



NAA TOOLKIT

EMOTIONAL SUPPORT ANIMALS

**A Practical Guide to Reasonable
Accommodation Requests**



© March 2016

The purpose of this document is to provide apartment industry professionals with an overview of the issues affecting our industry with regard to reasonable accommodation requests for emotional support animals and practical guidance to help NAA members navigate this complicated issue. The toolkit is intended for informational purposes only and does not constitute, and should not be construed as, legal advice. This guide is not intended to provide a mandatory standard of care for the industry. Every business needs to evaluate, based on its own particular circumstances, the appropriate course of action to develop best practices.

Table of Contents

Introduction – Letter from NAA Emotional Support Animal Working Group Chairman Phillip J. Neuman, Esq.	6-7
Relevant Federal Guidance	
FHEO Notice, Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, U.S. Department of Housing and Urban Development (HUD)	11-17
Joint Statement of HUD and the Department of Justice (DOJ), Reasonable Accommodations under the Fair Housing Act, HUD and DOJ	18-32
Memorandum for FHEO Regional Directors, Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation, Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, ED	33
NAA Resources	
Fact Sheet, Emotional Support Animals, NAA/NMHC	37
FAQs Regarding Reasonable Accommodation Requests for Assistance Animals	38-43
Scripts for Owners to Address Assistance Animal Concerns with Residents	44-47
Sample Policies and Forms	
Introduction to Sample Policies and Forms Provided by Kirk A. Cullimore, Esq., The Law Office of Kirk A. Cullimore	51-61
Sample Reasonable Accommodation and Modification Policies	62-63
Sample Documentation Forms for Residents, Includes Instructions	64-67

March 1, 2016

Dear NAA Members:

We are pleased to share with you the “NAA Toolkit, Emotional Support Animals: A Practical Guide to Reasonable Accommodation Requests.” Multifamily property owners have seen a significant increase in reasonable accommodation requests for emotional support animals in recent years and are concerned about possible abuse. While NAA seeks legislative and regulatory solutions to address member concerns, we felt it was important to provide members with resources giving practical guidance on this emerging issue.

As background, a lack of clarity in federal regulations opens the door for abuse and imposes an unfair burden on property owners, undermining the intent of the Fair Housing Act to help those truly in need of an emotional support animal. In cases where a property owner may request documentation on the disability-related need for an emotional support animal, the regulations allow for a broad range of individuals to provide the verification. These individuals include a physician, psychiatrist, social worker or other mental health professional.

Additionally, an individual certifying the resident’s need for an emotional support animal is not required to have an actual treatment relationship with the resident. In some cases, the documentation supplied to property owners is in the form of a letter purchased online for a fee. This documentation may be obtained with little or no contact with a mental health professional, other than a brief consultation, and not as the result of an actual treatment relationship.

In light of these concerns, NAA organized a working group of members, affiliated association staff and attorneys specializing in fair housing to collaborate on resources to help members navigate this complicated issue; the resources are compiled into this toolkit, including:

- The NAA/NMHC Fact Sheet on Emotional Support Animals, which provides overall background on this issue. It informs members on what NAA is doing to address their concerns;
- Relevant federal guidance from the U.S. Department of Housing and Urban Development (HUD) and the Department of Justice;
- Answers to frequently asked questions regarding reasonable accommodation requests for assistance animals;
- Scripts that owners may use in training their leasing staffs to ensure proper communication with residents on this issue;

- An introduction to sample policies and forms provided by Kirk A. Cullimore, Esq. of the Law Office of Kirk A. Cullimore;
- Sample reasonable accommodation and modification policies; and
- Sample documentation forms for residents, including instructions.

We acknowledge that owners have different policies for reasonable accommodation requests for animals, documentation requirements and third party verification procedures. The sample forms in this toolkit are included because they were approved as part of a conciliation agreement negotiated by Kirk Cullimore with HUD by way of the Denver Regional Office. It is important to note that other regional offices have not opined on the validity of these forms.

For more information on use and implementation of these sample forms, please contact Kirk Cullimore directly at kirk@cullimore.net.

In closing, special thanks to the NAA Emotional Support Animal Working Group for their hard work in support of this project. For more information about the toolkit, please contact Nicole Upano, Manager, Government Affairs for NAA at nupano@naahq.org.

Sincerely,



Phillip J. Neuman, Esq.
Chairman, NAA Emotional Support Animal Working Group
Couzens, Lansky, Fealk, Ellis, Roeder & Lazar, P.C.

Relevant Federal Guidance



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**
Issued: April 25, 2013
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations¹ for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHA or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHA and Section 504. In situations where the ADA and the FHA/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHA/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHA, Section 504, and/or the ADA².

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

² Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

- 3. Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities³ with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals⁴ in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

³ Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

⁴ Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

⁵ For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834, 63835 (October 27, 2008).

- (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?

If the answer to question (1) **or** (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.⁶

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

⁶ A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.⁷

Section II: The ADA Definition of "Service Animal"

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."⁸ Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses⁹), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

⁷ Ibid.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

⁹ 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁰ A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.¹¹

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."¹²

¹⁰ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

¹¹ For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

¹² 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”¹³ In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”¹⁴ While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for “service animal,” the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁵

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider’s responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

The definition of “service animal” contained in ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

¹³ 75 Fed. Reg. at 56194, 56268.

¹⁴ 75 Fed. Reg. at 56166, 56240.

¹⁵ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.



John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE

*REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT*

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). Accord: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg, Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

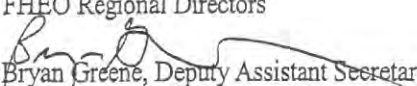


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

June 12, 2006

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MEMORANDUM FOR: FHEO Regional Directors

FROM: 
Bryan Greene, Deputy Assistant Secretary for Enforcement and
Programs, ED

SUBJECT: Insurance Policy Restrictions as a Defense for Refusals to Make a
Reasonable Accommodation

This memorandum responds to requests for guidance on how HUD investigators should examine Fair Housing Act "reasonable accommodation" cases where a housing provider cites an insurance policy restriction in denying a request from a person with a disability to reside in a dwelling with an assistance animal that is of a breed of dog that the landlord's insurance carrier considers dangerous. In the referenced cases, the housing providers stated that their insurance carriers will either refuse to cover their properties, substantially increase the cost of coverage, or adversely change the terms of their policies if these animals are allowed to occupy dwellings.

As with any request for a reasonable accommodation, the request should be evaluated on a case-by-case basis. HUD provides the following guidance to assist in that evaluation.

According to the *Joint Statement on Reasonable Accommodations*, an accommodation is unreasonable if it imposes an undue financial and administrative burden on a housing provider's operations. If a housing provider's insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider. However, the investigator must substantiate the housing provider's claim regarding the potential loss of or adverse change to the insurance coverage, by verifying such a claim with the insurance company directly and considering whether comparable insurance, without the restriction, is available in the market. If the investigator finds evidence that an insurance provider has a policy of refusing to insure any housing that has animals, without exception for assistance animals, it may refer that information to the Department of Justice for investigation to determine whether the insurance provider has violated federal civil rights laws prohibiting discrimination based upon disability.

www.hud.gov

espanol.hud.gov

NAA Resources



NATIONAL
MULTIFAMILY
HOUSING
COUNCIL



NMHC/NAA Viewpoint

NMHC and NAA strongly support the rights of persons with disabilities to make reasonable accommodation requests so they may have equal opportunity to use and enjoy a dwelling. However, a lack of clarity in the law governing emotional support animals allows for abuse and imposes an unfair burden on property owners. This undermines the intent of the Fair Housing Act to help those truly in need of an emotional support animal.

In some cases, residents supply reasonable accommodation request documentation for an emotional support animal to property owners in the form of a letter purchased online for a fee.

EMOTIONAL SUPPORT ANIMALS

Emotional support animals – also known as companion animals – are a type of assistance animal and provide emotional support to alleviate symptoms of a person's disability. Emotional support animals and service animals are both defined as assistance animals. However, service animals are different because they are typically trained to work, provide assistance or perform tasks for the benefit of a disabled person. For a disabled person who requires an emotional support animal, the simple presence of the animal provides a benefit. According to the federal Fair Housing Act, disabled persons who require an assistance animal may request a reasonable accommodation for the animal from their rental housing provider.

If a resident is eligible for the request, the property owner is required to permit the disabled person to live with and use an assistance animal in all areas where the resident is normally allowed to go. Any conditions and restrictions that housing providers apply to pets, including pet deposits or fees, may not be applied to assistance animals. Under the Act, refusal to make reasonable accommodations in rules, policies, practices or services to provide a disabled individual with equal opportunity to use and enjoy a dwelling is a prohibited form of discrimination.

Property owners have seen a significant increase in reasonable accommodation requests for emotional support animals in recent years. In cases where a property owner may request documentation on the disability-related need for an emotional support animal, federal regulations allow for a broad range of individuals to provide the verification. These individuals include a physician, psychiatrist, social worker or other mental health professional. A lack of clarity in the regulations opens the door for abuse and imposes an unfair burden on property owners, undermining the intent of the Act to help those truly in need of an emotional support animal.

Among the concerns, the individual certifying the resident's need for an emotional support animal is not required to have an actual treatment relationship with the resident. In some cases, residents supply reasonable accommodation request documentation to property owners in the form of a letter purchased online for a fee. This documentation may be provided with little or no contact with a mental health professional, other than a brief consultation, and not as the result of an actual treatment relationship.

NMHC/NAA urge HUD to revise its regulations regarding emotional support animals or take other steps to mitigate potential abuse. The goal is to help ensure that the benefit of a reasonable accommodation applies only to those who are legitimately in need.

FAQs Regarding Reasonable Accommodation Requests for Assistance Animals

This document is primarily based on HUD's April 25, 2013 Guidance, "Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs" ¹ unless otherwise noted and in addition, includes NAA staff analysis.

1. What is an Assistance Animal?

- An assistance animal is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability (commonly referred to as "a service animal"), or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability (commonly referred to as "an emotional support animal").
- An assistance animal (whether a service animal or an emotional support animal) is *not* a pet. Never refer to an assistance animal as a pet.
- An assistance animal does not need to be individually trained or certified. However, many service animals are trained to perform a specific task.

2. What are the distinctions between the types of assistance animals?

- "Assistance animal" is an umbrella term under which other types fall.
- Residents may use different terms to refer to their assistance animal. In this document, NAA focuses on the terms "service animal" and "emotional support animal" as they are discussed in HUD's guidance as assistance animals.
- Assistance animals that serve as service animals may guide individuals who are blind or have low vision, alert individuals who are deaf or hard of hearing to sounds, provide protection or rescue assistance. Service animals may be trained to pull a wheelchair, fetch items, or alert persons to impending seizures.
- Assistance animals that serve as emotional support animals may provide therapeutic support to a person with a mental illness. The simple presence of an emotional support animal provides a benefit to the disabled person.
- Residents may use other terms in addition to the above, such as "guide dog," "companion animal," "therapy animal," or "comfort animal," interchangeably as alternate names for an assistance animal. Another

¹ https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

common term is “psychiatric service animal” which may refer to a service animal that provides assistance to people with psychiatric disabilities, such as severe depression, anxiety disorders, and post-traumatic stress disorder (PTSD). Regardless of the term used by the resident, focus on whether the animal is an assistance animal as defined by HUD’s guidance and federal law, and do not refer to the animal as a pet.

- While dogs are the most common type of assistance animal, other animals can also be assistance animals.

3. What should an owner do if a resident requests a reasonable accommodation for an assistance animal?

- In addition to the information below, an owner should refer to the attached forms in the NAA member toolkit.
- According to HUD, when a housing provider receives a reasonable accommodation request, he or she must consider the following:
 - 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?
 - 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?
 - If the answer to both questions is “yes,” the law requires the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go.

4. According to the above, a resident is entitled to a reasonable accommodation for an assistance animal under the law only if the resident is disabled and has a disability-related need for the animal. Can I ask the resident why they need the animal?

You must be careful in your discussions with the resident. Do not ask for details about the resident’s disability. You should not ask the resident to give you his or her medical records or history. In some circumstances, you may ask for verification as stated below but any questions should be limited to whether there is a nexus between the resident’s disability and the disability-related need for the animal.

According to HUD, a housing provider may not ask an applicant or resident to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person’s physical or mental impairments.

5. Can an owner ask the resident to provide supporting documentation for the reasonable accommodation request?

According to HUD's guidance, housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal.

If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

A housing provider may not ask a resident or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog.

6. Can an owner require documentation from a licensed physician?

Again, HUD guidance says that an owner may ask the resident to provide documentation from a physician, psychiatrist, social worker, or "other mental health professional" only in certain situations where the resident's disability or disability-related need for the animal is not apparent. Also, such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support. A housing provider may not ask an applicant or resident to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments.

Note if you require residents to submit a third party verification form, owners *do* have the right to contact the medical professional to verify the authenticity of the document and signature, but may not ask for additional information regarding the disability.

7. Can a property owner restrict a resident's assistance animal from the leasing office, common areas or community pool?

No, the rental housing provider must permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go.²

8. What if the resident requests multiple animals?

The resident is allowed to request multiple assistance animals. An owner should consider whether the resident has a separate and distinct disability-related need for each animal.

9. Under what circumstances can an owner deny a reasonable accommodation request for a service animal?

According to HUD, the request may be denied if:

- Doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services.
- The specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or
- The specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

10. Can an owner deny a resident's request for a reasonable accommodation if the animal requested is considered an aggressive breed?

In accordance with the above, a determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.³

² Some state or local laws may prohibit animals in public areas for health and safety reasons. These laws are inconsistent with HUD's guidance on reasonable accommodation requests for assistance animals. Consult a local attorney prior to denying access of an assistance animal on community property on the basis of any such state or local law.

³ Some jurisdictions have enacted breed-specific legislation that prohibit certain aggressive breeds of animals. These laws are inconsistent with HUD's guidance on reasonable accommodation requests for assistance animals. Consult a local attorney prior to denying a request for an assistance animal on the basis of any such local law.

- 11. What if the reasonable accommodation request is for a large dog breed, such as a Great Dane or Mastiff?⁴**
The law prohibits breed, size and weight limitations; they may not be applied to an assistance animal. An owner may deny a request for the reasons in Question 9.
- 12. Can an owner require a resident to pay a pet deposit or fee for the animal?**
No, conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. Remember that the assistance animal is not a pet. HUD guidance explicitly prohibits pet deposits.
- 13. Can an owner require a resident to obtain renters insurance to cover any additional damage the animal may cause?**
No, requiring renters insurance for the animal would be considered a prohibited condition. If a resident's assistance animal causes damage to the resident's unit or the common areas of the dwelling, the housing provider may charge the resident for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all residents), if it is the provider's practice to assess residents for any damage they cause to the premises.⁵
- 14. What should an owner do if the resident's animal causes damage to the unit?**
As said above, any damages caused by the animal should be billed to the resident and/or deducted from the resident's security deposit. Damage amounts over and above the security deposit may be included in a damages collection lawsuit.
- 15. Can a housing provider require an animal addendum?**
Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. With that said, an owner may require a resident to sign a form that informs the resident of policies applicable to *all* animals on the property, such as:
- The resident must be responsible for damages caused by the animal,
 - The resident agrees that the animal will not disturb other residents,
 - The resident agrees to dispose of all waste and observe all leash (or running at large) laws, and
 - The resident must properly vaccinate the animal in accordance with applicable state laws.

⁴ See footnote 3.

⁵ See the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

Violation of these provisions may permit an owner to have the animal removed from the property.

16. What should an owner do if a resident asks why another resident is allowed to have an animal in a “no-pets building”?

An owner should not disclose the personal information of one resident to another resident. NAA suggests sample language in its “Scripts for Owners to Address Assistance Animal Concerns with Residents.” Additionally, we recommend that an owner consult a local attorney for specific language and to determine how to handle the situation properly.

Script for Owners to Address Assistance Animal Concerns with Residents

Before you engage in conversation with residents about assistance animals, please review NAA's "FAQs Regarding Reasonable Accommodation Requests for Assistance Animals."

In addition to the background information contained in the FAQs, remember to consider the following. It is important that you apply the same procedure or your company's policy uniformly. Consider including information on your reasonable accommodation policy in lease documents or the community newsletter. Provide notice of the policy in place so residents have a clear understanding of the process and have an opportunity to ask questions.

Your response should not vary from person to person and regardless of whether the reasonable accommodation request is verbal or in writing. Any deviation or change in your response could be viewed as disparate treatment (i.e. discriminating against someone by treating him or her differently than another person who is similarly situated) and result in a fair housing violation. Remember to document communications in writing and maintain copies of your correspondence with the resident.

As you review the scenarios below, keep in mind that the scenarios are applicable whether the initial contact by the resident is face-to-face, over the phone or via email. Again, apply the same procedure uniformly.

Below are eight (8) scenarios where the issue of assistance animals may arise between owners and residents.

- 1. A prospective resident with his or her assistance animal comes into the leasing office and expresses interest in renting a unit. The prospective resident says, "I have an assistance animal, and [the animal] will be living with me."**

"Ok. Once we complete your application, I would be happy to assist you with that request. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms* for you. Then, we can go over them, and I can answer any questions you may have."

*As a follow up to the above response, it is permissible to have a process that requires formal, written documentation for *all* reasonable accommodation requests from residents. However, please keep in mind

that HUD permits an owner to request third party verification only under certain circumstances.

According to HUD's guidance¹, housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal.

If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

A housing provider may not ask a resident or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog.

Again, you may not ask for third party verification if the disability or disability-related need is readily apparent or already known to the provider (e.g. persons who are blind or have low vision that require a guide dog). For example, if the resident or applicant is clearly blind and in the presence of a seeing-eye dog, there is no need for any further documentation.

2. A prospective resident without his or her assistance animal comes into the leasing office and expresses interest in renting a unit. The prospective resident says, "I have an assistance animal, and [he or she] will be living with me."

"Ok. Once we complete your application, I would be happy to assist you with that request. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all

¹ https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

residents. I will prepare the forms* for you. Then, we can go over them, and I can answer any questions you may have.”

*When you determine the appropriate forms for the resident, remember to consider whether the disability or disability-related need for the animal is readily apparent or already known. For example, if the resident or applicant seeks an emotional support animal, the disability or disability-related need for the animal may not be apparent and you may require additional documentation, such as a third party verification form.

3. A current resident approaches the owner and says, “My application for a service dog was approved. I was diagnosed with epilepsy, and the dog will help me get around in case I have a seizure.”

“Ok. I would be happy to assist you with that request. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have.”

In this case, the resident has given all the relevant information for the reasonable accommodation request. The resident has verbally confirmed his or her disability and provided the connection between the disability and the disability-related need for the animal. This scenario will not always be the case. Remember to follow the same procedure and script with every resident or applicant.

4. A current resident informs the owner saying, “I’m getting an emotional support animal. I don’t have to pay any pet fees, right?”

“Yes, pet fees are waived for an assistance animal. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have.”

5. A current resident approaches the owner and says, “I wanted to let you know that I got an assistance animal. Here’s his certificate as a registered therapy dog.”

“Ok. I would be happy to assist you with that request. Regardless of the dog’s registration or certification, we need you to fill out some paperwork in order to comply with fair housing laws. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have.”

- 6. Maintenance staff performs routine maintenance in a resident's unit and finds an unregistered animal in the resident's apartment. After the resident receives notice from the owner, the resident claims that the animal is not a pet. He or she says it is an emotional support animal.**

"Ok. You should have requested a reasonable accommodation for the animal according to our company policy, but we can consider a request now. In order to comply with fair housing laws, we will need to obtain some basic information about the animal and have you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have."

- 7. Resident 1 sees Resident 2 walking his or her assistance animal. Resident 1 asks the owner why Resident 2 is allowed to have an animal in a "no-pets building".**

"While we can't discuss the specifics of any other resident's tenancy with you, just as you wouldn't want us sharing your personal information with others, we can tell you that we are required to comply with the federal Fair Housing Act, and the Act provides for reasonable accommodation requests for certain assistance animals, which are not considered pets."

- 8. Resident 1 sees Resident 2 walking his or her assistance animal. Resident 1 asks the owner why Resident 2 is allowed to have a pit bull in a building that Resident 1 knows prohibits pit bulls as part of the restricted breed list.**

"While we can't discuss the specifics of any other resident's tenancy with you, just as you wouldn't want us sharing your personal information with others, we can tell you that we are required to comply with the federal Fair Housing Act. In these situations, we are required by law to make reasonable accommodations for assistance animals regardless of any breed, size or weight restrictions we may have."

Sample Policies and Forms



Assistance Animals in Multi-Family Housing

Guidance on Reasonable Accommodation Request
and Assistance Animals in Residential Rental Housing

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

1

Laws

That pertain to Residential Rental
Housing and Assistance Animals

- ▶ Federal Fair Housing Act
 - ▶ Prohibits discrimination on the basis of disability in housing.
 - ▶ Applies to almost all rental housing.
- ▶ Federal Rehabilitation Act Section 504
 - ▶ Prohibits discrimination on the basis of disability in housing.
 - ▶ Applies to housing that receives federal financial assistance from HUD
- ▶ Americans with Disabilities Act
 - ▶ Prohibits discrimination on the basis of disability in public accommodations.
 - ▶ Applies to public and common areas in housing that are accessible to public.
- ▶ State Laws
 - ▶ Varies but many states laws mirror the federal laws. Some extend greater protections and increase the application to other areas.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

2

What is an Assistance Animal ?



Cat?

Dog?



© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

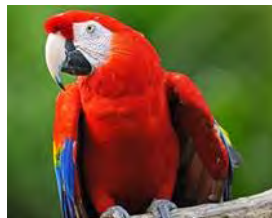
What is an Assistance Animal?



Horse?



Python?



Bird?

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

What is an Assistance Animal?



Rat?



Ferret?



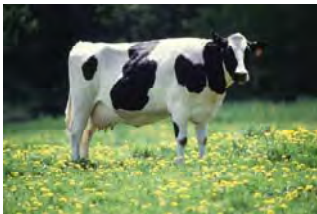
Pig?



Spider?

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

What is an Assistance Animal?



Cow?



Chicken?



Turtle?



Goat?

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

6

What is an Assistance Animal?



Alligator?

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

7

Assistance Animal Definitions

Under the Fair Housing Act and Section 504:

- ▶ Animal that works, provides assistance, or performs tasks for the benefit of a person with a disability or provides emotional support that alleviates one or more symptoms or effects of a person's disability.

Americans with Disabilities Act:

- ▶ The ADA defines "service animal" : Dogs that are individually trained to do work or perform tasks for people with disabilities. Companion Animals (emotional support animals) are excluded from this definition for purposes of the ADA. Miniature Horses are included in a separate provision.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

8

Assistance Animals Definitions Part 2

- ▶ **Assistance Animals** - This is the broad term for all animals for which a qualified disabled person under the FHA and Sec. 504 has requested an accommodation. An Assistance Animal does not require training or certification and may be any type of animal.
 - ▶ **Service Animals** - are a sub-section of Assistance Animals. They are generally animals that have been trained to perform specific functions for a disabled person. Guide dogs for the blind, seizure alert animals, animals trained to assist the hearing impaired are examples.
 - ▶ **Emotional Support Animals** - are another sub-section of Assistance Animals. These animals provide emotional support to persons with disabilities that need such support.
 - ▶ **Companion Animals** - This is another term for Emotional Support Animals. It is often used in state laws and in the ADA. For purposes of housing matters, Emotional Support Animals is the preferred term.
 - ▶ **Therapy Animals** - Most often this term is used to describe an animal that is used in therapy with the disabled. In its most common usage, it is not an Assistance Animal under the FHA or Sec. 504.

Note: In evaluating a reasonable accommodation request, proper terminology may not be used by the person requesting the accommodation. It is the obligation of the evaluator to impute the proper definitions.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

Reasonable Accommodation under the Fair Housing Act

- ▶ As it applies to a person who meets the definition of handicap under the Fair Housing Act:

sec. 804. [42 U.S.C. 3604] *discrimination in sale or rental of housing and other prohibited practices*

(f)(3)(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling...

A Housing Provider must grant a reasonable modification or accommodation if the request is made by a qualified handicapped person and meets the requirements established for a disability related need.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

10

Handicap (disability) Definition

- ▶ In order to obtain a Reasonable Accommodation, the person for whom the request is made must meet the definition of Handicap under the FHA:
- ▶ “Handicap” means, with respect to a person -
- ▶ (1) having a physical or mental impairment which substantially limits one or more of such person’s major life activities,
- ▶ (2) having a record of having such an impairment, or
- ▶ (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

Note: Handicap is the word used in the FHA. Recently, HUD and other agencies have been utilizing the softer and supposedly more politically correct “disability” and “disabled”. For purposes of this discussion, they can be used interchangeably.



© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

11

Reasonable Accommodation Request for an Assistance Animal

- ▶ Although the request does not have to be in writing, housing providers are entitled to have a request made for a reasonable accommodation.
- ▶ Once made, the onus is then upon the housing provider to assist the person making the request to obtain sufficient information to make a determination on the requested accommodation.
- ▶ Although specific forms have not been provided by HUD, certain forms and policies have been “approved” through conciliation agreements.
- ▶ Housing providers should have written policies on the handling of reasonable accommodation requests and on Assistance Animals.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

12

Readily Apparent Standard

- ▶ When a request for an Assistance Animal is made, it is expected that the Housing Provider will first make a determination if the elements necessary are readily apparent.
 - ▶ 1. Is it readily apparent that the person making the request meets the definition of Handicap in the Fair Housing Act?
 - ▶ 2. Is the need for (nexus) the requested Assistance Animal readily apparent?

The easiest example is someone who is blind with a guide dog. It is readily apparent that the person is blind and it is readily apparent that the dog is needed to assist in person with the disability. In that case, there is no need to investigate or obtain documentation prior to granting the request.

For accommodation requests that involve emotional support animals, it is unlikely that either the disability or the need will be readily apparent.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

13

Support for Accommodation Request Service Animals

- ▶ The process for review of any accommodation request for an Assistance Animal should be consistent. Because of the readily apparent standard, the process for service animals is often less onerous than those for emotional support animals. Documentation should be obtained for those areas that are not readily apparent.
 - ▶ **Service Animals Review:** The two criteria must be met for all Assistance Animals. However, often the need for documentation in the case of a service animal will be less. Once the qualifying disability is established (through whatever means), the nexus is generally apparent.

For example, a person with an animal trained to assist a person with diabetes, once they establish their disability the nexus for the animal becomes readily apparent. Similarly, a hearing impaired persons disability may be readily apparent and they may have documentation to establish the training of the animal to assist their disability.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

14

Support for Accommodation Request *Emotional Support Animal*

- ▶ Generally, neither the disability nor the nexus is readily apparent for an accommodation request concerning an emotional support animal.
- ▶ Utilize forms to assist in the gathering of information to make a decision on the accommodation request.
- ▶ Document the process of gathering and verifying the information.

▶ Remember that you cannot and should not ask what the disability is that the tenant has.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

15

Assistance Animal Forms & Instructions

- ▶ It is important to read and follow the instructions.
- ▶ It is important to KNOW your Assistance Animal Policy.
- ▶ There are three (3) forms as part of the Assistance Animal Request
 - ▶ Resident's Request for Assistance Animal - If the Resident cannot fill this form out, assist them in filling it out and have them sign it.
 - ▶ Animal Identification Form - Again if the Resident cannot fill this out, assist them in doing so and have them sign it. This form should be used for every animal in the community (pet, service animal, emotional support animal, therapy animal, etc.)
 - ▶ Verification for Assistance Animal - This form is for the medical provider, health or social service professional. It will also be used as a guide in verification.
- ▶ If the person making the request already has a note, letter, prescription, or other documentation from a medical professional or health or social service professional, it is not necessary to give that form to the Resident.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

16

Assistance Animal Forms & Instructions Part 2

- ▶ Once all the forms have been filled out and returned (or in the case of the Verification form, any documentation from the appropriate person), it is important that verification take place.
- ▶ Verification is just that. Confirmation of the following by speaking with the medical professional who actually signed the form :
 - ▶ 1. The medical provider, health or social service professional did in fact execute the document. (Verification form, prescription, letter, note, etc.)
 - ▶ 2. That such person understood what they had executed.
 - ▶ 3. Verify (by reading if necessary) that the medical provider, health or social service professional does confirm that the person meets the definition of HANDICAP as stated in the FHA.
 - ▶ 4. Verify (by reading if necessary) that the medical provider, health or social service professional does confirm that there is a nexus between the disability and the need for the animal requested.
 - ▶ 5. Finally, take the opportunity to educate a little. Read off the Verification form the middle paragraph.
 - ▶ 6. Ask if there are any questions and thank them for their time.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

17

What Next

- ▶ If everything is verified, then the request should be granted. It is recommended that the approval should be put in writing.
- ▶ If the medical provider, health or social service professional does not verify, then the request should be denied and notification of the denial along with the reasons should be given.
- ▶ In the event verification cannot be accomplished because the medical provider fails to respond, request help from the Resident and give notice that the request cannot be granted until verification can take place.
- ▶ Attempts to contact the professional should be made expeditiously and at least a few attempts made with requests for return calls should be left.
- ▶ In addition to verification, a review of the other documents should be made to make sure that there is nothing unusual to consider. (Viz. Exotic animal, animal with history of violence, animal with history of disturbances, farm animal, animal that violates local ordinances or laws)

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

18

Fees and Restrictions on Assistance Animals

- ▶ Once qualified, a housing provider may not charge any pet fees, pet rent, pet deposits or other fees relating to the Assistance Animal.
- ▶ Housing providers may not restrict Assistance Animals on the basis of size, weight, breed, or other criteria. (except types that may be restricted by law)
- ▶ Assistance Animals may accompany the Resident anywhere within the community. However, there may be exceptions in local law that would prohibit the animal from being in specific areas such as in the swimming pool or hot tub, and in areas where food is being prepared.
- ▶ Housing providers should have Animal Rules for their communities (even if they are a no pet community). These rules should be given to all persons with pets or animals.
- ▶ Persons with Assistance Animals that violate rules, cause damage, or cause a nuisance are still subject to the same eviction processes and fines as any other resident.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

19

Specific Denials of Assistance Animals

- ▶ If it is determined that a specific animal poses a threat to the safety or health of others and that cannot be reduced or eliminated by other accommodations, the Assistance Animal may be denied.
- ▶ If it is determined that a specific animal has a history of validated reports of nuisance, property damage, or physical damage to other persons or animals, and there is not way to reduce or eliminate the potential for future occurrences, the Assistance Animal may be denied.
- ▶ Any request for reasonable accommodation may be denied if granting the request would
 - ▶ Impose an undue financial or administrative burden, or
 - ▶ Would fundamentally alter the nature of the housing provider's services.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

20

ADA Rules as they apply to a Housing Provider

- ▶ ADA rules apply to a Housing Provider for non-residents in areas that are open to public access.
 - ▶ Clubhouse
 - ▶ Leasing Office
 - ▶ Possibly other open common areas but not amenities.
- ▶ What questions can you ask for a person entering a public access area?
 - ▶ Is this a service dog that is required because of a disability?
 - ▶ What work or tasks has the animal been trained to perform?
 - ▶ If there are satisfactory answers to these two questions, then the service dog must be allowed in the communities public access areas. However, the other rules apply in that the animal may not be a nuisance, threat to others, or out of control. All community rules would apply to the animal.
- ▶ Guests with Assistance Animals-
 - ▶ FHA does not apply to guests generally.
 - ▶ ADA would only require guests with SERVICE DOGS to be allowed in public areas.

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

21

Other Assistance Animal Subjects

- ▶ Multiple Assistance Animals
 - ▶ Local ordinance restrictions
 - ▶ Same medical provider on same form for all animals per individual
- ▶ Age of “prescription”
- ▶ Answering Questions about Assistance Animals in no pet communities
- ▶ Out of State medical professionals
 - ▶ Internet medical professionals
 - ▶ Unlicensed professionals

© Copyright 10/2015 The Law Offices of Kirk A. Cullimore, LLC

22

COMMUNITY MANAGEMENT POLICY AND PROCEDURE REASONABLE ACCOMMODATION AND MODIFICATION

POLICY

It is the policy of this community to provide reasonable accommodations and to permit tenants with disabilities to make reasonable modifications upon request, with the provision of appropriate documentation of the need for the accommodation or modification.

PROCEDURE

In order to maintain compliance with the state and federal fair housing laws this community will enter into a dialogue with the requesting tenant about the tenant's disability needs to reach a mutually acceptable reasonable accommodation. Only after such a dialogue and after thorough exploration of alternative options will this community consider denying the request or claiming undue burden. It is the policy to review all requests for reasonable accommodations or modifications, however submitted. In cases where the need for an accommodation is obvious, no documentation will be requested to establish the accommodation. When the need is not obvious or where the accommodation entails more than minimal cost or staff time, it shall be the policy of this community to request the tenant to provide written verification from the tenant's healthcare, mental health provider, or other appropriate party that the tenant has a disability (that meets the definition of the Fair Housing Act) and the nexus between the disability and the accommodation or modification. This request will require verification of the disability, but not specific information about the disability.

If it is determined that the request is very difficult, time-consuming or expensive, the community shall enter into a dialogue with the tenant to discuss and suggest any easier, quicker or less expensive alternate accommodations that may work for the requested accommodation. The community may offer the tenant an opportunity to make a modified request or suggest alternative solutions. If the local management of the community and the requesting tenant disagree about whether the request is reasonable or the solutions applicability, the matter shall be discussed with the supervising management or owner prior to denying the request.

If the community determines that the request cannot be fulfilled because it poses an undue financial and/or administrative burden or because it would cause a fundamental alteration in the communities operations, the matter shall be discussed with the supervising management or owner prior to denying the request. This discussion may also involve the tenant to determine if there are other alternatives.

REASONABLE ACCOMMODATIONS

This community shall promptly review all requests a disabled tenant makes for reasonable accommodations or modifications. Provide accommodations promptly or within a reasonable time. The community will provide a written response notifying the tenant of whether the requested accommodation will be provided, when, and how. Requests that require a dialogue with the tenant shall have that dialogue commenced promptly to allow for the accommodation request being expedited. This community shall assist the tenant in knowing what documentation or information is needed to assist the community in making both the decision on the request and fulfilling the request.

REASONABLE MODIFICATIONS

Modifications made by the tenant require written permission. Tenants will be permitted to make reasonable modifications pursuant to a request upon the following:

1. The tenant shall fully describe the intended modification(s),
2. The tenant shall provide assurance that required building permits will be obtained (and provide copies prior to the commencement of the modification),
3. The tenant shall provide assurance that the modifications will be done in a professional manner and by a licensed and insured professional if required,
4. The tenant agrees to return the premises to their original state, unless the modification will not interfere with the next tenant's use and enjoyment of the premises,
5. If allowed by the circumstances under existing law, the tenant agrees to pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations,
6. The costs of modifications and restoration shall generally be paid by Tenant unless the costs of such are minimal, and
7. It may be required that modifications be performed by appropriate licensed and insured contractors who have prior working relationships with the community.

Upon compliance, this community shall provide permission to perform modifications as soon as practicable. The community will promptly provide a written response notifying the tenant whether the requested modification will be allowed.

*****These Instructions are for instructional purposes only, and should not be given to a resident as part of the Assistance Animal request packet.**

Assistance Animal Forms Instructions

Please read and review before use of these forms.

1. Remember that neither HUD nor any state has “approved” the forms. Usage always has some risk. Also, every case is independent and should be reviewed on its merits and facts.
2. These forms are for any Assistance Animal wherein the need for the animal is not readily apparent. Service animals where the need is apparent need not use this form but should still provide the information on the Animal Identification Form.
3. You can require the information on the animal and ask that the Resident affirm their request for the Assistance Animal.
4. Give them the Verification for Assistance Animal form as a guide for the health care professional. If the professional does not want to sign it and provides substantially the same information in another format, it must be accepted. Remember to review your policy on who can provide this information.
5. If the Resident provides any documentation from a professional or other qualified person, it should be reviewed to make sure it provides sufficient information to confirm the status and nexus. If not, an attempt to get verification of the information needed directly from the person who signed the form should be first attempted.
6. A HIPAA FORM IS NOT REQUIRED. Many health care professionals will not discuss the patient without the HIPAA form. **Verification does not require the HIPAA form.** Explain to the health care professional that you are merely verifying the information that has already been provided. If you are unable to verify, you should inform the Resident of the problem to see if they can get the health care professional to provide the verification. Seek assistance from legal counsel and/or your regional manager in this circumstance.
7. It is the intent of these forms to gather sufficient information and verify that information to determine if a reasonable accommodation should be granted or not.
8. Failure to provide sufficient information may be grounds for denial. Sufficient information would include: a description of the animal, verification from someone that the Resident meets the definition of disabled and that there is a nexus between the disability and the need for the animal, and the other information contained on the Animal Identification Form.
9. **All communities should have animal rules. Persons who obtain an animal by reasonable accommodation generally must abide by those rules (excepting breed restrictions and size & weight restrictions). Those rules should be given to residents with animals.**
10. These forms should not be given out unless someone has filled out an application and is actually attempting to rent.
11. Questions on Assistance Animals from *prospective* residents should be answered:
This Community fully complies with the Fair Housing laws as it applies to disabilities. Persons who desire an accommodation must convey that request to management, who will then attempt to obtain sufficient verified information to determine if the request can be granted and how it can be accommodated. Since every situation is different, each request is treated separately. It is impossible to give a blanket answer on questions of accommodation. If a prospective tenant desires to apply, we will then accept any request and make a full review to see if it can be accommodated.
12. If you have any questions on a request, contact legal counsel.
13. If you think someone is testing your community on reasonable accommodation, contact your regional manager/owner and contact legal counsel.



Resident's Request for Assistance Animal

The undersigned does hereby request as assistance animal and does hereby attest and state as follows:

1. Handicap Definition

I am aware of the requirements of the Fair Housing Act and its definitions which include:

"Handicap" means, with respect to a person –

(1) having a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) having a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

2. Qualification

Pursuant to the definition above, I do qualify as an individual with a disability.

3. Impairment

I represent that the requested assistance animal is necessary to provide assistance with my disability.

The anticipated length of this disability is _____.

My primary care physician is Dr. _____ whose telephone number is _____.

4. Request

I do hereby request that I be able to reside with an assistance animal at the premises below. I certify that the statements herein are true as provided on the Animal Identification Form and the Medical Request for an Assistance Animal. I agree that the only animal I will keep for this purpose is listed therein and that I will abide by the rules and regulations of the community regarding animals. I understand that I will not have to pay additional costs or fees for the assistance animal but will be responsible for any damage caused. I request that my professional provide verification of the required information to my housing provider to assist in making this determination.

Applicant's Name _____

Premises Address _____

Dated _____

Signature of Applicant



Animal Identification Form

Type of animal _____ Breed _____

Age _____ Approximate Weight _____ Color _____

Describe any special training or certifications _____

Has the animal ever been reported to authorities (police, animal control) for any incident or for any reason? _____. If yes, please provide details.

Animals may not be in the common areas of the community unless on a leash or an approved device based upon the animal's certification.

Animals may be restricted from specific areas.

The animal's owners are responsible for cleaning up after the animal and for any damage done by the animal.

Animals may not disturb the peaceful and quiet enjoyment of the other tenants.

The Community may have other regulations and rules relating to animals.

I affirm that the animal is in compliance with all state and local laws concerning animals.

I have read the rules and regulations concerning animals (both above and those policies of the community), and agree to their terms.

Resident's signature

Dated

Please provide a photo of the animal.



© The Law Offices of Kirk A. Cullimore 4/2015 This form may not be reproduced without express written permission.

Verification for Assistance Animal

Name of Person making Request _____

A request has been made to allow an assistance animal to reside with the above named individual. Such request has been made pursuant to The Fair Housing Act. In order to qualify for an assistance animal exemption to the normal rules of the community, the person making the request **must qualify as handicapped as defined**, which is:

“Handicap” means, with respect to a person –

- (1) having a physical or mental impairment which substantially limits one or more of such person’s major life activities,***
- (2) having a record of having such an impairment, or***
- (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.***

Additionally, the assistance animal must assist the person in ameliorating the disability and/or the major life activities effected.

Much like a prescription, this request is made because of the professional’s opinion that the assistance animal may be necessary to afford the disabled person an equal opportunity to use and enjoy the leased premises. With this request and upon approval, the management of the premises must allow the animal on the premises and is prohibited from charging pet rent or other fees normally charged to persons with pets. Assistance animals are not pets but animals that are determined by competent professionals to be an important and necessary part of treatment or assistance of a disability/handicap.

Professional’s Name: _____ Telephone number: _____

I certify that I have sufficient information and have consulted with the person making this request in order to make this determination. I certify that the above named person is handicapped as defined above and that the animal described below is, in my professional opinion, necessary to afford an equal opportunity to use and enjoy the leased premises.

Prescribed Animal’s Description _____

Expiration Date of this Certification _____

Date

Signature of Medical Provider,
Health or Social Service Professional





4300 Wilson Blvd., Suite 400
Arlington, VA 22203
703-518-6141
www.naahq.org