

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Amendments to Chapter 12-46 Subchapters 1 and 20,
Hawaii Administrative Rules
January 25, 2013

SUMMARY

1. §12-46-7 is amended.
2. §12-46-11 is amended.
3. §12-46-20 is amended.
4. §12-46-302 is amended.
5. §12-46-305 is amended.
6. §12-46-306 is amended.
7. §12-46-311 is amended.
8. §12-46-313 is amended.
9. §12-46-318 is amended.

Amendments to Chapter 12-46,
Hawaii Administrative Rules

1. Section 12-46-7, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-7 **Service of complaint.** (a) Within ten days after a complaint is filed with the commission, or within ten days after the commission receives a complaint on deferral from the EEOC or the United States Department of Housing and Urban Development, the commission's executive director shall serve a copy of the complaint on the respondent by certified mail, return receipt requested, or by personal delivery, except when it is determined by the executive director that providing a copy of the complaint would impede the law enforcement functions of the commission.

(b) Where a copy of the complaint is not provided, the respondent shall be served with a notice of the complaint, including the date, place, and general description of the alleged unlawful discriminatory practice, within ten days after filing of the complaint.

(c) Providing the respondent with a copy of the complaint shall be deemed to impede the law enforcement functions of the commission where:

- (1) The complaint names more than one respondent, unless the respondents are charged jointly; e.g., an employer and a union are charged with having signed a collective bargaining agreement which is discriminatory; or
- (2) The complaint names a person or persons whom the commission believes may suffer retaliation or may be construed as being confidential informers or potential confidential informers;

(d) When a complaint is written and filed in a language other than English the commission shall provide for an English translation of the complaint

which shall be served along with any copy of the original complaint filed with the commission." [Eff 12/31/90; am] (Auth: HRS §368-3) (Imp: HRS §368-11).

2. Section 12-46-11, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-11 Dismissal of complaint. (a) The executive director shall dismiss the complaint:

- (1) If it is determined that the commission does not have jurisdiction over the complaint;
- (2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful discriminatory practice has been committed;
- (3) If either the complainant or respondent cannot be located; provided that reasonable efforts have been made to locate the complainant or respondent, or the complainant has not responded within thirty days to a notice sent by the commission to the complainant's last known address;
- (4) If the complainant has failed or is unable to cooperate fully in the investigation or conciliation of a complaint by:
 - (A) Failing or refusing to provide the investigating examiner with requested information;
 - (B) Failing or refusing to appear or to be available for interview or conferences as an investigating examiner deems necessary; or
 - (C) Otherwise refusing or failing to cooperate, or not being able to provide information which a person would reasonably be expected to have;to the extent that the commission's executive director or investigating examiner is unable to resolve the complaint; provided that after due notice of the commission's

- executive director's intent to dismiss the complaint, the complainant has had thirty days in which to respond;
- (5) If the executive director determines that there are inadequate remedies because:
- (A) The respondent to the complaint has filed a petition for relief under Chapter VII of the Bankruptcy Code, Title 11 United States Code, and the executive director determines that there are insufficient assets available to provide relief to the complainant and other remedies are inappropriate; or
 - (B) There is no significant monetary, employment, accommodation, service, housing, declaratory, or injunctive relief available to the complainant;
- (6) If the complaint has been investigated by an appropriate local, state, or federal enforcement agency, such as the EEOC, [~~Equal Employment Opportunity Commission,~~ Department of Housing and Urban Development, Office for Civil Rights, or Office of Federal Contract Compliance Programs, and a final determination regarding the complaint has been made by the agency;
- (7) If it is determined at any time that, based upon the executive director's discretion, dismissal is justified for administrative reasons, such as but not limited to:
- (A) A finding of reasonable cause is no longer appropriate because of a material change in the allegations of the complainant or respondent;
 - (B) A finding of reasonable cause is no longer appropriate because of a material change in the testimony of a key witness for the complainant or respondent; [~~or~~]
 - (C) A finding of reasonable cause is no longer appropriate because of a change

in law or the discovery of new and material evidence; [øx]

(D) A civil action alleging similar facts has been filed pursuant to section 515-9(b), HRS; or

- (8) If the complaint or relief sought is covered by a court order or consent decree, or the respondent action complained of is required or authorized by a court order or consent decree.

(b) The executive director may dismiss a complaint if the respondent has made a predetermination settlement offer as described in section 12-46-13, which is in writing and specific in its terms, and the complainant refuses to accept the offer; provided that the offer, as determined by the commission's executive director, would afford a just resolution for the harm alleged by the complainant and the complainant fails to accept the offer within thirty days after actual notice of the offer.

(c) In the event of any dismissal of a complaint:

- (1) The complainant shall be notified by certified mail, return receipt requested, of:
- (A) The reason or reasons for dismissal;
 - (B) The right to sue as provided by section 368-12 or 515-9, HRS; and
 - (C) The right to request the commission to reconsider the dismissal.
- (2) The respondent and the commission shall be notified in writing of the dismissal and the reasons therefor.

(d) The dismissal of a complaint may be reconsidered on the executive director's own initiative at any time or upon the complainant's written request filed within thirty days after the date of the receipt of the notice of disposition. Written notice of the reconsideration shall be provided by the executive director to the parties."

[Eff 12/31/90; am 5/1/92; am 11/4/93; am 5/3/99;

am] (Auth: HRS §368-3) (Imp: HRS §§368-11, 368-12, 368-13, 515-9)

3. Section 12-46-20, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-20 Notice of right to sue. (a) A notice of right to sue shall authorize:

- (1) A complainant alleging violations of chapters 368, 378, or 489, HRS, to bring a civil suit pursuant to section 368-12, HRS, within ninety days after receipt of the notice;
 - (2) A complainant alleging violations of chapter 515, HRS, issued such notice before a finding of reasonable cause pursuant to section 515-9(2), HRS, to bring a civil suit within ninety days of receipt of the notice or one year after the filing of the complaint, whichever is later; or
 - (3) The executive director to file a civil suit within ninety days of the receipt of the notice of right to sue by a party filing a timely notice of election to file civil action under subsection (b)(3) or one year after the filing of the complaint, whichever is later.
- (b) A request, in writing, may be made to the executive director to issue a notice of right to sue:
- (1) At any time after the filing of a complaint with the commission, and no later than three days after the conclusion of the scheduling conference provided for in section 12-46-19, by a complainant alleging violations of chapters 368, 378, or 489, HRS;
 - (2) At any time after the filing of a complaint with the commission but before a finding of reasonable cause under section 515-9(2), HRS, by a complainant alleging violations of chapter 515, HRS; or

- (3) Within twenty days after receipt of the notice of election to file a civil action under section 515-9(3), HRS, by any party to a complaint alleging violations of chapter 515, HRS.

(c) The commission's executive director shall issue a notice of right to sue provided that the commission has not:

- (1) Previously issued a notice;
 - (2) Entered into a conciliation agreement to which the complainant is a party; or
 - (3) Filed a civil action.
- (d) The commission's executive director shall issue a notice of right to sue:

- (1) Upon dismissal of the complaint pursuant to section 12-46-11; ~~[or]~~
- (2) Where the commission has entered into a conciliation agreement to which the complainant is not a party pursuant to section 12-46-15(d) ~~[-]~~ i;
- (3) Upon timely receipt of a notice of election to file a civil action under subsection (b) (3); or
- (4) If a civil action alleging similar facts has been filed pursuant to section 515-9(b), HRS. [Eff 12/31/90; am 11/4/93; am _____] (Auth: HRS §368-3) (Imp: HRS §§368-12, 515-9)

4. Section 12-46-302, Hawaii Administrative Rules, is amended as follows:

"§12-46-302 Definitions. As used in this subchapter, unless the context otherwise requires:

"Accessible" means a housing accommodation constructed in conformity with the appropriate requirements of ANSI A117.1-1986 or the Fair Housing Accessibility Guidelines issued by the Department of Housing and Urban Development.

"Age" means over the age of majority or emancipated minors.

"Ancestry" means national origin and includes reasons related to ancestry, such as:

- (1) Marriage to or association with persons of an ancestral group;
- (2) Membership in or association with an organization identified with or seeking to promote the interests of an ancestral group;
- (3) Attendance or participation in schools, churches, temples, or mosques, generally used by persons of an ancestral group; and
- (4) Because an individual's name or spouse's name is associated with an ancestral group.

"ANSI A117.1-1986" means the 1986 edition of the American National Standards Institute for buildings and facilities providing accessibility and usability for disabled persons.

"Application" means written, oral, or telephone inquiries.

"Assistance animal" means an animal that is needed to perform disability-related work, services or tasks for the benefit of a person with a disability, or is needed to provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals may include, but are not limited to, service animals, therapy animals, comfort animals or emotional support animals. Assistance animals may have formal training or may be untrained, and may include species other than dogs.

~~["Blind" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty~~

~~degrees. The impairment of sight shall be certified to on forms prescribed by the department of taxation on the basis of a written report on an examination performed by a qualified ophthalmologist or qualified optometrist.]~~

"Business necessity" means a compelling and well established public purpose which also establishes that there is no reasonable alternative means of serving the same purpose with less discriminatory impact.

"Commission" means the civil rights commission.

"Common use areas" means rooms, spaces, or elements inside or outside of a housing accommodation that are made available for the use of residents or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between housing accommodations.

"Complainant" means any person, including a tester or associates of a person with a protected basis, who claims to have been injured by a discriminatory real estate transaction practice or who believes that such person will be injured by a discriminatory real estate transaction practice that is about to occur and files a complaint in accordance with chapter 368, HRS, with the commission. The law does not require such persons to expose themselves to the injury involved with the actual act of discrimination before filing a complaint.

"Controlled substance" means any drug, substance, or immediate precursor included in schedules I through V of part II of chapter 329, HRS.

"Covered multi-family housing accommodations" means buildings consisting of four or more housing accommodations, if such buildings have one or more elevators; and ground floor dwelling units in other

buildings consisting of four or more housing accommodations.

~~["Deaf" means a person whose average loss in the speech frequencies (500-2000 Hertz) in the better ear is eighty two decibels, A.S.A., or worse. The impairment of deafness shall be certified to by a qualified otolaryngologist on forms prescribed by the department of taxation.]~~

"Direct threat" means a significant risk of substantial harm to the health or safety of the person or others that cannot be mitigated or eliminated by a reasonable accommodation based upon an individualized assessment. The risk of harm should be identifiable, substantial, current, or probable and not a remote or speculative risk.

"Disability" means having a physical or mental impairment which substantially limits one or more major life activities, having a record of such impairment, or being regarded as having such an impairment, including persons who have HIV or AIDS. The term does not include current illegal use of or addiction to a controlled substance, or alcohol or drug abuse that threatens the property or safety of others.

"Discriminatory practice" means a practice designated as discriminatory under the terms of this subchapter.

"Domiciled" means residence or physical presence at a location and the intent to remain, and includes a minor child staying in a housing accommodation on a regular basis with a parent or relative because of visitation rights granted by a court, or because of written or unwritten permission from a legal parent.

"Fair Housing Accessibility Guidelines" means guidelines issued by the Department of Housing and Urban Development on March 6, 1991 to provide

technical guidance on designing housing accommodations as required by the Fair Housing Amendments Act of 1988.

"Familial status" means the presence of children under eighteen years old in a family, including, but not limited to, a person having custody and domiciled with a minor child or children; a person domiciled with a minor child or children who has written or unwritten permission from the legal parent, such as a hanai relationship; a person who is pregnant; or any person who is in the process of securing legal custody of a minor child or children.

~~["Guide dog" means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person.]~~

"Hanai relationship" includes a child who is taken permanently to reside, be educated, and reared by someone other than the natural parents, traditionally a grandparent or other relative, with the written or unwritten permission of the natural parents.

"Housing accommodation" means any improved or unimproved real property, or part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of one or more individuals; any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families; any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof as the home or residence of one or more individuals; including, but not limited to, houses, apartments, town houses, mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties.

"Legitimate non-discriminatory reason" means a bona fide and compelling justification for a practice, policy, or action established by objective proof or evidence, which standing alone would have resulted in the same practice, policy, or action.

"Limitation" or **"limit"** includes actions which exclude individuals or persons or result in creating a preference for an individual or person.

"National origin" refers to ancestry and may include the national origin of an ancestor.

"Person" means an individual, corporation, firm, association, society, community, assembly, inhabitant of a district or neighborhood, person known and unknown, the public generally, legal representative, partnership, receiver, trust, trustee, trustee in bankruptcy, the State, or any governmental entity or agency, labor organization, mutual aid company, joint stock company, unincorporated organization, management company, tenant association, fair housing organization, or fiduciary.

"Protected basis" means race, sex[,](including gender identity or expression), sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or HIV (human immunodeficiency virus) infection.

"Public use areas" means interior or exterior rooms or spaces of a housing accommodation that are made available to the general public. Public use may be provided at a housing accommodation that is privately or publicly owned.

"Real estate broker or salesperson" means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property; or who negotiates or attempts to negotiate any of these activities; or who purports to be engaged

in these activities; or who negotiates or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon real property; or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these.

"Real estate transaction" means the advertising, sale, exchange, rental, lease, management, or use of real property, including, but not limited to, any actions related to real property after the advertising, sale, exchange, rental, or lease; the cancellation or termination of a sale, exchange, rental, or lease of real property; and the imposition of rules, policies, and practices affecting the terms, conditions, enjoyment, and privileges of using real property. It does not include commercial property that is advertised, sold, exchanged, rented, leased, managed, or used for the purposes of operating a business.

"Real property" means buildings, dwelling units, structures, real estate, lands, tenements, leaseholds, interest in real estate cooperatives, condominiums, mobile home parks, and hereditaments, corporeal and incorporeal, or any interest therein.

"Real property transaction" means real estate transaction as the term is used in this subchapter.

"Reasonable assurance" means actions or promises which establish that certain other actions will be taken in the future; provided that the reasonableness of an assurance shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances.

"Reasonable restriction" shall not include any restriction, prohibition, policy, practice, or rule that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction because of another person's protected basis or to

commit a discriminatory practice prohibited under this subchapter; provided that the reasonableness of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances.

"Religious institution" means any religious institution or organization, or any charitable or educational organization operated, supervised, or controlled by a religious institution or organization, which does not restrict membership to persons on the basis of race, color, or ancestry.

"Respondent" means any person, owner of real property, real estate broker, or salesperson, against whom a complaint or petition has been filed with the commission; the party against whom relief is sought; or any party who contests or controverts a proceeding or petition.

~~["Service animal" means any animal that is trained to provide those life activities limited by the disability of the person.]~~

~~["Signal dog" means any dog that is trained to alert a deaf person to intruders or sounds.]~~

"Steering" means the practice of directing persons who seek to enter into a real estate transaction toward or away from real property in order to deprive them of the benefits of living in a discrimination-free environment, and actions designed to discourage persons from seeking housing in a particular community, neighborhood, development, housing accommodation, or part thereof.

"Tester" means any person seeking to engage in a real estate transaction, regardless of the person's actual intent to engage in such a transaction, who has been subject to discriminatory practices in real estate transactions because of a protected basis, and tenant associations or fair housing organizations

whose members include such persons." [Eff 10/15/93;
am 5/3/99; am] (Auth: HRS §§368-3;
515-9(7)) (Imp: HRS §§515-2, 515-3, 515-8, 515-9)

5. Section 12-46-305, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-305 Discriminatory practices. It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson because of a person's protected basis:

- (1) To refuse to engage in a real estate transaction, evict, or terminate a tenancy;
- (2) To discriminate in the terms, conditions, enjoyment, or privileges of a real estate transaction, or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when, in fact, it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property, or to steer a person seeking to engage in a real estate transaction;
- ~~[(6) To print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;~~

- ~~(7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;~~
- ~~(8)]~~ (6) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation;
- ~~[(9)]~~ (7) To engage in harassment; or
- ~~[(10)]~~ (8) To institute or apply facially neutral policies or restrictions which result in a disparate adverse impact." [Eff 10/15/93; am] (Auth: HRS §§368-3; 515-9(7)) (Imp: HRS §515-3)

6. Section 12-46-306, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-306 Discrimination on the basis of disability. (a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson:

- (1) To refuse to engage in a real estate transaction or to deny equal opportunity to use and enjoy a housing accommodation with a person with a disability because the person uses ~~[the services of a guide dog, or signal dog, or service animal, provided that]~~ an assistance animal. If the disability is not readily apparent, an owner or other person engaging in a real estate transaction may

request information that verifies that the person has a disability, defined as a physical or mental impairment that substantially limits a major life activity. However, an owner or other person engaging in a real estate transaction may not request medical records or access to health care providers, and may not inquire as to the diagnosis, nature or severity of the person's disability. If the disability-related need for an assistance animal is not readily apparent, an owner or other person engaging in a real estate transaction may request verification that the assistance animal is needed to alleviate one or more symptoms of the person's disability. Verification may be provided by a letter or other communication from the person's treating health care professional, mental health professional, or social worker.

[x] Reasonable restrictions or prohibitions may be imposed upon the person with a disability regarding excessive noise or other problems caused by those animals including, but not limited to:

- (A) Observing applicable laws, including leash laws and pick-up laws;
- (B) Assuming responsibility for damage caused by the ~~[dog or]~~ animal;
- (C) Cleaning the housing unit upon vacating, by fumigation, deodorizing, professional carpet cleaning, or other appropriate methods; [x]
- (D) Cleaning the animal's waste;
- (E) Having the animal licensed with the county, if licensing is required by the county;
- (F) Having the animal vaccinated with documentation of the vaccination;
- (G) Having the animal under the control of the animal's owner or handler by use of harness, leash, tether, cage, carrier,

or other physical control in common areas. If the nature of the person's disability makes physical control impracticable, or if physical control would interfere with the assistance that the animal provides, the owner or other person engaging in a real estate transaction may require that the animal be otherwise under the control of the animal's owner or handler by voice control, signals, or other effective means; or

~~(D)~~ (H) Any other reasonable restriction that would leave the housing accommodation in the condition it was in prior to the occupancy of the tenant with a disability, except for reasonable wear and tear;

Example:

Sarah, a condominium owner with an anxiety disorder, asks for an exception to her condominium association's "no pets" rule in order to keep an emotional support rabbit in her unit. Because Sarah's disability and need for an emotional support animal are not readily apparent, the condominium association may ask Sarah to provide verification of her disability and the disability-related need for the rabbit. Sarah provides a letter from her treating psychologist stating that Sarah has an impairment that substantially limits a major life activity and that the rabbit is needed to prevent or reduce the symptoms of that impairment. The accommodation is therefore needed to afford Sarah an equal opportunity to use and enjoy her condominium and is reasonable. The association must allow the rabbit as an accommodation but may impose reasonable restrictions on its use.

- (2) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus (HIV) infection;
- (3) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation, including public and common use areas; or

Example:

Kanoa Gardens is a three hundred unit apartment complex with four hundred fifty parking spaces which are available to tenants and guests on a "first come first served" basis. Paul applies for housing in Kanoa Gardens. Paul has a mobility impairment and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of the law for the owner or manager of Kanoa Gardens to refuse to make this requested accommodation. Without a reserved space Paul may not be able to live in Kanoa Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford Paul an equal opportunity to use and enjoy a housing accommodation. The requested accommodation is reasonable because it is feasible and practical because of the number of unassigned parking spaces available.

- (4) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises, occupied or to be occupied by the person, if the proposed modifications may be necessary to afford the person with a disability full enjoyment of the premises.

Example:

A tenant with a disability asks an owner or manager for permission to install grab bars in the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the owner or manager to refuse to permit the tenant, at the tenant's own expense, from making the modifications necessary to add the grab bars.

An owner, any other person engaging in a real estate transaction, real estate broker, or salesperson may grant permission for a modification on the condition that the person with a disability give:

- (A) A reasonable description of the proposed modifications;
- (B) Reasonable assurances that the modifications will be done in a workmanlike manner and that any required building permits will be obtained; and
- (C) Reasonable assurances that the person with a disability will restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; however, restoration will not be necessary of those modifications which do not interfere with the owner's or next tenant's use and enjoyment of the premises.

Example:

An owner or manager may require the creation of an escrow fund and the payment of money into the fund to cover the costs of restoring the premises. Any portion of the fund, including interest, that is not required for the restoration of the premises will be reimbursed to the person with a disability, who paid into the fund, within a reasonable time.

Example:

If a person with a disability receives permission to put in grab bars and widen the doorway, it is not necessary to remove the blocking or narrow the doorway to restore the premises because the reinforced walls and wider doorway will not interfere with the owner's or next tenant's use and enjoyment of the premises. However, the tenant can be required to remove the grab bars and restore the wall to the condition that existed before the modification, reasonable wear and tear excepted.

(b) All covered multifamily housing accommodations, designed and constructed for first occupancy after March 13, 1991, shall:

- (1) Be designed and constructed to have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and

Example:

A real estate developer plans to construct six covered multifamily housing accommodations on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the housing accommodations, one need not be provided.

- (2) If built with an accessible building entrance, be designed and constructed in such a manner that:
- (A) Public use and common use portions of the housing accommodations, including recreation and laundry rooms, are accessible to and usable by persons with disabilities;
 - (B) All doors designed to allow passage into and within all premises are sufficiently wide to allow passage by persons who use wheelchairs;
 - (C) All premises contain an accessible route into and through the housing accommodation;
 - (D) Light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
 - (E) Reinforcements in the bathroom walls allow later installation of grab bars; and
 - (F) Kitchens and bathrooms are accessible to persons who use wheelchairs.

Example:

A developer plans to construct a one hundred unit condominium apartment

building with one elevator.
In accordance with the law,
the building has at least one
accessible route leading to
an accessible entrance. All
one hundred units are covered
multifamily housing
accommodations and they all
must be designed and
constructed so that they
comply with the accessibility
requirements of the law.

For purposes of this subsection, a multifamily housing accommodation shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if it is occupied by that date or if the last building permit or renewal thereof for the covered multifamily housing accommodation is issued by a state, county or local government agency on or before June 15, 1990. Accessibility will be determined based upon ANSI A117.1-1986 or the Fair Housing Accessibility Guidelines. The burden of establishing impracticality because of terrain or unusual site characteristics is on the owner, person engaging in a real estate transaction, or real estate broker or salesperson.

(c) An owner or other person engaging in a real estate transaction is not required to make a reasonable accommodation to a person who meets the definition of disability solely under the "record of impairment" or "regarded as" prongs of the definition of disability in section 12-46-302. [Eff 10/15/93; am 5/3/99; am] (Auth: HRS §§368-3; 515-9(7) (Imp: HRS §515-3)

7. Section 12-46-311, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-311 Other discriminatory practices. (a) An attempt to commit, directly or indirectly, a discriminatory practice is a discriminatory practice.

(b) A party to a conciliation agreement made under chapter 515, HRS, or this subchapter, who violates the terms of such agreement, has committed a discriminatory practice.

(c) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson to print, circulate, post, or mail, or cause to be published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination because of a person's protected basis.

(d) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson to offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against because of a person's protected basis in a real estate transaction or in the furnishing of facilities or services in connection therewith. [Eff 10/15/93; am]
(Auth: HRS §§368-3; 515-9(7)) (Imp: HRS §§515-16, 515-17, 515-18(b))

8. Section 12-46-313, Hawaii Administrative Rules, is amended to read as follows:

"§12-46-313 Exemptions. (a) Sections 12-46-305, -306, and -307 do not apply:

(1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two

- to control the animal so that the threat is mitigated or eliminated;
- (2) The animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation;
 - (3) The presence of the assistance animal would pose an undue financial and administrative burden to the owner or person engaging in a real estate transaction; or
 - (4) The presence of the assistance animal would fundamentally alter the nature of the operations of the owner or person engaging in a real estate transaction.

The determination of whether an assistance animal poses a direct threat and whether the animal's owner or handler has taken effective action to control the animal so that the threat is mitigated or eliminated, must be based on an individualized assessment about the specific animal in question, such as the animal's current conduct or recent history of overt acts. The determination may not be based on the animal's species or breed. Factors to be considered include: the nature, duration and severity of the risk of injury; the probability that the potential injury will actually occur; whether reasonable modifications of rules, policies, practices, procedures, or services will reduce the risk; and whether the animal's owner has taken any action that has reduced or eliminated the risk, such as obtaining specific training, medication, or equipment for the animal. Denial of the use of a particular animal does not preclude a request to use a different animal.

Example:

Michael, who lives in an apartment building that has a "no pets" policy, has a disability and requires the use of Spot, an emotional support dog. One day while Michael and Spot are riding in the elevator, Spot lunges and bites a guide dog owned by Cindy, who is blind and is in the elevator at the time. Spot therefore poses a direct threat to the health and

safety of others. If the direct threat can be mitigated, for example by having Michael muzzle and hold Spot by a short leash when Spot is in common areas, and by having Michael and Spot refrain from riding in the same elevator and being in the same common areas as Cindy and her guide dog, Michael may continue to use Spot. However, if the direct threat from Spot cannot be mitigated, or if Spot's continued presence would cause an undue financial and administrative burden, the apartment manager may deny Michael's use of Spot, though Michael may then request the use of a different emotional support animal."

[Eff 10/15/93; am] (Auth: HRS §§368-3; 515-9(7)) (Imp: HRS §§515-1, 515-2, 515-3, 515-4, 515-5, 515-6, 515-7, 515-9, 515-16, 515-17)

10. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

11. Additions to update source notes to reflect these amendments are not underscored.

12. These amendments to chapter 12-46, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on 4/23/13 and filed with the Office of the Lieutenant Governor.



Director of Labor and
Industrial Relations

APPROVED AS TO FORM:



Deputy Attorney General