



New guidance on assistance animals

QUESTION: As a property manager, I am having to deal with increasing numbers of tenants requesting that they be allowed to keep assistance animals. I heard the other day that some new rules on assistance animals have come out. Is that right, and if so, can you tell me about them?

ANSWER: The US Department of Housing and Urban Development ("HUD") issued a 19-page "Notice" on January 28, 2020 called "FHEO-2020-01" ("FHEO" is short for the Office of Fair Housing and Equal Opportunity). The subject of the Notice is "Assessing a Person's Request to Have an Assistance Animal as a Reasonable Accommodation Under the Fair Housing Act." The Notice replaces prior guidance on the subject issued by HUD in 2013 (FHEO-2013-01).

The Notice does **not** contain any new rules on the subject of assistance animals that expand or alter housing providers' obligations under the fair housing laws or regulations; rather, it was issued as a guidance document to both housing providers and individuals seeking an accommodation for an assistance animal.

The Notice contains two sections. The first section (pages 3 through 15) offers recommended "best practices" for housing providers to use when they are considering a request for an assistance animal. The second section (pages 16-19) provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider to support their request for the animal.

You mentioned that you are getting increasing numbers of requests for assistance animals. That does not surprise us because we are fielding more and more questions on the NC REALTORS® Legal Hotline about assistance animals. In this regard, it is interesting to note that according to the HUD Notice, complaints involving requests for assistance animals are "significantly increasing," and overall, nearly 60% of all fair housing complaints at the present time concern denial of reasonable accommodations and disability access.

QUESTION: I've heard several different terms used to describe these animals, including "service animal," "assistance animal," and "emotional support animal." Which is correct?

ANSWER: The term "service animal" is a term that's used in connection with the Americans With Disabilities Act, or "ADA." The ADA addresses the accommodation of disabled persons in places of public accommodation, like a real estate broker's office. The

term "assistance animal" has generally been used in connection with the fair housing laws, which address the accommodation of disabled persons in residential housing. The new HUD Notice confirms that an animal meeting ADA requirements for service animals will also meet fair housing law requirements, and lumps ADA service animals in with other types of trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities, referring to them all as "assistance animals" for purposes of the fair housing laws.

QUESTION: This may be a dumb question, but what does the term "reasonable accommodation" mean exactly?

ANSWER: Not a dumb question at all. As you know, under the fair housing laws, a housing provider can't discriminate against someone based on any of seven different protected characteristics, one of which is disability. A "reasonable accommodation" is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling, and a failure to provide a reasonable accommodation may be construed as discrimination against a disabled person. As a general rule, a person with a disability and a disability-related need for an assistance animal who requests to have an assistance animal is entitled to keep the animal, even if there's a "no pet" policy.

QUESTION: Does a request for an assistance animal have to be in writing?

ANSWER: No, the request may be made orally, and it's not necessary that the words "reasonable accommodation," "assistance animal," or other special words be used in the request. However, the HUD Notice encourages persons making a request to submit them in writing "in order to avoid miscommunication" with the housing provider, and to keep copies "in case there is a later dispute about when or whether a reasonable accommodation request was made."

QUESTION: One applicant asked to keep a cat *and* a dog? Is that permissible?

ANSWER: The short answer is yes, but only if the applicant can demonstrate a disability-related need for both animals. The Notice acknowledges that requests sometimes involve more than one animal, and states that the decision-making process set out in the Notice can be used for all requests, whether they involve one or more than one animal.

QUESTION: What about after-the-fact requests? I once caught a tenant with an unpermitted dog, and when I told him he had to get rid of it, low and behold he produced a letter stating that he needed the dog for emotional support. The owner decided to let him keep it but did we have to let him get away with that?

ANSWER: Here's what the Notice has to say about that: "[a]n accommodation... may be requested after a housing provider seeks to terminate the resident's lease or tenancy because of the animal's presence, although such timing may create an inference against good faith on the part of the person seeking a reasonable accommodation. However, under the [fair housing laws], a person with a disability may make a reasonable accommodation

request at any time, and the housing provider must consider the reasonable accommodation request even if the resident made the request after bringing the animal into the housing.

QUESTION: Can I ask an applicant who requests an assistance animal to prove that he or she has a disability?

ANSWER: If the disability is "observable" or obvious to a lay person, no. According to the Notice, "observable impairments include blindness or low vision, deafness or being hard of hearing, mobility limitations, and other types of impairments with observable symptoms or effects, such as intellectual impairments (including some types of autism), neurological impairments (e.g., stroke, Parkinson's disease, cerebral palsy, epilepsy, or brain injury), mental illness, or other diseases or conditions that affect major life activities or bodily functions."

QUESTION: Are addicts considered to be disabled under the fair housing laws?

ANSWER: According to the Notice, "[a]ddiction caused by current, illegal use of a controlled substance does not qualify as a disability."

QUESTION: What if the disability isn't obvious?

ANSWER: In that case, you may require a person who makes a request for an assistance animal for information that reasonably supports that the person has a disability and establishes a relationship or connection between the disability and the need for the assistance animal.

QUESTION: If they don't provide reasonable documentation when they request the animal, may I deny the request?

ANSWER: Yes, but you can't deny the request until you've given the person making the request a reasonable opportunity to do so. The Notice suggests that to assist the person making the request in understanding what information they need to provide, you should refer them to the second section of the Notice, which is called the "Guidance on Documenting an Individual's Need for Assistance Animals in Housing."

QUESTION: What sort of documentation may be provided?

ANSWER: In addition to documentation confirming the disability from a health care professional (including a physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse), the Notice lists as examples the following sources of information:

- A determination of disability from a federal, state, or local government agency.
- Receipt of disability benefits or services (Social Security Disability Income (SSDI)), Medicare or Supplemental Security Income (SSI) for a person under age 65,

veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency.

- Eligibility for housing assistance or a housing voucher received because of disability.

QUESTION: Do I have to accept documentation from the Internet?

ANSWER: There's a section of the Notice captioned "Documentation from the Internet." According to the Notice, "[s]ome websites sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee... In HUD's experience, *such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability-related need for an assistance animal*" (italics added).

QUESTION: Wow, does that mean I can reject any documentation provided over the Internet?

ANSWER: No. The Notice goes on to state the following: "[b]y contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a person's health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual."

QUESTION: So what does all that mean?

ANSWER: Our interpretation of HUD's statement on documentation from the Internet is that it's okay for a housing provider to question the reliability of Internet documentation, but if the documentation establishes that the professional has personal knowledge of the individual, it likely will be considered reliable.

QUESTION: Is there any guidance on what should be included in information provided by a health care professional?

ANSWER: Yes. The Notice recommends that the documentation include the following:

- the patient's name
- whether the health care professional has a professional relationship with the patient involving the provision of health care or disability-related services
- The type of animal(s) for which the reasonable accommodation is sought
- Whether the patient has a physical or mental impairment,
- Whether the patient's impairment(s) substantially limit at least one major life activity or major bodily function, and
- Whether the patient needs the animal(s) because it does work, provides assistance, or performs at least one task that benefits the patient because of his or her

disability, or because it provides therapeutic emotional support to alleviate a symptom or effect of the disability of the patient/client, and not merely as a pet.

The Notice makes it clear that you can't require a health care provider to use a specific form, provide notarized statements, or provide an individual's diagnosis or other detailed information about their physical or mental impairments.

QUESTION: Are there any limitations on what kind of animal a disabled person is allowed to keep?

ANSWER: Yes. Generally, the animal must be one that is commonly kept in households. Animals listed in the Notice as common household animals include a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes. On the other hand, you'll be happy to know that HUD does **not** consider reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals to be common household animals.

QUESTION: I noticed that you used the word "generally." Does that mean there are exceptions?

ANSWER: Yes. The Notice discusses so-called "unique animals," which are animals not commonly kept in households. An individual making a request involving a unique animal has the "substantial burden" of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal. The Notice gives the following examples of unique circumstances when the accommodation of a unique animal may be required:

- The animal is individually trained to do work or perform tasks that cannot be performed by a dog
- Information from a health care professional confirms that (i) allergies prevent the person from using a dog, or (ii) without the animal, the symptoms or effects of the person's disability will be significantly increased
- The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained.

The Notice gives as an example of a unique animal a trained monkey who performs tasks for a person with paralysis caused by a spinal cord injury that can't be performed by a dog, including retrieving a bottle from the refrigerator, unscrewing the cap, inserting a straw, and placing the bottle in a holder so the individual can get a drink of water.

QUESTION: A monkey? What if it got out and hurt somebody or tore up their property?

ANSWER: The Notice makes it clear that a housing provider may refuse a request for an assistance animal if the specific animal poses a direct threat to the health or safety of other individuals or would cause substantial physical damage to the property of others

that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (for example, keeping the animal in a secure enclosure).

QUESTION: We all know that some people are more responsible pet--I mean animal--owners than others. Is it reasonable for me to expect that the owner of an assistance animal will take care of his or her animal?

ANSWER: Yes. As stated in the Notice, "[a] person with a disability is responsible for feeding, maintaining, providing veterinary care, and controlling his or her assistance animal. The individual may do this on his or her own or with the assistance of family, friends, volunteers, or service providers."

QUESTION: For those of my owners who allow pets, I have rules limiting the size and breed of dogs a tenant can keep. Can I make tenants who have assistance animals abide by those same rules?

ANSWER: No. Pet rules do not apply to assistance animals. Thus, you may not limit the breed or size of a dog used as an assistance just because of the size or breed. However, as noted, limits based on specific issues with the animal's conduct are permitted.

QUESTION: I think I know the answer to this one but I will ask you anyway--how about pet fees?

ANSWER: An assistance animal is not considered to be a pet, so you can't charge the disabled person a pet fee or pet deposit. However, you can charge for damage an assistance animal causes.

QUESTION: Last question--where can I get my hands on a copy of the HUD Notice?

ANSWER: Click here for a link to [FHEO-2020-01](#). Don't hesitate to call us on the Legal Hotline if you have any more questions!

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