

One of the most confusing and complicated issues we face in the apartment industry is when, and to what extent, we are required to grant a request for an assistance animal. On January 28, 2020, HUD attempted to clarify some of these issues. The text of the HUD's notice can be found at:

https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_013 Please see below summary from HAA.

HUD ISSUES NOTICE ON ASSISTANCE ANIMALS

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1. What does the notice do?

The notice explains certain obligations of housing providers under the Fair Housing Act with respect to individuals with disabilities' reasonable accommodations for assistance animals. The notice provides housing providers with a set of best practices for complying with the Fair Housing Act, including the information that housing providers may need to know from a health care professional about an individual's need for an assistance animal. The notice replaces HUD's prior guidance from 2013.

HUD is providing its notice to help distinguish between a person with a non-observable disability who has a legitimate need for an assistance animal and a person without a disability simply wanting to have a pet or avoid the costs and limitations imposed by pet policies, such as pet fees and deposits.

2. What is an assistance animal?

There are two types of assistance animals: (i) service animals; and (ii) other animals that do work, perform tasks, provide assistance, or provide therapeutic emotional support for individuals with disabilities. An animal that does not qualify as a service animal or other type of assistance animal is a pet for purposes of the Fair Housing Act and may be treated as a pet for purposes of the lease, rules and policies.

3. What is a service animal?

A service animal is any dog that is trained to do work or perform tasks for the benefit of an individual with a

disability. If it is readily apparent that the dog is trained to do work or perform tasks, the dog is a service animal.

If it is not readily apparent that the dog is trained to do work or perform tasks, the housing provider may ask: (i) is the animal required because of a disability? and (ii) what work or task has the animal been trained to perform? If the answer to either of these questions is “no” or “none,” the animal does not qualify as a service animal. However, the animal could still be an assistance animal that needs to be accommodated if the animal works, performs tasks, provides assistance or provides emotional support for individuals with disabilities.

4. What criteria should be used in assessing whether to grant an accommodation for an assistance animal?

Housing providers should determine the following:

1. Does the person have an observable or known disability?
2. If the person does not have an observable disability, has the person provided information that reasonably supports that the person has a disability?
3. Has the person provided information which reasonably supports that the animal works, performs tasks, provides assistance or provides therapeutic emotional support with respect to the person's disability?

5. What information will be required to show that a person has a disability?

Information about a disability may include:

1. A governmental determination of disability;
2. Verification of receiving disability benefits or services (SSDI), Medicare or SSI benefits;
3. Eligibility for housing assistance or a voucher because of a disability; or
4. Confirmation and explanation of a disability from a healthcare professional – e.g. physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner or nurse.

6. Can documentation be provided from the internet?

HUD recognizes that some 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. HUD states that, in its 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.

However, HUD also states that, by contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. HUD states that one reliable form of documentation is a note from a person's health care professional that confirms a person's disability or need for an animal when the professional has personal knowledge of the individual.

7. What information can confirm a disability-related need for an assistance animal?

HUD states that reasonably supporting information often consists of information from a licensed health care professional – e.g. physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner or nurse – general to the condition, but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.

A relationship or connection between the disability and the need for the assistance animal must be provided. For non-observable disabilities and animals that provide a therapeutic emotional support, a housing provider may ask for information in order to conduct an individualized assessment of whether an accommodation is appropriate.

Housing providers may not require a health care professional to use a specific form, to provide notarized statements, to make statements under penalty of perjury, or to provide an individual's diagnosis or other detailed information about a person's physical or mental impairment. Housing providers may rely on professionals to provide accurate information to the best of their personal knowledge, consistent with the professional's obligations.

When providing this information, health care professionals should use personal knowledge of their patient/client – i.e., the knowledge used to diagnose, advise, counsel, treat or provide health care disability-related services to the patient/client. Information related to an individual's disability in health condition must be kept confidential and cannot be shared with other persons unless the information is needed for evaluating whether to grant or deny a reasonable accommodation request or unless disclosure is required

by law.

8. What should be included in required documentation?

As a best practice, documentation is recommended to include the following:

1. The patient's name;
2. Whether the health care professional has a professional relationship with the patient/client involving the provision of health care or disability-related services;
3. The type of animal for which the accommodation is sought;
4. Whether the patient has a physical or mental impairment;
5. Whether the patient's impairment substantially limits at least one major life activity or major bodily function;
6. Whether the patient needs the animal because the animal works, provides assistance or performs at least one task that benefits the patient because of his or her disability or because it provides emotional support to alleviate a symptom or effect of the patient/client's disability.

If the animal is not a common household animal, further information can be requested about the specific animal.

Responding to a request for an assistance animal can be a challenging task. Keep in mind, in addition to HUD's notice, a 2017 federal court case in Texas named *Houston v. DTN Operating Company LLC* may provide some additional guidance if a housing provider has questions regarding the credibility or completeness of information provided. For further information regarding this federal court case, please refer to the [It's The Law](#) article published in the January 2020 ABODE magazine. Flip to pages 12-13.