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To: House Judiciary Committee
From: Patrick Vogelsberg, VP of Governmental Affairs
Date: February 11, 2019

Re: Testimony on HB 2152

Honorable Chairman Patton and members of the committee:

On behalf of the Kansas Association of REALTORS® (KAR), thank you for the opportunity to appear before you today to encourage the committee to pass legislation that will provide the necessary guidance for those seeking reasonable accommodation for their animals, while deterring fraudulent behavior.

KAR represents nearly 10,000 members involved in residential, commercial and agricultural real estate and has advocated on behalf of the state's property owners for over 95 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

Prior to the 2019 legislative session, KAR worked with the Kansas Manufactured Housing Association (KAMA) and The Associated Landlords of Kansas on legislation regarding emotional support animals. Our goal is to give clear guidance to individuals making a request for accommodation and to a housing provider as to what substantiating documentation could be provided, while also providing a deterrent to fraudulent behavior.

Current law

Both Federal and State law speak to the allowance of service animals in housing. Kansas has what is cited to in statute as the "Kansas white cane law." K.S.A. 39-1101 et. seq. It was originally passed in 1969 and had amendments to it in 1982 and 2003. The law is limited to "assistance dog[s]" which is defined as any guide dog, hearing assistance dog, or service dog. There is also defined a "professional therapy dog." The main requirement for each of these is that the dog is specially selected and trained.

Those needing such dogs, have a right to be accompanied by the dog on all common carriers, places of public accommodation, and anywhere where the general public is invited. Further, those with a disability, have the right to have the dog accompany them in the purchase and use of residential housing without being required to pay an extra charge. However, the individual would be liable for any damage done to the premises or facilities by such dog.

For now, the Kansas statutory right to be accompanied by an animal for those with a disability is limited to the aforementioned specially-trained, dogs. Kansas has not expanded these rights into other types of non-trained or non-dog “support pets” in statute.

Federal Law, through the Fair Housing Act (FHA), is more expansive and extends to “emotional support animals,” and is not limited to just dogs. Under the FHA, a reasonable request for accommodation to a housing provider for a service animal must meet the following criteria:

- (1) The person making the request must have a disability, which is a physical or mental impairment that substantially limits one or more of major life activities; and
- (2) The person has a disability-related need for the assistance animal.

A housing provider can ask for documentation from a reliable source (physician, social worker, mental health provider) if the disability is not apparent or if the need for an animal is not apparent to be disability-related. The substantiation is not required for readily apparent disabilities, or extend to demands of medical records as proof.

A housing provider must make an exception to pet policies, unless the housing provider can show the animal presents a risk of harm to others or would create an undue financial burden. The burden is on the housing provider denying the accommodation. In other words, the presumption is always for accommodation.

The Issue

The issue is not with those who genuinely rely on service animals to assist them in daily living, but rather those that falsely claim their pet is an emotional support animal (or “assistance animal”) so that a landlord is required to allow the pet in the dwelling and common areas of the rental premises. Falsifying the need for a service animal is often done in a way to get around landlord no-pet policies, size and breed restrictions, or pet deposits.

This puts a housing provider in a difficult position as they have duties and obligations to other tenants. Furthermore, waiver of a pet prohibition could interfere with liability insurance policies. Most important, misrepresentation of pets as emotional support or assistance animals unnecessarily casts doubt on those that have legitimate need for an emotional support or assistance animal.

KAMA Draft Legislation

KAMA has provided a proposed draft of legislation called the, “Kansas Assistance and Service Animal Integrity Act” and KAR supports the draft’s approach to this issue.

In summary, the draft would require individuals seeking an exception to a landlord’s policy on animals because of disability to provide written evidence to the landlord regarding the disability. This written documentation would need to come from a health care provider that has met with their patient in person. Furthermore, it would impose penalties for someone who misrepresents that they, or someone else, is entitled to an assistance animal. In addition, misrepresentation would be grounds for terminating the lease agreement under the Kansas Landlord Tenant Act.

Conclusion

In conclusion, KAR ask that the committee take action this year to pass legislation that would provide clarity and integrity to request for accommodation in housing in regards to assistance animals.

Thank you for your consideration of our testimony.

Respectfully submitted,

A handwritten signature in black ink that reads "Patrick Vogelsberg". The signature is written in a cursive style with a large, prominent initial "P".

Patrick Vogelsberg, JD
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Kansas Association of REALTORS®