

HUD'S NEW GUIDANCE ON ASSISTANCE ANIMALS

LATEST UPDATE FOCUSES ON 'REASONABLE ACCOMMODATION' DISTINCTION IN FAIR HOUSING ACT.

By Erin Stackley, NAR senior representative of commercial legislative policy

If you own, manage, or sell residential rental properties, you were probably paying close attention when the U.S. Department of Housing and Urban Development released its long-anticipated guidance on assistance animals—“Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act”—on Jan. 28. It’s the first update to the HUD guidance since 2013. It outlines what information a housing provider can request and consider when deciding whether to grant a tenant “reasonable accommodation” regarding assistance animals.

According to the Fair Housing Act, housing providers must offer reasonable accommodation so that individuals with disabilities can have assistance animals in spite of any pet restrictions the providers might have. Reasonable accommodations are exceptions to “rules, policies, practices or services which may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling and public and common use areas.”

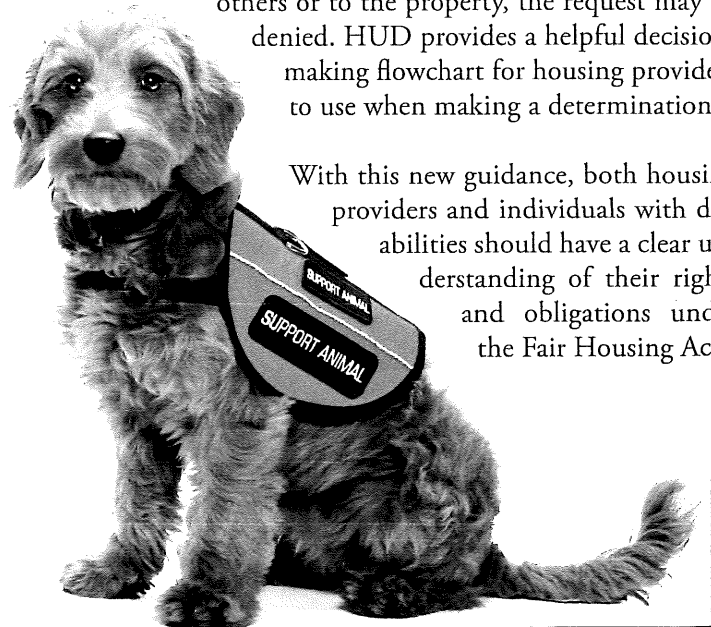
The Fair Housing Act defines assistance animals broadly, including trained and untrained animals that do work, perform tasks, and provide aid and/or therapeutic emotional support to individuals with disabilities. In recent years, industry professionals across the country have voiced concerns about people exploiting this part of the Fair Housing Act by falsely representing their pets as assistance animals.

The new guidance requires that a licensed medical professional have personal knowledge about the individual and the disability. This will likely reduce the number of people who, for example, order a certificate online without ever

having seen a doctor for diagnosis or treatment. The guidance also states that if the animal is not a “common household pet”—say, for example, the tenant has a miniature pony—the requestor carries the burden to demonstrate a disability-related therapeutic need for that specific animal or type of animal. Finally, the guidelines confirm that the assistance animal must be needed to address a disability that “substantially limits at least one major life activity or major bodily function.” The new guidance cautions housing providers against reassessing accommodations that were granted before the new guidance release.

In its guidance, HUD outlines the types of documentation a housing provider may request from a person seeking an accommodation and confirms that a property owner may charge a tenant for damage caused by an assistance animal or deduct damages from the security deposit. If an animal demonstrates a direct threat to the health and safety of others or to the property, the request may be denied. HUD provides a helpful decision-making flowchart for housing providers to use when making a determination.

With this new guidance, both housing providers and individuals with disabilities should have a clear understanding of their rights and obligations under the Fair Housing Act.



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