

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 01-17-70039
HUD# 07-17-5987-8

PARTIES TO THE SETTLEMENT AGREEMENT

RESPONDENTS

KAREN NOFTSGER AND DAVID NOFTSGER

14327 Lakeview Drive
Clive, Iowa 50325

COMPLAINANT

EVELYN FENTON

1299 NW 90th Court
Clive, Iowa 50325

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street
Des Moines, Iowa 50319

Description of the Parties:

Complainant alleges discrimination in the area of housing on the basis of disability. She claims Respondents refused to waive its “no-pets” policy for her assistance animal, resulting in a failure to make a reasonable accommodation and different terms and conditions of rental based on disability. Respondents own and manage the subject property, a duplex, located at 1299 NW 90th Court, Clive, Iowa 50325.

Terms of Settlement:

A complaint having been filed by Complainant against Respondents with the Iowa Civil Rights Commission (hereinafter referred to as the Commission) under Iowa Code Chapter 216 and there having been a preliminary inquiry, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree 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); 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. Respondents acknowledge the ICRA makes it unlawful to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person.
Iowa Code §§ 216.8(1)(a) and 216.8A(3)(a).

Respondents acknowledge the federal Fair Housing Act (FHA) makes it unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, national origin, or disability.
42 U.S.C. 3604(a) and (f)(1).

3. Respondents acknowledge 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); Iowa Code § 216.8A(3)(b).
4. Respondents acknowledge 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. 42 U.S.C. 3604(f)(3); Iowa Code § 216.8A(3)(c)(2).
5. Respondents acknowledge its 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.

Assistance animals are often referred to as service animals, emotional support animals, therapy animals, companion animals, or support animals. Under the FHA and ICRA, an assistance animal is “not a pet. 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. 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, or providing emotional support to persons with disabilities who have a disability-related need for such support.” *Service Animals and Assistance Animals for People with Disabilities in*

Housing and HUD-Funded Programs, U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2013-01, April 25, 2013, at 2.

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 – i.e., 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? 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?

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." Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under The Fair Housing Act*, May 17, 2004, at 7.

"The request may also be denied if: (1) 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 (2) 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. 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. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals." FHEO-2013-01 at 3.

Respondents acknowledge it will consider each tenant or prospective tenant'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, Respondents may make a reasonable inquiry and request documentation from a health care provider that verifies the tenant/prospective tenant's disability, without seeking or collecting information regarding the nature of the disability.

In addition, Respondents may make reasonable inquiry and request documentation from a health care provider that verifies the tenant or prospective tenant's need for the accommodation, i.e., the relationship between the person's disability and the need for the requested accommodation.

Respondents acknowledge that assistance animals cannot be subjected to monthly pet fees or pet deposits since they are not considered pets under the FHA or ICRA. Respondents also acknowledge that housing providers cannot require special tags, equipment, certification or special identification for assistance animals.

Voluntary and Full Settlement

6. The parties acknowledge this 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. Respondents agree the Commission may review compliance with this Agreement. And as part of such review, Respondents agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.
10. The parties acknowledge, if the Commission or the U.S. Department of Housing and Urban Development (HUD) has reasonable cause to believe that Respondents have breached this Agreement, the Commission may refer the matter to the Iowa Department of Justice - Office of the Attorney General, and HUD may refer the matter to the U.S. Department of Justice.

Disclosure

11. 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

12. Complainant hereby waives, releases, and covenants not to sue Respondents 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.

Fair Housing Brochure

13. Respondents Karen and David Noftsger agree to promote Fair Housing, by printing the Commission's Fair Housing brochure, "Fair Housing and You," and distributing the brochure to each of their rental units on or before March 15, 2017. Respondents agree to access the brochure on the Commission's website at:
https://icrc.iowa.gov/sites/default/files/publications/2013/FairHousing_English_2013.pdf

Respondents also agree to send a statement to the Commission, on or before March 15, 2017, verifying that the brochure was, in fact, distributed to each of their tenants with the number of rental units it was distributed to at each property.

Relief for Complainant

14. The parties agree, on November 23, 2016, Complainant emailed Respondents documentation from her health care provider dated November 21, 2016, verifying her need for an assistance animal. Respondents agree to grant Complainant's reasonable accommodation request and allow her assistance animal to live with her at the subject dwelling after she provides proof that the assistance animal has been licensed with the City of Clive, Iowa, through WestPet animal licensing program. In addition, prior to January 30th of each year, Complainant agrees to provide proof that her assistance animal has been licensed with the City of Clive.

These conditions are contingent upon all the parties executing this Agreement and returning it to the Commission on or before March 1, 2017 and the Commission subsequently issuing a Closing Letter for said complaint.

15. Respondents agree to waive \$1,000 in future rent owed by Complainant. Complainant's monthly rent is \$1,275 per her rental agreement. Effective April 1, 2017, Respondents will waive \$200 of Complainant's \$1,275 monthly rent for a five-month period, April 1 through August 31, 2017. During this timeframe, Complainant will pay \$1,075 in monthly rent instead of \$1,275.

16. Respondents agree to rescind their October 8, 2016 demand that Complainant pay them \$700 for violating their no-pet’s policy (\$300 initial fee and \$50 per day for each day the alleged violation occurred, totaling \$400 for the period, September 18, 2016 through September 25, 2016).

Reporting and Record-Keeping

17. On or before March 15, 2017, Respondents shall forward to the Commission a statement verifying that the brochure was, in fact, distributed to each of their tenants, as evidence of compliance with Term 13 of this Agreement.

All required documentation of compliance must be submitted to:

Don Grove
Iowa Civil Rights Commission
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
don.grove@iowa.gov

Karen Noftsger, RESPONDENT Date

David Noftsger, RESPONDENT Date

Evelyn Fenton, COMPLAINANT Date

Kristin H. Johnson, DIRECTOR Date
IOWA CIVIL RIGHTS COMMISSION