. Medical Marijuana: Oregon Law

ORS 475.862 Unlawful delivery of marijuana within 1,000 feet of school. (1) It is unlawful for any person to deliver marijuana within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of marijuana within 1,000 feet of a school is a Class A felony.

475.864 Unlawful possession of marijuana. (1) It is unlawful for any person knowingly or intentionally to possess marijuana.

(2) Unlawful possession of marijuana is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this subsection is a specific fine violation. The presumptive fine for a violation under this subsection is \$650.

(4) Notwithstanding subsections (2) and (3) of this section, unlawful possession of marijuana is a Class C misdemeanor if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae and the possession takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

The Oregon Medical Marijuana Act

- The Statutes: ORS 475.300 through ORS 475.346
- What They Say: The statutes contained within the OMMA are complicated. In the “real world,” they often make little sense.
- Enforcement: Police have informed me that they have been reluctant to pursue marijuana charges, for violations of the OMMA, unless the violation is blatantly obvious.

Emerald Steel Fabricators, Inc. vs. Bureau of Labor and Industries

- Oregon Supreme Court ruled that the Federal Controlled Substance Act preempts the Oregon Medical Marijuana Act
- Dealt with an employment (ADA) issue
- ADA is federal law, but practitioners are construing the “**preemption**” laws so as to apply this case to state laws (including the OMMA)
- Changed the way agencies look at medical marijuana issues

BOLI and FHCO In the Post–Emerald Steel Era

- BOLI will not investigate housing claims of discrimination pertaining to the use of medical marijuana
- FHCO may not consider medical marijuana cases for the purpose of filing claims/actions

FHCO's Policy Statements

- Landlords are not required to rent to MM users
- Landlords do not have to grant a reasonable accommodation to MM users
- MM users may still be able to sue (although BOLI won't accept claims)
- Landlords can allow tenants to grow/use MM
- Landlords can charge higher security deposits to MM users
- Link: http://fhco.org/med_marijuana.htm

Subsidized Properties

- HUD has stated, “PHAs and owners may not grant reasonable accommodations that would allow tenants to grow, use, otherwise possess, or distribute medical marijuana, even if doing so such tenants are complying with state laws authorizing medical marijuana-related conduct. Further, PHSs and owners must deny admission to those applicant households with individuals who are, at the time of consideration for admission, using medical marijuana.”

Terminating Tenancies

- For Cause Notices (30 Days)
 - Interference with other tenant's quiet use and enjoyment of their premises
 - Repeat Violation Notices (20 Days)
- No Cause Notices (30 or 60 Day Notices)
 - Only permissible if landlord owns the home
- Notices of Termination For Outrageous Conduct (24 Hours)
 - Drug deals
 - Damage to property (fires from processing)

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