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### **Tales Roun' the Campfire April is Fair Housing Month!**

In early 1968, Congress and the Supreme Court took a step that prior to that time seemed impossible, both declared that it would now be illegal to discriminate in the sale or rental of housing because of race. The new fair housing laws enacted were to bring drastic revisions to the black-white pattern of housing in American cities.

There were several reasons the 1968 Civil Rights Act, containing open occupancy provisions, passed at that time. The Senate Housing and Urban Affairs Subcommittee of the Banking and Currency Committee, held hearings on a fair housing bill which could be added as an amendment to worker's protection legislation providing civil rights. In addition, Senate liberals involved in this legislative battle were organized and unyielding. And on April 4th of that year Martin Luther King was assassinated escalating the social unrest in the country, increasing action in the House of Representatives.

In August 1967, hearings commenced on Senator Walter F. Mondale's proposal, S. 1358. The original bill provided that fair housing be implemented in three stages. The first would require all federally-assisted housing comply; the second stage included compliance for all multi-unit housing; the final stage would require compliance for all single-family units. The immediate opposition of the bill by Southern members antagonized those in support of the bill and set the stage for even stronger legislation.

Proponents argued the constitutional grounds of the civil rights legislation, and the increasing need for housing open on an equal opportunity basis to African Americans, while working to dispel myths that open housing would lead to the reduction of property values. The psychological arguments for fair housing included the opportunities that would open up for African Americans - they could escape the ghetto, and have increased employment and education opportunities. Persuasively, proponents argued that segregated housing was simply a rejection of one human

being by another based on superior power. Throughout the country riots were breaking out in every major city - passage of a fair housing law at that time might ease the social unrest and lead to reduction of ignorance and the black-white barrier.

Opponents argued the constitutional grounds of individual state's rights and private property control.

For months both proponents and opponents made strategic moves in efforts to support their positions until March 11th, when the bill passed the Senate by a vote of 71 yeas to 20 nays, ultimately including new titles addressing the rights of Native Americans. On April 10<sup>th</sup>, with the National Guard troops called in to control riot conditions in the basement of the Capitol, the bill passed the House. On April 11th, President Johnson signed H.R. 2516, and the Civil Rights Act of 1968 became law.

### **And that is why . . . April is Fair Housing Month!**

*For more information about the passage of the Fair Housing Act, please see FAIR HOUSING: A LEGISLATIVE HISTORY AND A PERSPECTIVE By JEAN EBERHART DUBOFSKY*

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### **Assistance and Service Animals . . . the Confusion Lingers**

A day doesn't pass in Montana Fair Housing's office that we don't receive inquiries about the definition of an assistance animal. People often refer to them as companion pets, therapy animals or pets, emotional support animals, service animals, etc. With the rising use of assistance animals for a number of disability-related needs, and changed definitions and clarifications provided in the Americans with Disabilities Act (ADA) in 2010, confusion by consumers, advocates, health professionals, and housing providers is wide spread. This article attempts to provide readers with a brief description of provisions for persons with disabilities provided for in the Montana Human Rights Act (HRA), the Federal Fair Housing Act as Amended in 1988 (FHA), and the ADA.

The provisions and definitions contained in the ADA do not cover housing-related issues unless the housing in question receives federal funding that is attached to the building. Acceptance of housing assistance that follows the

household (versus attached to the building) does not impose requirements included in the ADA. The ADA covers employment-related needs for persons with disabilities, and services provided by public entities and public accommodations (like government operated services and shopping malls). Leasing offices may be covered under the ADA as a public accommodation.

Titles II and III of the ADA (public entities and public accommodations) defines SERVICE ANIMALS as dogs, and in specific instances, miniature horses, and requires that the animal be trained to do work or perform tasks directly related to a person's disability.

A covered entity under Titles II or III of the ADA cannot ask for documentation or certification to confirm that an animal is a "service animal." There are only two questions that can be asked to determine if an animal meets the Title II or III definition of a service animal:

- (1) Is the dog a service animal required because of a disability?
- (2) What work or task has the dog been trained to perform?

"Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task."

The HRA, at Section 49-4-214(3), states that a "person who is training a service animal is entitled to the same rights and assumes the same responsibilities granted to a person with a disability in this section."

Under Title I (employment) there is no specific definition for "service animal," and the Title II and III regulations do not apply to Title I. This means an employer may have to allow an employee to bring in an animal that does not meet the Title II and III definition of "service animal," such as an emotional support or therapy animal. Title I of the ADA allows employers to request verification of disability, the need for the animal, a description of limitations arising from the disability, and how the accommodation (animal) would help the employee do their job. The employer can also request documentation verifying that the animal has been trained. Employers do not have to allow employees to bring in an animal if it isn't needed because of a disability or if the animal disrupts the work environment.

The Montana Human Rights Act and Federal Fair Housing Act require housing providers to approve requests for reasonable accommodations needed by persons with disabilities. A housing provider cannot refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." FHAA Sec. 804(f)(3)(b) [42 U.S.C. 3604]. These provisions also apply to non-household members that may

be associated with the resident. Developing and/or implementing a no animals or no pets policy does not justify the denial of a request for a reasonable accommodation for an assistance animal.

The HRA and FHA do not limit the type or size of assistance animals. A housing provider can not assess additional deposits or other monies from a qualified person needing an assistance animal, nor require documentation that the animal has received training. The housing provider can request verification from a healthcare provider or other person familiar with the disability-related needs and symptoms. The scope of these inquiries are limited to: verification that the person needing the accommodation meets the definition of a person with a disability; a description of the expected duration of the disability; and a description of major life activities limited by the disability. The housing provider can also request a description of the symptoms that will be offset by the animal minimizing impact on major life activities. The owner of an animal serving as an assistance animal can be required to produce documentation that the animal has all vaccinations and licenses, and is spayed or neutered, if required by county and city laws. However, the latter inquiry should only be made if the housing provider requires all households to comply with laws and ordinances, and requires compliance with other licensing and legal requirements. If that is not occurring there may be argument for a different terms and conditions violation based on protected class status.

Requests for reasonable accommodations do not have to be made in writing nor on specific forms. Montana Fair Housing suggests that, if possible, requests and verification be written for clarity and documentation. According to the joint statement issued by the Department of Housing and Urban Development and the Department of Justice, a "housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations."

Helpful Resources for ADA related inquiries:

[-Revised ADA Requirements: Service Animals:](http://www.ada.gov/service_animals_2010.htm)

[http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)

[-ADA Update: A Primer for Small Business:](http://www.ada.gov/regs2010/smallbusiness/smallbusinessprimer2010.htm)

<http://www.ada.gov/regs2010/smallbusiness/smallbusinessprimer2010.htm>

[-Job Accommodation Network, Service Animals](http://askjan.org/topics/servanim.htm)

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Helpful resources for fair housing laws are available at [montanafairhousing.org](http://montanafairhousing.org) and at <http://portal.hud.gov>.

*Articles included in this newsletter are reprints from previous editions. On request they have been warmed up and served again!*