

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 09-16-69575
HUD# 07-17-5073-8

PARTIES TO THE SETTLEMENT AGREEMENT

RESPONDENTS

JACK L. IRWIN
6500 South 34th Street
Lincoln, Nebraska 68516

LUCILLE LEITING
907 Brookdale Drive
Carroll, Iowa 51401

COMPLAINANT

ANGELA JACKSON
Commissioner
Iowa Civil Rights Commission
400 East 14th Street
Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION
400 East 14th Street
Des Moines, Iowa 50319

Description of the Parties:

Complainant is a member of the Iowa Civil Rights Commission (hereinafter referred to as the Commission). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216. Complainant alleged Respondents failed to provide a reasonable accommodation by refusing to waive their "no-pets" policy for an assistance animal, resulting in different terms and conditions of rental and a denial of rental housing based on disability. Respondents own or manage the subject property, a 42-unit apartment complex, located at 921 High Ridge Road, Carroll, Iowa 51401.

Terms of Settlement:

A complaint having been filed by Complainant against Respondents with 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 their 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 they 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. 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 Training

13. Respondents agree Jack L. Irwin and each of his current employees or agents who are involved in the management or operation of Respondents' residential rental properties will receive training on the requirements of State and Federal Fair Housing Laws within 90 days of their receipt of a Closing Letter from the Commission. The training will address all aspects of fair housing law, but will emphasize the law regarding how to handle requests for reasonable accommodations from tenants and prospective tenants with disabilities. The training shall be conducted by a qualified person, approved by the Commission or the U.S. Department of Housing and Urban Development.

Respondents also agree to send documentation to the Commission, verifying the fair housing training has been completed, within ten (10) days of completing the training.

Assistance Animal Fact Sheet

14. Respondents agree to place the ICRC Fact Sheet, "Assistance Animals and the Fair Housing Act," in each of their property management offices in conspicuous locations, easily viewable to tenants and prospective tenants within thirty (30) days of their receipt of a Closing Letter from the Commission. Respondents also agree to send documentation verifying the postings to the Commission within ten (10) days of posting.

New Policy and Practice

15. For all residential rental properties owned and managed, now and in the future, Respondents agree, within thirty (30) days of the execution of this Agreement, to adopt and implement specific, uniform, and objective written standards, procedures, and forms for receiving and handling requests made by people with disabilities for reasonable accommodation. These standards shall comply with the requirements of Iowa Code Chapter 216 and 42 U.S.C. § 3601 et seq.

Respondents agree within thirty (30) days of the execution of this Agreement to send documentation to the Commission detailing Respondents' said procedures with copies of their reasonable accommodation policy and applicable forms.

Respondents shall inform all applicants and occupants that they may request reasonable accommodations of Respondents' rules, policies, practices, and services. Prior to lease execution, if prospective residents inquire about reasonable accommodations, Respondents shall inform them of their ability to seek reasonable accommodations.

Respondents shall adopt a Reasonable Accommodation Policy and forms to implement the policy, using the following forms or forms substantially equivalent:

- Reasonable Accommodation Policy (Attachment 1)
- Assistance Animals Policy (Attachment 5)
- Guidelines Regarding Assistance Animals (Attachment 6)
- Application for Reasonable Accommodation (Attachments 2-4)

Upon adopting specific, uniform, and objective written standards and procedures for receiving and handling requests made by people with disabilities for reasonable accommodations, Respondents shall provide written notice of those standards, procedures and forms to each current and future resident who has requested an accommodation.

Respondents shall keep written records of each request for reasonable accommodation. These records shall include:

- Name, address, and telephone number of the person making the request;
- Date request received;
- Nature of request;
- Whether request granted or denied; and
- If denied, reason(s) for the denial.

Review of Tenant Files

16. Respondents agree to review all current tenant files to determine whether their employees or agents appropriately handled past requests for reasonable accommodations in accordance with the requirements of Iowa Code Chapter 216 and 42 U.S.C. § 3601 et seq. If errors were made in the handling of past requests for reasonable accommodations, Respondents shall promptly correct those errors by notifying the affected residents, granting the requests for reasonable accommodations, and refunding any monies unlawfully collected for pet fees or deposits.

Within ninety (90) days of the execution of this Agreement, Respondents shall submit a written report to the Commission, to the attention of Don Grove, Supervisor of Investigations, stating: (1) the number of tenant files reviewed, (2) the name and job title of the person or persons who reviewed those files, (3) the date or dates those files were reviewed, (4) the number of errors found, and (5) the number of errors corrected.

For each error, Respondents shall include in its written report to the Commission the following information:

- Name, address, and telephone number of affected resident;
- Date of request for reasonable accommodation;
- Nature of request;
- Date affected resident notified of error; and
- Nature of action taken to correct error.

Relief for Complainant

17. Respondents 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 December 15, 2016. Respondents agree to access the brochure on the Commission's website at:

icrc.iowa.gov/sites/files/civil_rights/publications/2013/FairHousing_English_2013.pdf

Respondents also agree to send a statement to the Commission on or before December 15, 2016, 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.

Reporting and Record-Keeping

18. Respondents shall forward to the Commission objective evidence of the successful completion of fair housing training in the form of a Certificate or a letter from the entity conducting the training within ten (10) days of the completion of the training, as evidence of compliance with Term 13 of this Agreement.

19. Respondents agree to send documentation to the Commission, verifying the ICRC Fact Sheets have been posted within ten (10) days of displaying them, as evidence of compliance with Term 14 of this Agreement.

20. Within thirty (30) days of the execution of this Agreement, Respondents shall submit a written report to the Commission detailing their reasonable accommodation procedures, along with a copy of their reasonable accommodation policy and applicable request forms, as objective evidence that they have adopted and implemented specific, uniform, and objective written standards, procedures, and said forms for receiving and handling requests made by people with disabilities for reasonable accommodation, as evidence of compliance with Term 15 of this Agreement.

21. Within ninety (90) days of the execution of this Agreement, Respondents shall submit a written report to the Commission, as objective evidence that all current tenant files have been reviewed to determine whether their employees or agents appropriately handled past requests for reasonable accommodations as evidence of compliance with Term 16 of this Agreement.

22. On or before December 15, 2016, Respondents shall send a written statement to the Commission verifying the “Fair Housing and You” brochure has been distributed to all of their tenants, as evidence of compliance with Term 17 of this Agreement.

All required documentation of compliance must be submitted via email or U.S. mail to:

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

Jack L. Irwin, RESPONDENT

Date

Lucille Leiting, RESPONDENT

Date

Angela Jackson, COMPLAINANT

Date

Kristin H. Johnson, DIRECTOR
IOWA CIVIL RIGHTS COMMISSION

Date