

Triple Play PA Property Management and Fair Housing Required Course 2020 Cycle

Icebreaker Quiz, True or False:

1. A real estate licensee may manage property they own without having a broker's license, providing they disclose their license status.
2. A real estate salesperson may assist a broker in property management.
3. Assistance by a salesperson to a broker for management includes the ability to execute a lease on behalf of the owner of the property.
4. Rental referral agents have a limited license, and do not need to take any specific education to obtain that license.
5. A rental listing referral office does not require supervision.
6. An oral agreement to manage property is sufficient.
7. RELRA has no specific requirements for the form of reporting management activities, by a broker, to the owner.
8. Rental listing referral agents are not required to verify the availability of rental units on the date they provide the list, and collect a fee from the prospective tenant.
9. A Consumer Notice must be provided to prospective tenants, unless the agent is representing the landlord.
10. When a property is sold, a security deposit can be transferred, providing written notice is provided to the tenant.
11. A landlord may collect first and last month's rent, as well as a security deposit.

What are the major issues with Property Management?

- People performing property management without the appropriate license
- Failure to provide records to property owners
- Failure to account for monies they take in
- Most Fair Housing complaints come from the property management side of the business

True Cases:

Case #1, "I Was Getting Around to That" (getting a license)

- ✓ Person began managing real estate in 2007
- ✓ Did not acquire a broker's license until 2009
- ✓ Formed more than one company to manage real estate
- ✓ One company was *never* licensed in the Commonwealth
- ✓ Civil Penalty \$5000
- ✓ Costs of \$997.43 for investigation
- ✓ 30 hours remedial education on the topics of real estate brokerage and office management

Case #2: "Oh, Did I Need a License to Do This?"

- ✓ Person has a real estate salesperson's license originally issued April of 2015
- ✓ Has never held a broker's license
- ✓ Between June 2014 and March 2015, respondent acted as a property manager for 19 properties
 - Signed property management agreements
 - Collected rents, paid expenses, sent owners itemized statements
 - Was paid a 'finder's fee' of 85% of the first month's rent
 - As a manager, was paid 8% of all rents
 - Deposited all funds into her personal bank account, including security deposits
- ✓ When she became licensed, she shifted her existing contracts to her broker

Her Defense:

- ✓ Didn't know a license was needed, despite research on various websites (not, apparently, the SREC website!)
- ✓ "Lifelong resident of Lancaster County, married & mother of 4, devoted to bringing up her children
- ✓ Approached by a family friend to do management
- ✓ Word of mouth brought other clients
- ✓ No one suffered any losses
- ✓ Performed flawlessly
- ✓ When she found out she needed a license, she got one

The State Said:

- ✓ Cease and desist
- ✓ Civil penalty of \$4000
- ✓ Investigation costs \$410.55
- ✓ Consent order

Case #3: "Where's the Money?"

- ✓ Licensee originally licensed in 1992
- ✓ Primarily a property management company in Greater Philadelphia Area
- ✓ Collected rents and held security deposits
- ✓ Around March 2016, Respondent's property management clients began not receiving rent payments and were unable to get Respondent to return security deposits
- ✓ Respondent commingled money, misappropriated funds
- ✓ Clients suffered significant financial losses
- ✓ Respondent went out of business April 2016
- ✓ President of company died November 2016
- ✓ Recovery Fund

And The Most Interesting Case: “I’ll Sue The SREC!”

Sally Ladd, resident of New Jersey, who created a business for herself renting out properties in the Poconos as short term rentals, ala Air BNB. She managed five properties in the Poconos from 2013-2017, holding herself out as a’ short-term vacation property manager”. In 2017, when the SREC told her she needed a license, she shut her business down—and sued the state, claiming the licensing requirements were unconstitutional. Her defense was mostly these points:

1. I’m only providing this service to a limited number of clients, therefore
2. The licensing requirements are constitutionally excessive and burden her ability to earn a living

Suit filed in Commonwealth Court in July 2017, June 2018, the court ruled and dismissed her case. Quoting from the court, in bullet points:

- ✓ We would not obviate the requirement for *any profession* merely because they have limited clients or only practice part of the year
- ✓ Accepting this argument would upend the legitimacy of the requirements for a professional license
- ✓ State-mandated licensing requirements serve to ensure competence in given fields
- ✓ No cases were cited where a Pennsylvania court found that a license requirement was unreasonable or oppressive
- ✓ Acknowledged that the burdens to her would be greater than for a typical broker engaged in a regular (not limited) business
- ✓ Noted that the PA Constitution does not require the General Assembly to establish a tiered system for every profession to account for different volumes of work performed

Where is this now? She is appealing to the Pennsylvania Supreme Court

Fair Housing and Rentals:

The following statistics are from the Pennsylvania Human Relations Commission Report for 2016-2017

Type of Discrimination	Age	Ancestry	Race	Sex	Religion	National Origin	Handicap/Disability
Total complaints, 2016-2017	11	12	51	22	4	15	119

As you can see, the greatest number of complaints are coming from handicap/disability. This leads us into the discussion of support animals.

Emotional Support Animals: Defined as a type of assistance animal recognized as a “reasonable accommodation” for a person with a disability under the Federal Fair Housing Act; also defined as “not a pet”. Only two questions, per HUD are allowed:

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?
2. Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

“NO” to either question means housing provide is *not* required to make a reasonable accommodation.

What do You think? Other FAQs. In your groups, decide on an answer to each question.

1. Does HUD list the possible disabilities?
2. Is documentation required?
3. Can the housing provider ask for access to medical records?
4. Can they ‘unreasonably delay’ the request?
5. Can limits be placed on assistance animals because of breed, e.g. pit bulls?
6. Can the same restrictions applied to pets, e.g., pet deposits be applied?
7. What is the difference between a service animal and an emotional support animal?
8. Does an emotional support animal need specialized training?
9. Does the Fair Housing Act (FHA) apply to all housing?
10. What if the breed of animal is classified by the landlord’s insurance company as “dangerous”?
11. What if the city or county has a ban on certain breeds?
12. What about messes, and damages?
13. Can a person have more than one service or emotional support animal?
14. What about animals other than cats and dogs?

Pennsylvania Legislation Act 118: The Assistance and Service Animal Integrity Act (ASAIA) This was signed by Governor Wolf on October 24, 2018. The Act was in response to complaints from landlords, property managers and homeowners associations on the lack of regulation regarding the criteria for service and assistance animals. A cursory view of the internet reveals that an individual with a few minutes and a few which ranges around \$80 can register an animal as an ‘emotional support animal’ and get a ‘doctor’s documentation’ that the animal is required.

Because of the ease of this, it has been abused by persons who do not, in fact, have any need for an emotional support animal. Many people remember the person who tried to board an airplane with an emotional support peacock. The airline denied that request!

REALTORS® should understand that Act 118 is a state law, which means that Federal Law is still in place, and could override it. Act 118 is so new we do not yet have case law about it. Here are the high points of Act 118:

- ASAIA defines an assistance animal to be an animal other than a service animal, so emotional support animals are included within the definition

- It authorizes landlords, their agents, and homeowners' associations to request documentation of both the disability and the related need (providing it is not readily apparent)
- The documentation must be 'reliable'
- There are possible criminal sanction for individuals who knowingly misrepresent that an individual has a disability
- Immunity is granted to landlords, agents for the landlord and homeowners' associations from harm to property or persons caused by animals allowed within the property, if the animal qualifies as a 'reasonable accommodation'.

Wrap up and Q & A