

# Assistance Animals in Affordable Housing

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During a compliance training a couple of months ago, I opened the floor to the audience to ask questions. One audience member complained about assistance animals — namely that she knew residents were lying about their need for such animals to get around the rules. She was convinced the same doctor was just signing these forms with abandon.

About a third of the audience was aghast at her statement, another third wanted to applaud her, and the remaining third gauged the room to see what would happen next.

This is a hot-button topic for many people in the country, not just in the affordable housing industry. I hear it on news, in magazines and even on Facebook posts. People are frustrated by those who seem to circumvent the rules and as a result, not always trusting that people truly need such animals.

Let's review the laws and regulations, the definitions of these animals, and what we need to do to ensure that we are treating people fairly and allowing those who need such animals to have them. Ignorance of the laws can be quite costly, as one owner recently found out in a \$1 million lawsuit in Colorado. (See the News Clips section of the June 2019 *The Credential* newsletter for more information.)

## **Department of Housing and Urban Development (HUD) Regulations**

On April 20, 2013, HUD published memo HUD No. 13-060 ("HUD ISSUES NOTICE ON ASSISTANCE ANIMALS AND REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES"):

"The Fair Housing Act prohibits landlords from discriminating based on disability, race, color, national origin, religion, sex, and familial status. The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communications, and

state and local government activities. Both laws contain provisions which address the use of service or assistance animals by people with disabilities. While the Fair Housing Act covers nearly all types of housing, some types of housing, such as public housing, are covered by both laws.”

According to the notice, landlords must address two threshold questions when a resident requests a companion animal:

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 either question is “no,” then the law does not require a modification of an existing no-pets policy, and the reasonable accommodation request may be denied. However, if the answer to these questions is “yes,” the landlord must modify or provide an exception to a no-pets 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.

## **Americans with Disabilities Act (ADA) Regulations**

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for Title II (state and local government services) and Title III (public accommodations and commercial facilities) on Sept. 15, 2010, in the Federal Register. These requirements clarify and refine issues that have arisen over the past 20 years, and contain new and updated requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Beginning on March 15, 2011, only dogs are recognized as service animals under Titles II and III of the ADA.

Service animals are defined as dogs who are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets.

The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

Please note that the Americans with Disabilities Act (ADA) applies to the public spaces of properties such as community rooms or the rental office. This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Some state and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from the state attorney general's office.

## **Reasonable Accommodations**

A common misconception is that reasonable accommodations are limited to those properties covered by Section 504, meaning that the property has federal funding such as project-based rental assistance (PBRA) from HUD for HOME funds. Fair Housing law requires reasonable accommodations in this situation regardless of funding; even conventional landlords must follow this.

Landlords cannot deny a request for this reasonable accommodation simply because they aren't aware of the need. They can, and most likely should, ask for verification of the need for an assistance animal.

This verification could be obtained from a physician, psychiatrist, social worker or other mental health professional to note 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 landlord 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.

As with any disability-related situation, a landlord 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.

There are no limitations as to the types or sizes of animals, per the Fair Housing Act and Section 504. Landlords may not charge deposit fees for these animals; however, they may require that such animals are properly licensed, inoculated and follow the community rules of behavior, such as ensuring that the resident always retains control of the animal, cleans up after the animal, and pays for repairs of any damage caused by the animal.

It is also possible that a resident may have more than one assistance animal if there are certain diagnoses that are made better by the animals. An example would be a resident for whom a doctor has prescribed a dog to detect a seizure and also a tank of fish to help relieve stress.

As my training session experience showed, there are times we need to check our own implicit biases. We also need to make sure we are following the rules to verify the need for such animals if the disability is not apparent, and to have policies in place that these animals are not pets. Also, medical professionals are liable for the verifications they sign. If they certify that a need is present, and they haven't verified it or are falsifying the form, they can be held not only to Title 18 language regarding providing false information but also could face consequences with their licensure.

Our due diligence as landlords is to follow the rules for establishing the need for the reasonable accommodation and allowing residents to access the needed assistance that these animals provide.