

HUD Issues Guidance on Service and Assistance Animals

HUD announced today that it has issued a Notice on Service Animals and Assistance Animals for People with Disabilities in Housing. The Notice explains the circumstances under which the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act (Section 504), and the Americans with Disabilities Act (ADA) may require housing providers to allow tenants to live with “service” and “assistance” animals. The Notice will be used by HUD staff to enforce federal fair housing laws as they apply to persons with disabilities who have a disability-related need to live with animals in both public and private housing.

“Service Animal” v. “Assistance Animal”

HUD explains that the Department of Justice’s (DOJ) amendments to its ADA regulations to narrow the definition of “service animals” does not apply to requests by tenants for animals as a reasonable accommodation under the FHA or Section 504. The ADA regulations define “service animal” as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a

disability. The ADA 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.”

HUD states that this narrow definition of “service animal” does not apply to requests for “assistance animals” under the FHA or Section 504. Instead, HUD defines “assistance animal” as 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.” In other words, an “assistance animal” can be any type, breed, or size of animal and does not have to be trained or certified. HUD emphasizes that it is a violation of the FHA or Section 504 if a housing provider attempts to limit the type of “assistance animal” with which a tenant may live to the ADA’s “service animal” definition.

Housing providers must evaluate a request by an applicant or tenant to live with an “assistance animal” as it would any other request for reasonable accommodation.

A Matter of Reasonable Accommodation

HUD notes that fair housing issues may arise with regard to animals when persons with disabilities use (or seek to use) “assistance animals,” but the housing provider forbids “pets” or otherwise imposes restrictions or conditions relating to “pets” or “other animals.” In that case, housing providers must evaluate a request by an applicant or tenant to live with an “assistance animal” as it would any other request for reasonable accommodation.

When an applicant or tenant requests to live with an “assistance animal,” the housing provider must consider two questions:

(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 the 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 of these questions is “yes,” the FHA and Section 504 require the housing provider to provide an exception to the “no pets” policy or other restriction to allow the tenant to live with the “assistance animal.”

Proving Need for the Animal

Consistent with its previous reasonable accommodation guidance, HUD states that unless the disability and the disability-related need for an “assistance animal” is “obvious,” a housing provider may require “reliable documentation of disability and [the] disability-related need for an assistance animal.” HUD also recognizes that requests to live with an animal merely for “emotional support” may present unique challenges in determining if the applicant or resident has

a disability-related need for the animal. For those requests, the Notice states a housing provider may ask that the verification come from “a physician, psychiatrist, social worker, or other mental health professional.” The Notice unfortunately does not give detailed guidance on what type or how much information a housing provider may request when the need for the “assistance animal” is not “obvious.”

Not a “Pet,” So No Breed Restrictions or Other Conditions

The Notice states that, as with other requests for reasonable accommodation, a housing provider may deny requests for “assistance animals” only if: (1) granting the request will impose an undue financial and administrative burden; (2) allowing the animal will fundamentally alter the housing provider’s services; or (3) “the specific animal in question” poses a direct threat to the health or safety of others or would cause substantial damage to the property of others. Unfortunately, HUD fails to provide any further direction as to when one or more of these circumstances may allow a housing provider to legitimately deny a request.

Additionally, this portion of the Notice addressing reasonable accommodations creates some serious challenges to housing providers and may result in unintended consequences. The Notice unequivocally states that “an assistance animal is not a pet” and “breed, size, and weight limitations may not be applied to an assistance animal.”

Unfortunately, housing providers may not have a uniform policy that restricts so-called “dangerous breeds” or “wild” assistance animals. Instead, if the request for a specific assistance animal raises a safety concern, the housing provider must conduct a “direct threat” analysis based only on “the specific animal in question” and not on “evidence about harm or damage that other animals have caused.” This interpretation may severely hinder a housing provider’s ability to protect the health and safety of its tenants. Indeed, a housing provider may have to wait until an animal, although already known as a dangerous breed, actually injures another tenant, guest, or employee before taking adverse action.

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HUD also states that “conditions and restrictions that housing providers apply to pets may not be applied to assistance animals.” HUD gives the common example that a housing provider may not charge a “pet deposit” to an applicant or tenant who requires an assistance animal. By stating

that a housing provider may not impose “conditions or restrictions” on the animal, however, the Notice at least suggests that a housing provider may not even require the resident to maintain responsibility for things such as the animal’s toileting and littering habits or take adverse action when the animal is disrupting the peace and quiet enjoyment of other tenants.

Applying Multiple Laws

HUD emphasizes that housing providers such as public housing agencies, shelters, and housing at a place of education may be subject to the FHA or Section 504 and be “covered entities” under the ADA. In those cases, the housing provider/covered entity must meet the requirements of both the Fair Housing Act (and/or Section 504) and the ADA when an applicant or resident requests to live with a “service animal.” The ADA places significant restrictions on how a covered entity may verify the need of the person with a disability for a “service animal.” The covered entity may not request any documentation from the person and may only ask two questions: (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? The ADA does not allow the covered entity to request documentation “even when an individual’s disability and the work or tasks performed by the service animal are not readily apparent.”

This interpretation may result in unintended consequences for housing providers such as Public Housing Authorities (“PHA”). Because a PHA is both a housing provider under the Fair Housing Act and a “public entity” under the ADA, the PHA may be prohibited from requesting documentation from a tenant even if the animal will be living in housing. The same is true for student housing at places of education and other dual-purpose housing considered covered entities under the ADA.

Ignorance Is Not Bliss

Addressing requests for “service” or “assistance” animals is arguably the most complex fair housing issue housing providers face today. Housing providers must not delay in adopting policies and procedures to address reasonable accommodation requests and providing training and education to all employees on how the Fair Housing Act, Section 504, and/or the ADA apply to housing operations. ■

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Scott Parrish Moore is widely recognized for his experience and knowledge in fair housing and ADA law. He advises clients across the country on how to address fair housing and ADA issues in housing and commercial property development and management. Scott is also the legal specialist for HUD’s Fair Housing Accessibility First Program. Scott provides nationwide training to housing providers, non-profit organizations, state and local governments, and design and construction professionals.

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