

## **A New Tenant Cottage Industry – “Scamming for Dollars”** by Jerome J. Ghigliotti, Jr., APC

There is a new tenant cottage industry in California, and especially in rent control jurisdictions, where more tenants know their “civil rights”. Now applicants and tenants are suing landlords under the guise of the Americans with Disabilities Act (ADA), and the California Unruh Act. The ADA is good law that has assisted many disabled persons maintain independence and dignity, and to continue to contribute to society.

Just in case you have not read my previous writings - every right is abused by some. The ADA is extremely long and complicated and the Unruh Act parallels the ADA in that both protect the disabled from prejudicial discrimination. California has also adopted “service animal” legislation. (CC sec 54.1). The service animal legislation provides that anyone who is disabled can have a “service animal” to assist them. The disabled can obtain a permit which allows their “service animals” to be exempt from all restrictions otherwise imposed on pets; however, there is no requirement under law to obtain the permit. For instance, a “service animal” is permitted to accompany its owner into a restaurant, whereas California law otherwise prohibits animals from being in a restaurant for sanitary reasons.

### **Service Animal**

The “service animal” is an extension of the prior concept of a Seeing Eye Dog™. Seeing Eye Dogs™ assist the blind and vision impaired in navigating a world in which sight helps others to avoid danger. There is also a hearing dog assistance program. These are long established and very well regulated, and provide canine assistants of a very high quality. These are task oriented and trained dogs. The Unruh Act applies specifically to task dogs, but apparently not to other animals, and not specifically to non-task animals.

There are four significant limitations as to use of “service animals”:

1. A “service animal” which endangers the health or safety of others,
2. A “service animal” which interferes with a business (a dog barking in a movie theatre),
3. The disability must qualify under the ADA/Unruh Act, and
4. It appears that the “service animal” must be “trained” to assist the disabled individual in dealing with that person’s disability.

### **Non-Task Service Animals**

Non-task “service animals” are intended to make persons with emotional problems feel better, but the ADA is very vaguely written on this. For landlords with a “no pets” policy or lease, “service animals” are exempt from that restriction. The ADA provides that landlords have a legal obligation to make “reasonable” accommodations to assist the disabled. ***“Service animal” ownership has been abused to the extent that is now a form of organized crime.*** The ADA provides protection for persons with a disability that limits a person’s major lifestyle functions, and the Unruh Act is comparable. (Government Code sec 12926).

The current cottage industry is for persons without any obvious disability who will answer advertisements for apartments for rent. They prey upon landlords who are lax in checking applicants, and prospective tenants. Often, a credit check will reveal that these applicants have had prior evictions. A check of the county docket (often online) may reveal that these applicants

have filed many prior lawsuits. Some may have criminal convictions. **Never** accept a credit check from an applicant. An applicant who provides his own credit check could have white-washed out all of the derogatory information. A landlord is entitled to receive a payment not to exceed \$41.72 from each adult applicant, (yes, two separate payments for a married couple,) in order to obtain an independent credit check.

The tenant will complete an application and submit it to the landlord. Where the application asks if there are any “pets”, the applicant will answer “no” and after the rental has been offered to the applicant and, often, after the lease or rental agreement has been signed, the applicant will then tell the landlord that he has a “service animal”. Of course, this is bait. The landlord will, in every instance, reply, “But you told me that you had no pets.” The applicant/tenant will say that he did not tell you that he had a “service animal” because he was afraid that you would reject him if he told you. Or the applicant will tell you that “service animals” are not pets. Under the law, “service animals” are not pets. It is not a lie to answer “no” to pets, when the applicant/tenant has a “service animal”. That is the hook sinking into the landlord’s mouth. But the landlord will believe that the applicant/tenant lied and no sane landlord would rent to an applicant who lies on their application. If the landlord then says that the applicant/tenant lied, the landlord has technically violated the ADA; the hook is firmly imbedded. Now you have a lawsuit.

In fact, a genuinely disabled person must make a request for reasonable accommodation to have a “service animal” in a no pets apartment. Unfortunately, the request for accommodation does not have to be in writing. These applicants can and will lie that they made that request.

Accommodation requests can be denied if they are “unreasonable”, one of those legal words which can be twisted any way that a person so desires. There have been limited instances in which an accommodation request can be denied. If an allegedly disabled person requests to have a pit bull as a reasonable accommodation, the landlord can reject that request if that pit bull would be a danger to other tenants, as all pit bulls are. Or, if an allegedly disabled person wants to smoke marijuana and that would injure another tenant with asthma, then that might be a reasonable denial of accommodation.

The applicant/tenant will then tell the landlord that if the landlord does not want the applicant/tenant to live there, then he will find another place to live. If the landlord then says “okay” to this, he has just flushed \$20,000 to \$50,000 of his own money down the toilet.

The applicant/tenant will then hire a contingency tenant lawyer and will sue the landlord for illegal ADA/Unruh discrimination. ***It is a quirk of the ADA that it is illegal to ask an allegedly disabled person what his disability is.*** A landlord can ask for some proof of disability and this is usually provided with a vague doctor’s note. Someone once asked me how to tell if an applicant is disabled. I answered that every tenant in San Francisco, all 600,000 of them, thinks and claims that he is disabled. Many medical doctors in San Francisco and other metropolitan areas depend upon patient word-of-mouth, or are just soft hearted. If asked to write a “disability” note, many will do so without analysis of the ADA definition for disability, and often without even an examination – this gets them more referrals.

From that moment forward, a landlord’s bank account is in the hands of their landlord insurance policy company. Many insurance companies do not provide ADA violation protection, because such is usually determined to be an intentional act, which is uninsurable. Some of the better landlord insurance companies will provide a defense, but will require the landlord to personally pay all settlement or jury award monies. Most often, even after a lawsuit has been filed, it is never learned whether the applicant/tenant is actually disabled and often as well, it is never

determined whether the applicant/tenant actually owns a registered “service animal”. Most insurance companies do not want to depose a writing doctor as to the training and disability qualifications. They should do so but many insurance company lawyers are either afraid or unqualified to depose a doctor.

A professional tenant can play this scam three, four or five times each year and earn \$100,000 per year without ever lifting a finger or appearing in a court room. The applicant/tenant does not even have to move into your rental unit - they do not want to do so as they make their money from applications, not from tenancies.

How can a landlord protect himself from a professional tenant?

- First, do a very thorough credit and background check.
- Obtain landlord information for the past ten years and actually speak to every past landlord. Any blank time period recommends a rejection. Mommy and Daddy are NOT landlord references.
- Never ask an applicant/tenant about disability or ownership of a “service animal”. That is against the law.
- Check with your local animal control agency at the applicant’s prior residence. If no “service animal” is listed, and the applicant/tenant claims one, ask for proof of registration. However, registration is not strictly required, only on the word of the applicant.

The best protection against “service animal” lawsuits is - on the first instance that an applicant or tenant mentions “service animal”, politely smile, say “Thank you”, hang up or walk away and call a landlord lawyer.

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