SHORT-TERM VACATION RENTALS
AIRBNB / VRBO / HOMEAWAY

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PEOPLE COME AND GO...
SO QUICKLY AROUND HERE
memegenerator.net

AirBNB– brand name synonymous with product (no pejorative intent intended!)

Shorthand for Short Term Vacation Rental (“STVR”)

VRBO/Homeaway, etc.

STVRs have two primary things in common:

1. Provide rental properties for a shorter time period than is likely permitted under most condo or HOA docs

2. Internet-based

Airbnb – rentals of rooms to castles

Founded 2008 in San Francisco: air mattress!

First venture funding $20,000 in 2009.

March 2017, company valued at $31 billion.

Third quarter 2018, revenue > $1 billion.

Privately owned; IPO reportedly planned 2019

Collects commissions from owners and renters

HomeAway / VRBO (acquired by EXPEDIA-2015)

Rentals of entire homes or units

Founded 2005 Austin, Texas

Airbnb's chief competitor

2011 IPO; Valued >$211 billion

Compensated through paid listings

New payment models performance-based

HOW DOES IT WORK?

"Airbnb collects money by providing a matching service online for property owners and short-term renters. Airbnb generally does not own or operate the properties. Rather, Airbnb collects a fee on each transaction for acting as an intermediary. Airbnb offloads responsibility for cleaning, maintenance, repairs, insurance, and compliance with regulations and laws to the property owners who act as independent contractors. What are Airbnb's responsibilities? It handles advertising, owner-renter communications, booking, and payment processing in exchange for commissions from both the renters and the property owners."

Florida Community Associations Versus Airbnb and VRBO in Florida,
Fla Bar Journal, Vol. 91, No. 2 February 2017 Pg 16 William P. Sklar and Jerry C. Edwards

VRBO/HOMEAWAY

"VRBO operates its business somewhat similarly to Airbnb. VRBO also acts as an intermediary between property owners and short-term renters. However, VRBO acts similarly to the classified pages in a newspaper by allowing property owners to advertise on its site for a flat fee, rather than collecting a commission and involving itself in the transaction like Airbnb. VRBO also only lists entire homes whereas Airbnb lists anything from entire homes to single rooms. That said, Airbnb's and VRBO's business models are both essentially built around acting as middlemen between property owners and short-term renters."

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AIRBNB TERMS OF SERVICE (excerpt):

7.2.3 You represent and warrant that any Listing you post and the booking of, or a Guest's stay at, an Accommodation will (i) not breach any agreements you have entered into with any third parties, such as homeowners association, condominium, or other agreements, and (ii) comply with all applicable laws (such as zoning laws), Tax requirements, and other rules and regulations (including having all required permits, licenses and registrations). As a Host, you are responsible for your own acts and omissions and are also responsible for the acts and omissions of any individuals who reside at or are otherwise present at the Accommodation at your request or invitation, excluding the Guest and any individuals the Guest invites to the Accommodation.

AIRBNB TERMS OF SERVICE - LICENSE

8.2 Booking Accommodations

8.2.1 You understand that a confirmed booking of an Accommodation ("Accommodation Booking") is a limited license granted to you by the Host to enter, occupy and use the Accommodation for the duration of your stay, during which time the Host (only where and to the extent permitted by applicable law) retains the right to re-enter the Accommodation, in accordance with your agreement with the Host.

8.2.2 You agree to leave the Accommodation no later than the checkout time that the Host specifies in the Listing or such other time as mutually agreed upon between you and the Host. If you stay past the agreed upon checkout time without the Host's consent ("Overstay"), you no longer have a license to stay in the Accommodation and the Host is entitled to make you leave in a manner consistent with applicable law.

Words not appearing in Terms of Service:

“rent”

“lease” (except in “Please”)

“tenant”

“landlord”

“premises”, “lot”, “unit”

Words appearing in Terms of Service:

“license”

“host”

“guest”

“accommodations”

HAPPY WORDS!	FROWNY WORDS!
“license”	“lease” / “rental agreement”
“host”	“landlord”
“guest”	“tenant”
“accommodations”	“premises”, “lot”, “unit”

What’s the purpose of these distinctions?

AVOIDING SHORT-TERM RENTALS?

Some do seek out short-term vacation rentals:

-- condo hotels ("condo-tels")
-- resort condos
-- on-site rental manager
-- on-site concierge

Some condos specialize in rentals, both long and short term:

Typical provision in resort condo declaration***:***
"The apartments may be rented on a daily through annual basis."

(Yes! It's true!)

BUT MOST DO NOT --
Several reasons:

1. Keeping absentee ownership to a minimum; maintaining character of the community; hard to maintain a "harmonious / congenial" living environment if the pieces on the neighborhood chessboard are constantly moving in and out; most people just do not want to own a home in the middle of a hotel

2. Practical problems with "de facto" unregulated occupancies, even with rules in place; vacationers indifferent to rules; reports of loud parties, crowded recreational facilities; reports of 10 to 20 additional cars blocking the parking lot, to the point where first responders can't even get through; more than a simple nuisance or annoyance

3. Problems for HOAs and CONDOS alike
   –Boys' golf weekends – 4 BR, 4 Bath home with pool
   – "Family" reunions –thirty cousins, forty in-laws
   – "In town for my buddy's wedding"
   – Corporate "boondoggles"

4. Avoid characterization as "public lodging" or "transient occupancy" under state law or ADA ("lodging facility")
   –Bigger issue in South Florida –many condos in Brevard don't worry about this ; many are less than 75 feet, or less than 3 stories high, or less than 50% of their units held out to the public as available for transient occupancy (fire safety issue)
   –Other burdensome regulatory issues that come with being a "transient lodging facility" or "transient occupancy" (licensing, registration, tax implications)
   (And break out the holy water and garlic for ADA issues)

APPLICABLE LAWS:
FEDERAL, STATE AND LOCAL

FEDERAL: Communications Decency Act ("CDA"), 47 U.S.C. § 230
Title V, Telecommunications Act of 1996 (sat dishes, pornography, immunity provision for internet sites)

STATE: Section 509.032(7)(b), Florida Statutes/ State preemption of local ordinances
Section 509.242(1)(c) -- “vacation rental”

LOCAL: Brevard County –Tax remittance agreement w/Airbnb
Code of Ordinances § 62-103/
Prima facie evidence of “resort dwelling” (different occupants/vehicles w/in 90 days; “held out to public” as STVR

FEDERAL:
47 U.S.C. Section 230(c) and (f):

(c)(1): *No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.*

(f) Definitions As used in this section:

(1) Internet : The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service [Airbnb]: The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider [the "host"]: The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

In principle, similar to wire fraud –

AT&T not liable for criminal activity merely because it takes place over interstate phone lines;

AT&T is not responsible for the content of the communications;

Federal courts have held that AirBNB is not "an information or content provider"

--they merely provide the platform on which that information is exchanged

La Park ("Aimco") v. Airbnb, Inc., 285 F. Supp. 3rd 1097 (C.D. Ca. 2017)

--Landlord in Los Angeles owned multiple apartment buildings; filed class action suit Airbnb for violating the landlord's prohibition against subleasing;

["The listings usually do not disclose hosts' real names or apartment numbers, which makes it hard for Aimco to enforce lessees' anti-assignment clause."]

--Airbnb moved to dismiss the complaint on the basis of the immunity clause in the CDA Act ("*No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.")*

LaPark (cont’d)

“Airbnb generally refuses property owners' requests that Airbnb cease engaging in rental transactions with tenants whom Airbnb learns are violating their leases by engaging in short-term rentals.”

[HOWEVER!]

"Aware of growing concerns among property owners and residential communities regarding illegal subleasing activity and disruptive guest behavior," Airbnb launched the "Friendly Buildings Program," which is directed at homeowner's associations ("HOAs") and owners of multi-unit residential buildings. In exchange for being "friendly," i.e. , allowing rentals through Airbnb, the program provides participating HOAs and multi-unit property owners a commission on Airbnb activity within their communities, as well as tools to oversee and manage those rentals, none of which is available to non-participants.”

LANDLORD'S ARGUMENTS:

--Airbnb refused to identify the owners ("hosts") renting out their homes

--Airbnb refused to take down the listings

--Landlord should be entitled to an inunction order requiring Airbnb to disclose the hosts' names and addresses in order for Landlord to maintain a "safe, peaceful and desirable" community for its other tenants

AIRBNB ARGUMENTS:

--CDA preempts Landlord's state law claims

COURT HELD:

Airbnb NOT an "information content provider" under S. 230(c):

"This grant of immunity applies only if the interactive computer service provider is not also an 'information content provider,' which is defined as someone who is 'responsible, in whole or in part, for the creation or development of' the offending content."

"Airbnb hosts—not Airbnb—are responsible for providing the actual listing information. Airbnb "merely provide[s] a framework that could be utilized for proper or improper purposes."…

Court dismissed the complaint.

STATE LAW:

FIRE SAFETY - 509.215

TRANSIENT LODGING - 509.013

VACATION RENTALS - 509.242

PREEMPTION TO STATE - 509.032

CONDO RENTAL RESTRICTIONS - 718.110(13)

FIRE SAFETY - “PUBLIC/TRANSIENT LODGING”

Some condos argue against short-term vacation rentals on basis of S. 509.215:

509.215 Firesafety.—
(1) Any:

(a) ***Public lodging establishment***, as defined in this chapter, which is of three stories or more and for which the construction contract has been let after September 30, 1983, with interior corridors which do not have direct access from the guest area to exterior means of egress, *or*

(b) Building over 75 feet in height that has direct access from the guest area to exterior means of egress and for which the construction contract has been let after September 30, 1983, ***shall be equipped with an automatic sprinkler system*** ....

.....

(3) Notwithstanding any other provision of law to the contrary, this section applies only to those ***public lodging establishments*** in a building wherein ***more than 50 percent of the units in the building are advertised or held out to the public as available for transient occupancy.***

“TRANSIENT OCCUPANCY”

S. 509.013(12)
“Transient occupancy” means occupancy when it is the intention of the parties that the occupancy will be ***temporary***. There is a rebuttable presumption that, ***when the dwelling unit occupied is not the sole residence of the guest***, the occupancy is transient.

“PUBLIC LODGING ESTABLISHMENT”
S. 509.013

(4)(a) “Public lodging establishment” includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. “***Transient public lodging*** establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings ***which is rented to guests more than three times in a calendar year*** for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. “Nontransient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

EXCLUSION FROM PUBLIC LODGING ESTABLISHMENT:
S. 509.013(4)(b):

(b) The following are excluded from the definitions in paragraph (a):

4. Any unit or group of units in a ***condominium***, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and ***that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.***

VACATION RENTAL:
S. 509.242(1)(c)

509.242 (1)(c) Public lodging establishments; classifications.—
(c) Vacation rental.—A vacation rental is any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.

STATE PREEMPTION OF LOCAL LAW
S. 509.032(7)(b)

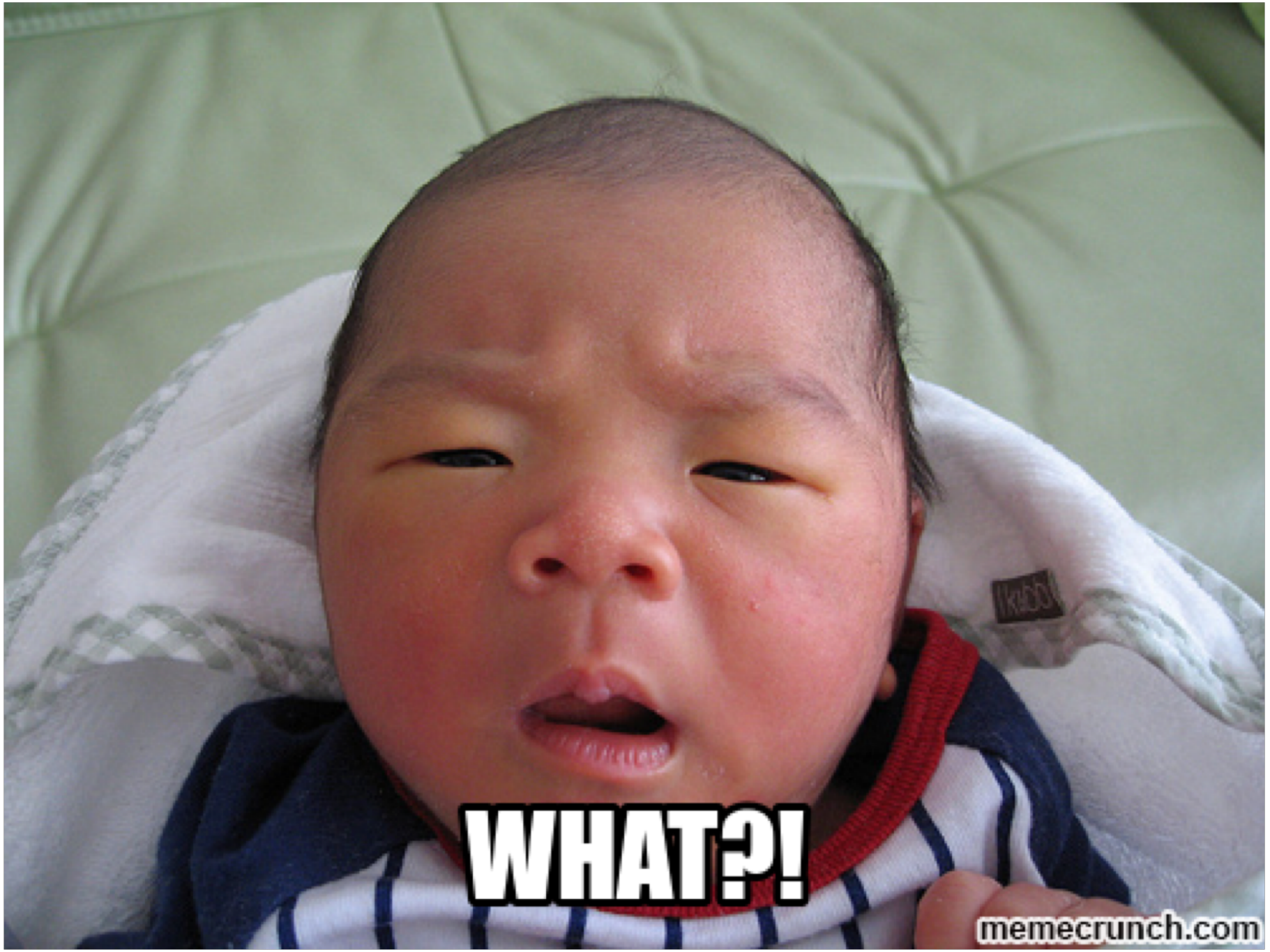
(a)The regulation of **public lodging establishments** and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b)A local law, ordinance, or **regulation** may not prohibit **vacation rentals** or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, **2011**.

Does "regulation" include restrictions in declaration of condominium or an HOA declaration of covenants, conditions and restrictions?

Thus far, no -- "regulation" has been treated as a regulation promulgated by local county or city government.

So here’s the thing ….


WHAT?!
memecrunch.com

P.S. (*per* Woodside Village Condo v. Jahren)

Section 718.110(13), Florida Statutes:
"An amendment prohibiting unit owners from renting their units ***or*** altering the duration of the rental term or specifying ***or*** limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment."

-- Presently, only applies to condos per Ch 718

-- But annual attempts to add this to HOAs in Ch 720
(And conceivably expand 718.110(13) to include short term vacation rentals in condos)

THREE ISSUES:

1. What will the law be? Will it be prospective or retroactive?

2. What do your documents say? What do they need to say? How soon do they need to say it? (Yesterday!)

3. How do you enforce your documents against short term vacation rentals? What remedies do you have?

What will the law be?


ASK
AGAIN
LATER

Two areas to watch (at present):

1. County tax collections;
   Airbnb v. County of Palm Beach,
   Case 9:18-cv-81640 (S.D. Fla. 2018)

2. Pending bills in legislature (watch SCCA website page for pending legislation)

https://www.airbnbcitizen.com/airbnb-tax-facts/
April 12th, 2017

Tax agreements with 275 governments

[excerpts]

Over the last three years, we've partnered with hundreds of governments around the globe to make it easier for our hosts and guests to pay their fair share of hotel and tourist taxes. With millions of Americans preparing to file their taxes before the April 18 deadline, we wanted to provide an update on our efforts here in the US and around the world to help our community pay our share.

By May 1, 2017, we will have entered into agreements with over 275 jurisdictions and collected and remitted more than $240 million in hotel and tourist taxes throughout the world.

https://www.airbnbcitizen.com/airbnb-tax-facts/ April 12th, 2017
[cont'd]

Home sharing democratizes revenue by providing an increasingly valuable source of new funds for governments. By collecting and remitting hotel and similar taxes, Airbnb ensures a streamlined process for our host community and lightens the administrative burden for state and local governments.

...

In early April [2017], we reached three major agreements in the state of Florida. Sarasota County, Miami-Dade County, and Broward County all approved measures allowing Airbnb to collect and remit tourist taxes which will bring millions of dollars in new revenue to the Sunshine State. In France, we recently announced that we will begin collecting and remitting tourist taxes on behalf of our hosts in 31 additional cities, covering popular destinations across the French regions and ski resorts, reaching a total of 50 French cities by spring of 2017. You can view the entire list of jurisdictions where Airbnb is collecting and remitting hotel taxes ….

[Including Brevard County]

Airbnb v. County of Palm Beach (12/18)

Palm Beach county commission adopted an ordinance requiring short term vacation renters to register with county, pay an annual fee, and submit monthly tax returns for 6% county tourist tax, or face fines of $500/day per unit; Airbnb sued the county, claiming CDA immunity:

"*And Palm Beach County Tax Collector Anne Gannon believes Airbnb should be responsible for ratting out users who don't comply with the county's ordinance.*

Citing Section 230 of the Communications Decency Act, Airbnb says Gannon's assertion is malarkey. If the county wants that money, the onus is on them, not Airbnb, to follow up with users.

Section 230, as written says, 'No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.'

In English, the owners of a web platform can't be held responsible for the actions of a user."

Drew Wilson, 12/3/18, FloridaPolitics.com
http://floridapolitics.com/archives/282488-airbnb-sues-palm-beach

[Distinguish La Park: Question: does federal immunity statute apply to registration and taxes?]

Pending bills in legislature:
Excerpt of SB 824:

Florida Senate - 2019 SB 824 By Senator Diaz --**PROPOSED**
("A bill to be entitled An act relating to ***private property rights*** of homeowners")

Section 509.032(7)(b)3 and 5:

3. A local law, ordinance, or regulation may regulate activities that arise when a property is used **as a vacation rental** if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit rentals, impose occupancy limits, or regulate the duration or frequency of rentals.

5. ... In all actions brought pursuant to this section, the political subdivision that enacted the local law, ordinance, or regulation shall establish by clear and convincing evidence that the local law, ordinance, or regulation complies with this section. ....

So "regulation" still appears to apply only to governmental regs, not condos or HOAs;
Will other bills be proposed similar to 718.110(13)?

TAX REVENUE TO STATE OF FLORIDA AND COUNTIES (Tax remittance agreements)

Airbnb annual reports:

2016: $20,000,000

2017: $45,700,000

2018: $89,500,000

Sources:
https://www.floridatrend.com/article/23942/airbnb-releases-2017-florida-tax-report
http://www.sun-sentinel.com/business/fl-bz-airbnb-doubles-revenue-and-tax-collections-in-florida-20190128-story.html

QUESTION 1: Tourist Development Tax Tipline (website): How does county determine whether that owner's tax may already have been paid by Airbnb?

Tax Collector: checks their system to confirm there's no account registered for that property; if not, then letter to the property owner inquiring about short-term rentals; normally get a response, especially if they're renting through Airbnb because the owner suddenly thinks Airbnb isn't remitting the tax they are collecting; if no response from owner, then TC automatically assesses tax based upon the advertisement.

QUESTION 2: So if they're actually renting through Airbnb, tax collector can confirm that an account has already been set up for that specific property?

Tax Collector: No; Airbnb doesn't furnish data for the property owners using their platform; but proof of Airbnb listing can be required of owner.

DOCUMENTS

DECLARATION OF CONDOMINIUM / DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS:

Customary language for minimum rental periods:

"No unit shall be rented for a period of less than 1-3-6 months"

"No lease or rental agreement shall be permitted for a term of less than 1-3-6 months"

"No rental or lease shall be allowed unless first approved by the board of directors"

--Sufficient to prevent Airbnb/VRBO listings?
--Remember the Happy Words and the Frowny Words?

HAPPY WORDS!	FROWNY WORDS!
"license"	***"lease" / "rental agreement"***
"host"	"landlord"
"guest"	"tenant"
"accommodations"	"premises", "lot", "unit"

Association to owner: "*Get those people out! They're violating the minimum rental period*!"
Owner to Association: "*What rental? This is a license!*"

So what language to use?

A “license” is not a “rental agreement”

(E.g., corner food stands at gas stations have a “license”)

License : In real property law. An authority to do a particular act or series of acts upon another’s land without possessing any estate therein.

A license is … merely a personal right to use the property of another for a specific purpose, is not an interest in the land and, therefore, may not be assigned or conveyed. ... As a personal right, a license usually may be revoked at will by the licensor. The Florida Bar, Florida Real Property Practice I Sec. 12.14 (1965); 1 Boyer, Florida Real Estate Transactions Sec. 23.08 (1979).

Expand / replace “rental” with “occupancy” or “right to occupy”;
(a matter of drafting)

How specific should the language be? (Goldilocks Drafting: not too narrow/not overbroad)

Recent Florida case law:

Santa Monica Beach Property Owners Assn, Inc., v. Accord, 219 So.3rd 111 (Fla. 1st DCA 2017) (holding: prohibition against commercial use of a unit does not prevent use as a short term vacation rental; key issue is the tenant's use of the property as residential; assn documents apparently did not specifically prohibit short-term rentals; assn had to rely on "residential use only")

Court also held:

"…the omission of an explicit prohibition on that use [short-term rentals] in the covenants is fatal to the position advocated by the Association in this case because '[t]o impute such a restriction would cut against the principle that such restraints `are not favored and are to be strictly construed in favor of the free and unrestricted use of real property.'

Indeed, the need for explicit language in the covenants is particularly important where the use in question is common and predictable, as is the case with short-term rentals of houses near the beach to vacationers."

SAMPLE FOR DISCUSSION ONLY – DO NOT COPY:

In order to maintain a harmonious and congenial community of residents which promotes continuity of occupancy, and to prevent the community from becoming or resembling a hotel, resort or transient lodging facility, no Unit shall be leased or sub-leased for a period of time less than __X__. No Unit shall be used for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years. No Unit shall be advertised, marketed or otherwise listed on an internet vacation, bed and breakfast, resort or other rental site as being available for short-term occupancy or for any other purpose which would result in a violation of the association's governing documents*. The term "short-term occupancy" shall mean any period of time less than __X__. The terms "lease", "rental", "rental agreement" and the like shall include without limitation any lease, sub-lease, rental agreement, license, easement or other grant of the right to temporarily occupy the unit for a period of time less than __X__ for valuable consideration given to the owner. Any vehicle owned or leased by a person occupying a Unit in violation of this or any other provision of the governing documents shall be deemed an "unauthorized vehicle" and shall be subject to towing as determined by the board of directors and as permitted by law.

(*With thanks to JSL)

PARTIES:

Who do you sue?

AirBNB -- Deep pockets -- a two-edged sword

Tenant (“Guest”)

Unit owner (“Host”)

Who’s at fault?

What forum do you want?

How much time do you have?

REMEDIES DEPENDENT ON DEFENDANT AND TIMING

AirBNB, the unit owner ("host") or the tenant ("guest")?

Possible remedies:

1. Injunction -- court order requiring a party to take certain action, or prohibiting a party from taking certain action

2. Money damages -- suit for damages

3.Arbitration -- petition for arbitration under Section 718.1255
[but see "dispute" definition]

4. Fines (lien > $1,000 for HOAs; no lien for condos, although county court suit ***maybe*** available for collection)

5. Towing

INJUNCTIONS: (timing is the big problem)

Injunction – court order requiring a party to take certain action, or prohibiting a party from taking certain action

Permanent Injunction – a normal civil suit

–circuit court suit may take a year or more (filing, service, answer, motions, discovery, trial, enforcement, sheriff's civil process)

–county court suit – concurrent jurisdiction, a bit quicker

–posting of bond to cover defendant's potential damages

Preliminary (emergency) injunction – expedited depending on urgency of the issue

–circuit court or county court

– can be done on emergency basis and without notice to defendant

– affidavit as to notice

– posting of bond to cover defendant's potential damages

But still: filing, ex parte hearing, entry of order, process through sheriff's department, service of preliminary injunction, follow-up enforcement

(The guest will be back in Toronto/Rio de Janeiro/Barcelona/West Melbourne)

SUIT FOR MONEY DAMAGES:

Suit for money damages – garden variety civil action

Circuit or county court, depending on amount

May take a few months up to a year, depending on defenses raised

Damages difficult to quantify – must be reasonably ascertainable

Judgment – nice piece of paper with judge's signature – suitable for framing!

Judgment becomes merely a general lien, not entitled to priority like an assessment lien

ARBITRATION:

Arbitration vs “host” and “guest” for removal of tenant:

Irrelevant for removal of “guest” or “tenant” because it’s not a “dispute”

Section 718.1255, F.S.:
718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

> (c) ... “Dispute” does not include any disagreement that primarily involves: ...
> **the eviction or other removal of a tenant from a unit**;

HOWEVER:

Arbitration against Unit Owner?

--Possible order prohibiting unit owner from violating Dec;

--But no Airbnb or vacation rental cases show up in Final Order Indexes online

FINES:

Fines – both condos and HOAs

CONDOS:

-- no lien rights available

-- but *maybe* enforceable through suit for damages

HOAs:

--have lien rights for fines exceeding $1,000; more effective than condo liens

PROCESS ISSUES/PROBLEMS:

--appropriate notice of hearing

--compliance with makeup of fine committee

--compliance with board approval procedures and notice of due date

TOWING: Need 1) authority AND 2) notice

-- Perhaps most effective remedy: Guest vehicles treated as "unauthorized vehicles"
--**But must have inventory of authorized vehicles to identify unauthorized vehicles**!

-- compliance with Section 715.07(2), F.S.
(revised 1982-1985- Shootout at the Leon County Civic Center)

-- Language in Dec: "The association, through its board of directors and as permitted by law, shall have the authority to tow or arrange to have towed any unauthorized vehicle which may be parked on the condominium property."
--supplemented as needed with board's rule-making authority

Condos treated differently than HOAs (HOAs require more authority in docs):

715.07(2): The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle or vessel parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles or vessels, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, **under any of the following circumstances:**

PLEASE NOTE THE "CIRCUMSTANCES"!

715.07(2) What are the “circumstances”?

Notice
Notice
Notice
Notice
Notice
Notice

Note: HOAs must inventory authorized vehicles to determine what may be towed.

And about 137 other statutory conditions and requirements!

Check with legal counsel and retain competent, reputable towing service.

EMOTIONAL SUPPORT ANIMALS (Fair Housing Amendments Act of 1988)

(Lassie Go Home!)

(Does the dog always win?)

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LAWS:

FAIR HOUSING AMENDMENTS ACT OF 1988
(emotional support animals; housing)

AMERICAN WITH DISABILITIES ACT OF 1990
(service dogs; public accommodations, restaurants, facilities)

AIR CARRIER ACCESS ACT
(airlines vs. the peacocks and ducks)

REHABILITATION ACT OF 1973
(F/K/A Vocational Rehabilitation Act)

[Florida Fair Housing Act]

FHAA - Fair Housing Amendments Act of 1988 (Originally Title VIII of Civil Rights Act of 1968)

Civil rights law which prohibits discrimination in housing based on race, color, religion, sex, disability, familial status, or national origin.

Generally applies only in the context of “housing”.

EMOTIONAL SUPPORT ANIMALS
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EMOTIONAL SUPPORT ANIMALS
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ADA – Americans with Disabilities Act of 1990

A civil rights law which prohibits discrimination based on disability

Generally applies only to public entities, public accommodations, public facilities

DOES NOT APPLY TO CONDOS W/RARE EXCEPTIONS

Clubhouse? (If open to the public – or both resid'l and public?)
-- and common areas used for access to clubhouse
-- and short-term vacation rentals? (Public accommodations?)

SERVICE DOGS SERVICE DOGS SERVICE DOGS SERVICE DOGS
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BADGES?
WE DON'T NEED NO STINKIN' BADGES.
memegenerator.net

WE DON’T NEED
NO STINKIN’ VESTS.


EMOTIONAL
SUPPORT
ANIMALS
E.S.A.


EMOTIONAL
SUPPORT
DOG


EMOTIONAL
SUPPORT ANIMAL
ANXIETY
COMPANION
HONEY BADGER


SUPPORT ANIMAL


EMOTIONAL
SUPPORT
DOG

AND WE DON’T NEED
NO STINKIN’ CERTIFICATES.

Registered Emotional Support Animal

This certificate confirms that

JAMES MILLER

Has properly registered

RUGER

as an Emotional Support Animal

on **January 29, 2016**

Joseph Vinci

Authorized Agent

CERTIFICATE # 65489

ESA's are protected under the Federal Laws ACAA/FHA

In the US, two federal laws grant rights to owners of Emotional Support Animals (ESA's). Both the Air Carriers Access Act (ACAA) and the Fair Housing Act (FHA) call for modification of "no pets" policies for ESA's. The ACAA allows for Mentally or Emotionally disabled persons to be accompanied on flights by an ESA. The FHA and Section 504 of the Rehabilitation Act of 1973 protect the rights of people who have emotional disabilities. This means that since ESA's are assistant aids and not the average pet, landlords must make a reasonable effort to provide housing for the animal and owner. The FHA does not require the tenant to provide proof of training or certification of the animal.

Emotional Support Animal Certificate

This Certificate confirms that:

Your ESA'S Name Here

Is protected under Federal Law

EMOTIONAL SUPPORT ANIMAL

ESA REGISTRATION NUMBER

ESA 9099672189

Emotional Support Animal
EMOTIONAL
Support Animal

HANDLERS NAME **Your Name Here**

ESA ACCESS TO AIRLINES AND HOUSING PRTECTED BY FEDERAL LAW

ACCESS REQUIRED WHERE PERMITTED BY LAW

UNDER THE AIR CARRIER ACCESS ACT 49 U.S.C. 41705, DOT 14 C.F.R. PART 382, FAIR HOUSING AMENDMENTS ACT OF 1988 THIS ESA HAS THE RIGHT TO: 1) FLY WITH ITS HANDLER IN THE CABIN OF AN AIRCRAFT WITHOUT BEING CHARGED A PET FEE. 2) QUALIFY FOR NO PET HOUSING WITHOUT BEING CHARGED A PET FEE.

Emotional Support Animal

Presented to Handler

JANE SMITH

Animal Name

Dawgy Dog

Registration Number

06302016

In accordance with Section 504 of the Rehabilitation Act of 1973 and the Federal Fair Housing Amendments Act of 1988: A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability related need for an assistance animal.

In accordance with the Air Carrier Access Act (49 U.S.C. 41705 and 14 C.F.R. 382) U.S. and foreign air carriers are prohibited to discriminate on the basis of a patron's mental or physical need for an assistance animal to assist with their disabilities.

www.SERVICEDOGCERTIFICATIONS.org

AND WE DON'T NEED
NO STINKIN' I.D. CARDS

Emotional Support Animal

BRUTIS

Handler: Ryan Boylan

Valid thru: July 31, 2022

Registration #55543

Emotional Support Animal

The Fair Housing Amendments Act protects the right of people with disabilities to keep emotional support animals, even when a landlord's policy explicitly prohibits pets. The law will generally require the landlord to make an exception to its "no pet" policy so the tenant with a disability can fully use and enjoy his or her dwellings. In most housing complexes, so long as the tenant has a letter or prescription from an appropriate professional, such as a therapist or physician, he or she is entitled to a reasonable accommodation that would allow an emotional support animal in the apartment.

For questions concerning Emotional Support Animals, please contact your local United States Department of Housing and Urban Development office or visit www.hud.gov or www.dot.gov/airconsumer

RegisterMyServiceAnimal.com
(480) 823-5677


ADA REGISTRY .COM
ASSISTANCE DOGS OF AMERICA
EMOTIONAL SUPPORT DOG
NAME OF DOG
Tinkerbell
BREED OF DOG
Boxer
STATE REGISTERED
Oregon
REGISTRATION NO.
OSDR 155884
ISSUE DATE:
2017
PUBLIC ACCESS AND ENTRY REQUESTED


Your Dog's Photo Here
Buddy
Emotional Support Animal
Handler/Owner
Linda Smith
Oakland, CA 94601
415-555-3456


U.S. SUPPORT DOG
I.D. CARD
Upload Dog Image
NAME OF OWNER
Enter Text_1 here
BREED OF DOG
Enter Text_2 here
STATE REGISTERED
Enter Text_3 here
ADA
TITLE II
2016
PUBLIC ACCESS
AND ENTRY
IS REQUIRED
BY U.S. LAW
INTERNAL CODE: Enter Your OSDR Here

EMOTIONAL SUPPORT DOG

STARTER KIT

EACH STARTER KIT INCLUDES:

1. **EMOTIONAL SUPPORT DOG BANDANA**
2. **EMOTIONAL SUPPORT I.D. CARD**
3. **OFFICIAL EMOTIONAL SUPPORT I.D. DOG TAG**


Emotional Support Dog
DOG'S NAME: Buddy
REGISTRATION NO. TS4165614
John Doe
HANDLER
USAR
ESA SUPPORT DOG
EMOTIONAL SUPPORT DOG
IDENTIFICATION
EMOTIONAL SUPPORT ANIMAL
USAR
USDR

Your favorite pet will qualify!

Emotional Support Animal

If You Plan On Flying This Holiday Season, Book Your Emotional Support Animal Now, Airlines Limit Number of ESA's Per Flight & Require Medical Recommendation Letter From Doctor!

WE DON'T NEED NO STINKIN' VESTS, CERTIFICATES OR I.D. CARDS.

SO WHAT DO WE NEED?
WE NEED TO KNOW TWO THINGS:

(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?

AND

(2) Does the person making the request have a disability-related need for an emotional animal? In other words, does the animal … provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

(FHEO Notice: FHEO-2013-01; Issued: April 25, 2013)

If the answer to either question (1) or (2) is "no," then the FHAA does not require a modification to a provider's "no pets" policy, and the reasonable accommodation request may be denied.

No “disability” – no animal.

“Disability” but no “disability-related need” – no animal.

If the answers to both questions (1) and (2) are "yes," the FHAA requires the housing provider to modify or provide an exception to a "no pets" rule or policy, and the reasonable accommodation request must be approved.

See HUD FHEO Notice-2013-01
https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF

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

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

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

1. **Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations[1] for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.

2. **Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA[2].

[1] Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

[2] Title II of the ADA applies to public entities, including public entities that provide housing, e.g., public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

24 C.F.R. § 100.201(a)(2) ("Disability"):
Physical or mental impairment includes:

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental 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.

And must "substantially limit one or more major life activities"

OTHER GROUNDS FOR DENIAL:
REQUEST MAY ALSO BE DENIED IF:

Reasonable accommodations generally:
If it would impose an “undue financial and administrative burden” or would fundamentally alter the nature of the housing provider's services (general rule for all “reasonable accommodations”)

Animals specifically:

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

If 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

MUST BE BASED ON “INDIVIDUALIZED ASSESSMENT”:

Breed, size, and weight limitations may not be applied to emotional support 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 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.”

WHAT CAN YOU ASK? WHAT CAN'T YOU ASK?

GENERALLY:
Cannot deny a reasonable accommodation request because you may be uncertain whether or not the person seeking the accommodation has a disability or a disability related need for an ESA.

BUT:
Housing providers may ask individuals who have **disabilities that are not readily apparent** or known to the provider to submit reliable documentation of a disability and their disability-related need for an ESA.

IN MOST CASES, MENTAL/EMOTIONAL DISABILITY IS "NOT READILY APPARENT"

SO:

CAN ASK for documentation from "a physician, psychiatrist, social worker, or other mental health professional" that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability.

> --documentation is 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

QUESTIONS:

HUD POSITION STATES: You may not ask an applicant to provide access to **medical records** or to provide **detailed or extensive information** or documentation of a person's physical or mental impairments.

HUD POSITION STATES: The "documentation" can be provided by a "physician, psychiatrist, social worker, or other mental health professional".

SO:
Can you ask about the health care professional's credentials?

Some caselaw says yes; but you'd better have some basis for doing so.
It depends!

What if the "prescription" is from an internet provider?

Not an obvious denial; but can and probably should be explored.
It depends!

What if the "prescriber" is someone other than a "mental health care professional", i.e., a primary care physician? A "counselor"?

It depends!

Can you charge a “pet deposit”?

No – an ESA is not a “pet”. But may charge for property damage after the fact. And an ESA is not a license to disregard every other rule (e.g., nuisance, offensive conduct); see, e.g., the pooper scooper case!

Can tenants have emotional support animals?

Yes. FHAA applies to owners, tenants, family members, and others “associated with” them.

Can “guests” bring emotional support animals to the property?

Yes. Any person “associated with” the owner or tenant.

BUT: Each of them must also qualify for emotional support animal, i.e.:

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?

AND

(2) Does the person making the request have a disability-related need for an emotional animal? In other words, does the animal work, provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

How to deal with “guests”?

-- require registration of guests AND ESA paperwork
-- will need a formal rule adopted to require guests to comply
-- Note: downside: publication tends to encourage overly creative requests

THREE POLICIES TO CONSIDER:

1. Consult with legal counsel on whether to adopt a formal rule:
   Requests and supporting documentation for reasonable accommodation for owners (tenants and guests) must be filed in writing with Board.

2. Very important to respond with dated acknowledgment reciting date request was received
   -- unreasonable delay in responding can be deemed to be a denial!

3. Establish confidential file in "official records" for any "medical records" per 718.111(12)
   -- "prescription letters", not necessarily formal medical records
   -- separate from official records indicating approval or denial of request

From this point on: Consult with legal counsel – every case can be different.

REMEDIES:

What if the owner ignores the board's denial of the request?

Arbitration – assn can file a petition for removal of the pet; at best, arbitrator will strike any defense raised under Fair Housing unless owner files a HUD complaint within X days

–so it's like an invitation to the owner to file a HUD Complaint

HUD Complaints – owner gets a free ride; files the complaint, HUD refers it to FCHR, and they take over for the owner, with goal of getting a "conciliation agreement";

– assn's liability insurance may or may not provide coverage for defense

What if board denies request on grounds that owner is not actually "disabled" or that "health care professional" lacks proper credentials?

– if the owner wants his pet, sorry, I mean ESA, badly enough, he can simply shop around for other local doctors who will furnish new documentation

Court injunction:

File in state court; owner may transfer to federal court, Middle District of Florida

KIROU v. OCEANSIDE PLAZA CONDOMINIUM ASSOCIATION, INC., 425 So. 2d 650 (Fla. 3rd DCA 1983)

“The monumental action which raises the issue began when the condominium association filed a complaint against one of its unit owners, the appellant Kirou, and his tenants, the Gewirtzes, seeking to cancel his "Pet Agreement" and remove the offending animals on the ground that the Gewirtzes' dogs had disgraced themselves in and on the common elements.

It is clear to us that only Kirou was entitled to recover under the attorneys' fees provision in question. The "proceeding" below was one in which the association sought to get the dogs out, and Kirou tried to keep them in. When the dust--or whatever--had cleared, they were still there. Thus, notwithstanding the intermediate battle, or rather skirmish, over the counterclaim, which had no effect on the ultimate result, Kirou plainly won, and the association plainly lost the war. It was therefore not the or even a "prevailing party" in the proceeding and thus should not have been awarded fees.

FN3: We are not uninfluenced by the hope that this result, as well as our own additional award of [attorney’s fees] against the association for appellate fees, will discourage the maintenance of such actions – of which "trivial" is a hyperbolic description--in courts already overburdened by matters which, unlike this, justify their attention.”

“The dog always wins.”

So where does that leave you ...?


ROCK
HARD PLACE

Some final random thoughts ....

Many mental health professionals still say there is no concrete scientific evidence that emotional support animals ameliorate mental or emotional problems. But ...

One of the most well-intentioned but most-abused law on the books ...

The people who have a genuine, authentic need for emotional support animals are also among the ones who truly pay the price for the abuse of the law by others.

So on one hand, you got these guys …


DISTINCT EDGE
marlboro
allure
GLOBE
GO NUTS WITH A DELICIOUS SNACK
Orbit
Extra

And on the other hand ...


I DON'T KNOW
MAN, I JUST...
WHAT IF I NEVER FIND
OUT WHO'S A GOOD BOY


LASSIE!
GET HELP!!
Shanahan

THANK YOU!

AND REMEMBER ....


IT'S GONNA BE OKAY