COMMUNITY COUNSEL

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2015 NEW LAW ROUND-UP — PART 1

The 2015 regular legislative session is over in Florida, having ended rather abruptly. The session has been marked by more discord than one expects in a one party state — which is perhaps what one *should* expect when one party has dominated state politics for so long and with such ease.

Nevertheless, a few bills relevant to community associations did manage to pass through the constricted pipeline and plop out the other end, and there is no reason to believe that the Governor will find any of them objectionable. So we start our review of this year's bills with a hot topic—animals—specifically service animals.

HB 71, by Representative Jimmie Smith does a good job in codifying and incorporating federal law into section 413.08, Fla. Stat. as it relates to service animals. Note that the bill specifically excludes emotional support pets. A "service animal" is a dog or miniature horse that has training to do work and *"….emotional support, well-being, comfort, or companionship do not constitute work*." Public accommodations may ask what work the animal is trained to perform.

The bill also defines a "public accommodation." While this surely will include resort condominiums and others with short term rentals, its reach *may* be broader, including a "….*place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons*." Still excluded will be private housing with non-transient housing, where units are offered for rental directly by the unit owners. This means that private housing is not subject to the limitations imposed on questions that can be asked by public accommodations. Since public accommodations can ask about the training of a service animal, so can private housing accommodations, and they have additional leeway as well—leeway that is not addressed in this statute.

In a refreshing and needed innovation, the bill adds criminal penalties for misrepresenting the qualifications of an animal as a service animal as well as the qualifications of a person as a trainer of service animals. As we have discussed in this space before, there are no standards, national or statewide, on what is a "certified" service animal and abuse of the term is widespread, ultimately to the detriment of the people who need service animals and the hard working and dedicated people who train these marvelous animals.

The bill also makes it clear that service animals must be under control, either through use of a leash or tether, or if that is not possible, due to the nature of the disability, through voice commands or similar effective means. The bill is detailed as to the types of benefits service animals can provide and the privacy a public accommodation must afford a disabled person. Now if we can just get a similar law for emotional support pets, we will be a much better position to deal with this important topic.

RECENT CASES

- OWNER OF EMOTIONAL SUPPORT DOG WAS PERMITTED TO ARGUE THAT SHE WAS ENTITLED TO HAVE THE DOG NOTWITHSTANDING A PRIOR AGREEMENT NOT TO GET ANOTHER DOG ONCE HER ORIGINAL DOG DIED, AND COURT HAD NO JURISDICTION OVER THE CASE UNTIL HUD FINISHED ITS PROCEEDINGS.
- FNMA WAS NOT THE HOLDER OF THE MORTGAGE ENTITLED TO SAFE HARBOR PROTECTION MERELY BECAUSE IT WAS ASSIGNEE OF THE RIGHT TO BID AT FORECLOSURE SALE.

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

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RECENT CASE SUMMARIES

In **State of Florida vs. Leisure Village, Inc. of Stuart**, 40 Fla. L. Weekly D934a (Fla. 4th DCA, April 22, 2015) the State brought an action on behalf of Owner for discrimination against Association because Association denied Owner's request for a reasonable accommodation under the Fair Housing Act (FHA). Owner and Association were previously engaged in litigation that ended with a settlement stipulation that Owner could keep the dog she had at the time, so long as she also agreed not to get another dog once that dog passed away. This prior stipulation also included an agreement that required Owner to move out of Association if she ever got another dog. After Owner's first dog died in 2010, Owner was diagnosed with chronic depression. Her treating psychiatrist recommended that she get another pet, an "emotional support animal", to help optimize her treatment. Based on this recommendation, Owner's attorney made a request to Association for an accommodation for the support dog, which Association denied. Despite her request being denied, Owner nonetheless obtained another dog a month later. While Association was before the trial court to enforce the parties' prior stipulation, Owner filed a complaint with the US Department of Housing and Urban Development claiming a violation of the FHA. Before HUD could rule on the complaint, the trial court ordered Owner to remove the dog from the property. Approximately three months after the trial court ordered Owner to remove her dog from the property, HUD completed its investigation and issued a finding of cause, thus allowing Owner to pursue her discrimination claim in court. After unsuccessfully filing a claim in federal court, Owner filed another complaint in the trial court that set forth allegations of discriminatory housing practices under the FHA, and argued that she had an independent right under the FHA to keep a dog. The trial court ultimately dismissed Owner's case, finding that her cause of action for Association's alleged violation of the FHA was barred by collateral estoppel and law of the case. On appeal to the Fourth District Court of Appeal, the court noted that an exhaustion of administrative remedies was required for the trial court to have subject matter jurisdiction of Owner's FHA claim. Owner's administrative remedies were not exhausted until HUD ruled on her claim, which then created Owner's cause of action. As no cause of action existed at the time the trial court earlier ruled on the veracity of the settlement agreement, the court lacked subject matter jurisdiction and collateral estoppel did not apply. As to "law of the case", the appellate court noted that the law is well-settled that "law of the case" principles do not apply unless the issues are decided on appeal. Thus, the appellate court reversed the trial court's findings that the instant case was barred by collateral estoppel and law of the case.

In **Federal National Mortgage Association vs. Park Place at Pompano Condominium Association, Inc.**, 22 Fla. L. Weekly Supp. 587a (Circuit Court, 17th Judicial Circuit in and for Broward County, May 28, 2014) Fannie Mae (FNMA) brought an action against Association alleging that Fannie Mae was entitled to the "safe harbor provisions" of Section 718.116(1), Fla. Stat. The complaint alleged that Fannie Mae purchased a mortgage in 2006; that the loan servicer for Fannie Mae filed the mortgage foreclosure action in 2009 naming Association as a defendant; that in 2012 a final judgment was entered in the foreclosure action; that the loan servicer assigned its bid to Fannie Mae; and that the clerk of court issued a certificate of title in favor of Fannie Mae. Association disputed that Fannie Mae was entitled to the "safe harbor" protections as Fannie Mae was merely the assignee of the right to bid, not the holder of the mortgage. In granting Association's motion for summary judgment, the court noted that to be entitled to the "safe harbor" protections, a party must establish that it was a first mortgagee, or its successor or assignee; that it acquired title to the unit through foreclosure, and that Association was named as a defendant in the foreclosure action. The circuit court found that the "owner" of the mortgage at the time the foreclosure action was filed was BAC Home Loans Servicing, the entity that filed the foreclosure action. The fact that BAC assigned its right to bid at the foreclosure sale was insufficient to confer the protections of the safe harbor provisions upon Fannie Mae.

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