

Changes to Florida Statutes that Effect Civil Rights and Fair Housing in Florida

By: Matthew Dietz

During the 2020 legislative session, there has been significant changes in statutes that prohibit discrimination in the State of Florida. These changes effect the way that civil rights claims are processed by the administrative agency that investigates such claims, the rights of claimants for they day in court, and it also changes how housing providers must ensure that their associations or properties comply with 55+ housing requirements, restrictive covenants, and how they evaluate accommodations for service animals.

In Florida, the [Florida Commission on Human Relations](#) (FCHR) is responsible for investigating and resolving discrimination complaints in the areas of employment, housing, and certain public accommodations, as well as investigating state employee whistle-blower complaints of retaliation.

Florida Civil Rights Act

[The Florida Civil Rights Act](#) (FCRA) protects persons from discrimination based on race, color, religion, sex, pregnancy, national origin, age, disability, and marital status.

1. While a complaint needs to be filed with the FCHR within 365 days from the date that the claim accrued, the deadline for filing a case after a determination is made is now one year after a determination of cause is made.
2. If a determination of no reasonable cause is made, then the aggrieved party continues to have 35 days to file an administrative complaint.

Florida Fair Housing Act

Florida Fair Housing Act, which protects citizens against discrimination in housing practices on the same basis as federal law - race, color, national origin, sex, disability, familial status, or religion. The changes this year are as follows:

1. Florida finally changed the statute to ensure that filing an administrative complaint is not an administrative precondition to filing a claim under the state law. The failure to explicitly make this change caused Florida law not to be certified as substantially equivalent to federal law, thereby threatening hundreds of thousands of dollars of funding for investigations per year.
2. For facilities and communities designed for the housing of elderly, the legislature removed the requirement that they must register with the FCHR and renew the registration every 2 years and removes associated fees and fines. There was no similar provision in federal law.
3. Changes the term "Handicapped" to "Disability"

Property Rights

Discriminatory restrictions are now “unlawful, are unenforceable, and declared null and void.” These restrictions are defined as a provision in a title transaction recorded in Florida which restricts the ownership, occupancy, or use of any real property on a protected status including race, color, national origin, religion, gender, or physical disability – or any other characteristic deemed protected against discrimination under the 14th Amendment. While this provision does not explicitly state the LGBTQ persons are protected, the general language seems to cover it.

Emotional Support Animals

The new Florida law essentially codifies the federal requirements for emotional support animals under the Fair Housing Act, and prohibits a landlord, to the extent required by federal law, rule, or regulation, to deny housing to a person with a disability or a disability-related need who has an animal that is required as support. However, it adds a provision that creates a criminal penalty for a person who falsifies written documentation or knowingly or willfully misrepresents the use of an emotional support animal.

The statute prohibits discrimination against persons with disabilities who use emotional support animals and defines emotional support animal as an animal that does not require training to do specific work or perform special tasks for a person with a disability but, by virtue of its presence, provides support to alleviate one or more identified symptoms or effects of a person’s disability. The other provisions are as follows:

- 1) A housing provider may not require extra compensation for such animal
- 2) A housing provider may not deny a reasonable accommodation request for an emotional support animal if such animal poses a direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others, which threat cannot be reduced or eliminated by another reasonable accommodation. If the animal causes any damage to person or property, the owner is responsible for such damage.
- 3) A housing provider can ask for “reliable information” from a licensed or certified health care practitioner for information that supports the disability of the person asking for the ESA. However, the health care provider must have provided in-person care to that person on at least one occasion.
- 4) “Reliable information” does NOT mean that a housing provider can request information that discloses the diagnosis or severity of a person’s disability or any medical records relating to the disability!
- 5) If a person requests to keep more than one emotional support animal, request information regarding the specific need for each animal.

- 6) A housing provider may require proof of compliance with state and local requirements for licensing and vaccinating each emotional support animal.
- 7) A housing provider may develop forms or procedures to facilitate these requests, but the request cannot be denied because of the failure to utilize any such procedures.

The main purpose of this law was to clarify the existing obligations of housing providers and rights of persons with disabilities. In addition, it was to dissuade persons from passing their pets off as emotional support animals without a documented need.

To accomplish dissuading those who attempt to pass off their dogs as Emotional Support Animals, the law does not find "esa registrations" "persuasive proof of the animal's status:

An emotional support animal registration of any kind, including, but not limited to, an identification card, patch, certificate, or similar registration obtained from the Internet is not, by itself, sufficient information to reliably establish that a person has a disability or a disability-related need for an emotional support animal.

It also adds a criminal penalty, as follows:

817.265 False or fraudulent proof of need for an emotional support animal.—A person who falsifies information or written documentation, or knowingly provides fraudulent information or written documentation, for an emotional support animal under s.760.27, or otherwise knowingly and willfully misrepresents himself or herself, through his or her conduct or through a verbal or written notice, as having a disability or disability related need for an emotional support animal or being otherwise qualified to use an emotional support animal, commits a misdemeanor of the second degree, punishable as provided in s.775.082 or s. 775.083. In addition, within 6 months after a conviction under this section, a person must perform 30 hours of community service for an organization that serves persons with disabilities or for another entity or organization that the court determines is appropriate.

The aspect that I would like to see is how this applies to health care professionals or other purveyors of emotional support animal licenses or certificates.

While this law provides adequate guidance, I would still recommend that housing providers use the guidance that was issued by the U.S. Department of Housing and Urban Development on January 20th - [Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act](#). To a great extent, the guidance adopts existing case law with regards to assistance animals. However unlike the federal guidance, the state law did not have any

exemptions to unique animals – (see my article last month - [What to do with your Emotional Support Unicorn? – HUD's New Guidance on Assistance Animals](#))