

SUPPORT ANIMALS AS ACCOMMODATIONS – What Information Can an Association Request?

Under the Fair Housing Act (FHA), a housing provider such as a community, homeowner, condominium and/or cooperative association (“Association”) must provide a reasonable accommodation to a person with a disability if that person needs such an accommodation to have equal opportunity to enjoy and use a dwelling.¹ The obligation to accommodate a disability extends to psychological disabilities as well as physical ones, and non-obvious disabilities as well as visible ones. According to the FHEO Notice 2020-01, published by the Department of Housing and Urban Development (HUD) and entitled, “Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,” requests for an accommodation to a “no pets” or “no animals” policy is one of the most common requests that Associations receive.² The FHA requires housing providers to permit, as a reasonable accommodation, the use of support animals, which are animals that work, provide assistance, or perform tasks that benefit persons with disabilities, or provide support to alleviate a symptom or effect of a disability.³

Problems often arise with requests for support animals as an accommodation for individuals with psychological disabilities. There are many potential missteps which may occur during the process that can lead to significant liability. Understanding the process, including what information the Association can and cannot require, can help Associations mitigate the risk of claims related to an alleged failure to accommodate an individual with a disability.

At the outset, it is important to understand that although an Association may encourage written requests, they cannot require the submission of a written request or the use of any specific words, such as “reasonable accommodation,” “assistance animal,” or any other words for an individual to request a reasonable accommodation. But once a request for an accommodation for a support animal is received, how does an Association determine whether an individual is entitled to a support animal as an accommodation?

Disabilities that are the basis for a request for a support animal are often not observable. In those cases, an Association may request certain reliable disability-related information that (1) verifies that an individual has a physical or mental impairment that substantially limits one or more major life activities and therefore meets the FHA’s definition of an individual with a disability, (2) describes the needed accommodation, and (3) shows the relationship between the individual’s disability and the need for the requested accommodation.⁴

In most cases, detailed medical information is not necessary. In fact, the individual can usually provide sufficient information verifying that they are an individual with a disability by providing proof, such as the receipt of Supplemental Security Income while under 65 years of age, Social Security Disability Insurance benefits, or a credible statement by the individual themselves.⁵ A medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability may also provide verification of a disability.⁶ An Association may not require details about a diagnosis, the severity of a disability, medical records or a medical examination.⁷ In addition, an Association may not require the use of a specific form, notarized statements, statements under penalty of perjury, or the provision of an individual’s diagnosis or other detailed information about a person’s physical or mental impairments.⁸ An Association should consider providing to requestors the *Guidance on Documenting an Individual’s Need for Assistance Animals in Housing* (at the end of the HUD Guidance document) to assist them in understanding the information necessary to submit with respect to their accommodation request.

If the individual provides verification of disability, the Association should then determine if there is a connection between the person’s disability and the animal.¹⁰ All information received should be kept confidential and should only be shared with those involved in making the accommodation decision or if disclosure is required by law.

A reasonable accommodation request may be denied if the individual who needs the accommodation does not meet the FHA definition of an individual with a disability, or if there is no disability-related need for the accommodation. A request also may be denied if it is not reasonable, or, in other words, which would be an undue financial and administrative burden or would fundamentally alter the nature of the Association’s operations.¹¹ Before denying a reasonable accommodation request, an Association should engage in a good-faith dialogue, known as the “interactive process,” with the individual making the request, in order to determine if there is an alternative accommodation that would satisfy the individual’s needs.

Consider the case of *U.S. v. Fairfield Properties*. The Plaintiff had extreme anxiety and suffered panic attacks. Although the Association permitted residents to have one dog, the Plaintiff had two dogs. When the

Association advised her that she was in violation of their pet rule, the Plaintiff explained that both of her dogs were emotional support dogs that assisted her in managing her disability. The Association advised her that she could keep one of the dogs as an emotional support animal, but not the other. The Plaintiff requested that the Association reconsider, but the Association stood by their denial. The Association never requested documentation regarding the Plaintiff's disability or of the medical necessity of the second dog. The court found that the Association's refusal to approve her reasonable accommodation request to keep both dogs violated the FHA and caused the Plaintiff to experience more frequent panic attacks, and an increased need for medication. The matter ultimately settled for \$47,500, and an agreement by the Association to conduct fair housing training and adopt a new reasonable accommodation policy.

Where did the Association go wrong? The Association failed to request documentation regarding the medical necessity of the second dog, so they had no basis

to deny the Plaintiff's reasonable accommodation request. Although the Association's pet policy permitted only one dog, the request for the second dog was a request for an exception to that policy as a reasonable accommodation, which the Association denied without any basis.¹²

While an Association may request information, as set forth above, they must also take care not to delay decisions once they receive information sufficient to make a decision. The Association must provide prompt responses to reasonable accommodation requests, as undue delay in responding to such requests may be deemed to be a failure to provide a reasonable accommodation.¹³

An Association may not charge a fee for processing a reasonable accommodation request and may not charge a deposit, fee, or surcharge for an assistance animal. Associations may not limit the breed or size of a dog but may place limits based on issues with the specific animal's conduct if it poses a direct threat.

Thought Corner: Associations should have clear procedures and protocols to manage accommodation requests. They should ensure that the individuals handling these requests are trained in federal and state disability accommodation and fair housing laws and are familiar with HUD Guidance. Care should be taken to request only appropriate information to verify disability status and the link between the disability and the support animal. The process should be completed promptly, as undue delays may be considered a denial of a reasonable accommodation. Associations should consider consulting with counsel to assist in handling accommodation requests.

ADDITIONAL REFERENCES

¹ 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204. For a more detailed description of the obligation to accommodate individuals with disabilities under the FHA, see Assistance Animals: A Potential Exception to Your Association's "No Pets" Policy | Ian H. Graham (IHG) Insurance.

² Housing and Urban Development FHEO Notice: FHEO-2020-01, Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act, issued 1/28/20 (HUD Guidance), at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>.

³ *Id.*

⁴ Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Accommodations under the Fair Housing Act, issued 5/15/04 ("Joint Statement") at <https://www.hud.gov/sites/documents/huddojstatement.pdf>. To the contrary, if an individual's disability is obvious, or known to the Association, and if the need for the requested accommodation is also readily apparent or known, then the Association may not request any additional information about the individual's disability or the disability-related need for the accommodation. If the requester's disability is known or readily apparent, but the need for the accommodation is not readily apparent or known, the Association may request only information that is necessary to evaluate the disability-related need for the accommodation. *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ HUD Guidance at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Joint Statement at <https://www.hud.gov/sites/documents/huddojstatement.pdf>

¹² *Id.*

¹³ *Id.*



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