



HUD Guidance on Assistance Animals



Presented by: Texas Department of Housing and Community Affairs

DISCLAIMER

This material is based upon work supported by the U.S. Department of Housing and Urban Development under the FHIP Grant No. FEOI1900455.

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Before We Start:

- All materials and recordings of this webinar will be available on the TDHCA website.
- If you have any questions, please enter them into the question chat box – after every segment, we will answer the questions in the chat box.
- This training is informational only and does not satisfy the requirements in 10 TAC 10.402(e)(1)-(2) for post bond closing documentation (for Multifamily Bond transactions) and documentation submitted for the 10 Percent Test (for Housing Tax Credits).



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Background

- As of January 29, 2020, HUD estimated that nearly 60% of all Fair Housing Act complaints were regarding denial of reasonable accommodations and disability access.
- In Texas, from 2013-2018, disability related complaints comprised nearly 50% of all Fair Housing Act complaints.
 - 67% of all disability related complaints in Texas claimed failure to make a reasonable accommodation as a basis for the complaint. (2019 State of Texas Analysis of Impediments to Fair Housing Choice)
- In January of 2020, HUD issued updated guidance regarding how to assess a person's request to have an **assistance animal** as a reasonable accommodation under the Fair Housing Act.
- Two parts of the guidance:
 - Assessing a person's request; and
 - Documenting the need for an **assistance animal**.



Assessing the Individual's Request



What IS an Assistance Animal?

- Two types of “**Assistance Animal**”
 - **Service animal**
 - Other animals that do any of the tasks listed for individuals with disabilities
- A trained or untrained animal that:
 - Does work
 - Performs tasks
 - Assists
 - Provides therapeutic emotional support

What an Assistance Animal is NOT

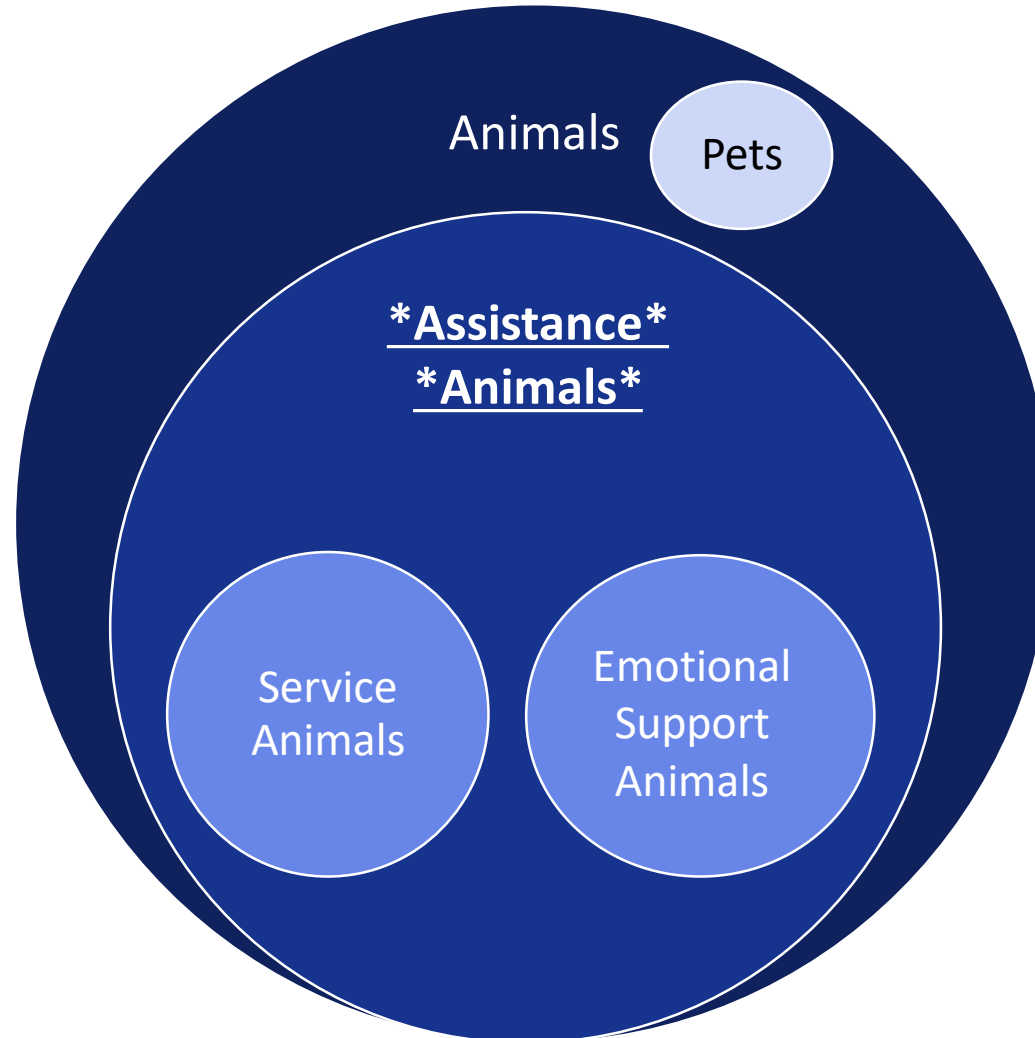
- An **assistance animal** is NOT a pet.
- Housing providers may NOT charge fees, deposits, or require pet insurance for **assistance animals** like they would with pets.
- Housing providers may NOT disallow an **assistance animal** because of its breed or size.
- All **assistance animals** are NOT necessarily service animals, but all service animals are assistance animals.



What's the Difference?

What is the difference between service animals, emotional support animals and assistance animals?

For the purposes of the Fair Housing Act, **assistance animals** refers to both **service animals** and **emotional support animals**. It also includes other animals that do work, perform tasks, or assist an individual with a disability.



What Laws Govern Assistance Animals

- Contrary to popular belief, the Americans with Disabilities Act (ADA) only requires public accommodations, state governments, and local governments to permit the use of **service animals** by an individual with a disability.
- Section 504 and the Fair Housing Act (FHA) requires housing providers to allow **assistance animals** for individuals with a disability.



HUD Guidance, Part 1

Reasonable Accommodations

What is a Reasonable Accommodation?

- A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have equal opportunity to use and enjoy a dwelling, including public and common use spaces.
- It is not necessary to submit a written request or use the words “reasonable accommodation,” “assistance animal,” or any other special words to request a reasonable accommodation under the Fair Housing Act.
- Persons requesting a reasonable accommodation are encouraged to do so in order to avoid miscommunication. It is also recommended that persons with disabilities keep a copy of their reasonable accommodation requests and supporting documentation in case there is a later dispute as to whether a reasonable accommodation request was made.

Has the individual requested a reasonable accommodation to get or keep an animal in connection with a physical or mental impairment or disability?



Remember: an individual does not need to use the words “reasonable accommodation” or any other magic words or phrases in order for a request to be a request for a reasonable accommodations.

Yes

No

Proceed to Part 2.1
(on the next slide)

The housing provider is not required to grant a reasonable accommodation that has not been requested.



Service Animals, Part 2.1

What is a service animal?



- Under the ADA, a **service animal** means “any dog* that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability.”

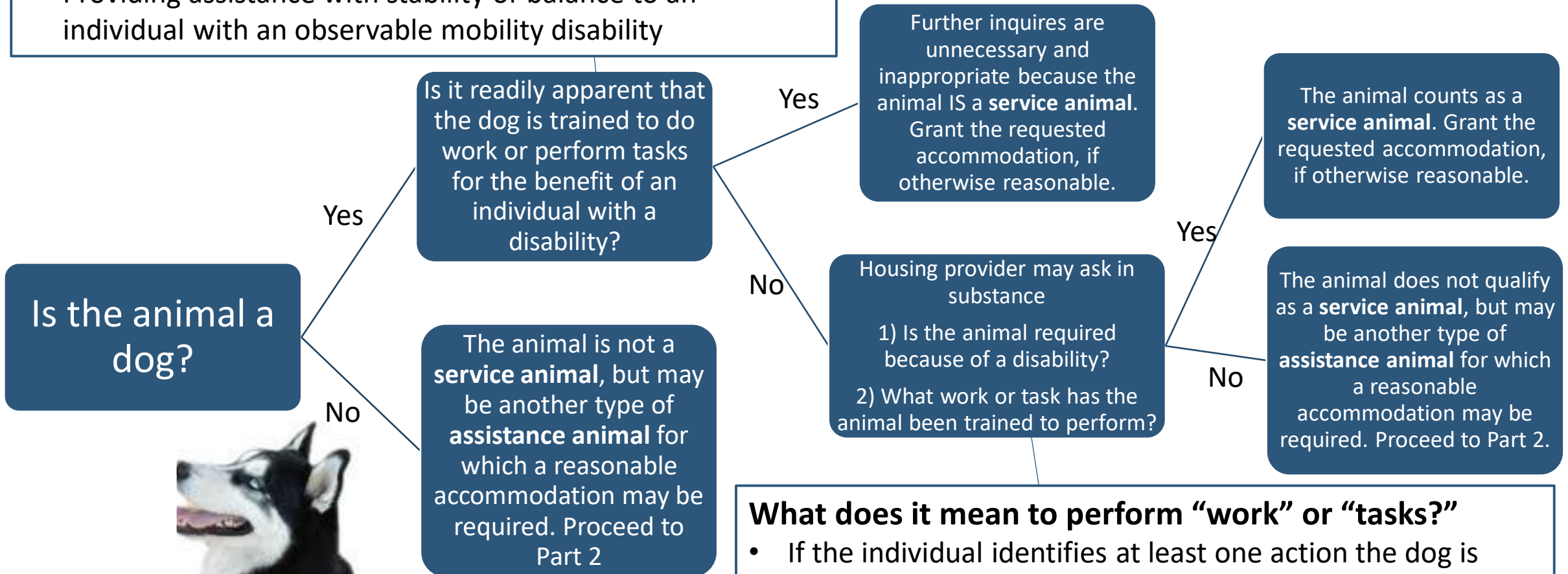
*There is one exception to the stipulation that a service animal may only be a dog. In very rare circumstances the Department of Justice has indicated that a miniature horse can be a service animal, as well.

What is “Readily Apparent?”

- Guiding an individual who is blind or has low vision
- Pulling a wheelchair
- Providing assistance with stability or balance to an individual with an observable mobility disability

Service Animals, Part 2.2

Service Animals

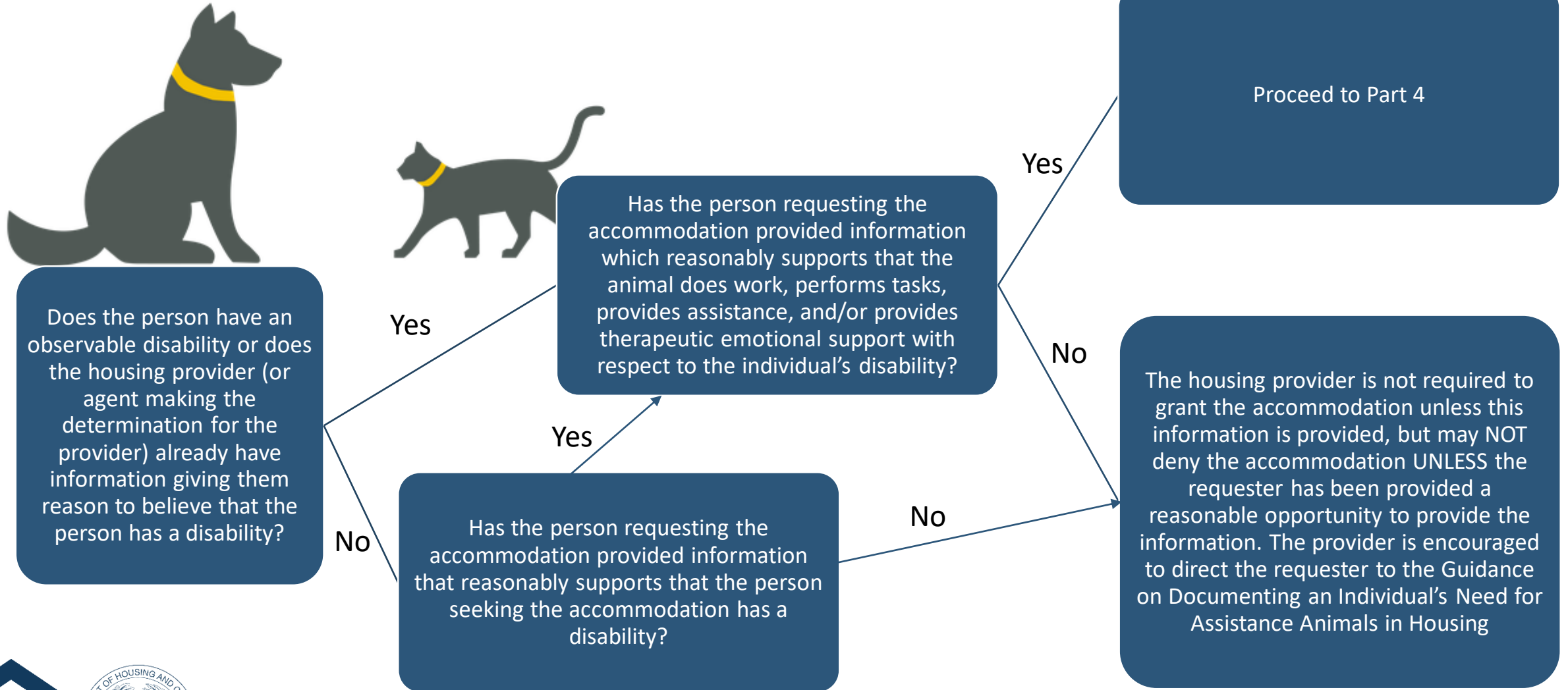


What does it mean to perform “work” or “tasks?”

- If the individual identifies at least one action the dog is trained to take which is helpful to the disability other than emotional support.

HUD Guidance, Part 3

Criteria for Deciding Whether to Grant the Accommodation



Information about the Disability

Information about Disability May Include:

- A determination of disability from a federal, state, or local government agency.
- Receipt of disability benefits or services (Social Security Disability Income (SSDI), Medicare, or Supplemental Security Income (SSI) for a person under age 65, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency.
- Eligibility for housing assistance or a housing voucher received because of disability.
- Information confirming disability from a health care professional, - *e.g.* physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse.

Determination that an individual does not qualify as having a disability for purposes of a benefit or other program does not necessarily mean the individual does not have a disability for the purposes of the Fair Housing Act, Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act.



Disability Determination

DOJ Regulations and ADA Amendments Act of 2008

Under the Department of Justice's regulations implementing the ADA Amendments Act of 2008, which HUD considers instructive when determining whether a person has a disability under the Fair Housing Act, some types of impairments will, in virtually all cases, be found to impose a substantial limitation on a major life activity resulting in a determination of a disability. Examples:

- Deafness
- Blindness
- Intellectual Disabilities
- Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair
- Autism
- Cancer
- Cerebral Palsy
- Diabetes
- Epilepsy
- Muscular Dystrophy
- Multiple Sclerosis
- Human Immunodeficiency Virus (HIV) infection
- Major Depressive Disorder
- Bipolar Disorder
- Schizophrenia



Observable and Non-Observable Disabilities

Not all disabilities are observable or readily apparent

Under the Fair Housing Act, a disability is defined as a physical or mental impairment that substantially limits one or more major life activities. While some impairments may seem invisible, others may be readily observed. Observable impairments generally tend to be obvious and would not be reasonably attributable to non-medical causes by a lay-person.

HOWEVER

Certain impairments, especially impairments that may form the basis for a request for an **emotional support animal** may not be observable. In those instances, a housing provider may request information regarding both the existence of a disability and the disability related need for the animal.

Housing providers are **NOT** entitled to know an individual's diagnosis and providers should **NOT** ask for this information.



Documentation from the Internet

If you read it on the Internet, it **MUST** be true, right?

Some websites sell certificates, licensing, and registration documents for **assistance animals** to anyone who answers certain questions or participates in a short interview and pays a fee. Under the Fair Housing Act, a housing provider **MAY** request reliable documentation when an individual requesting a reasonable accommodation has a disability and disability related need for an accommodation that are not obvious or otherwise known.

HUD states that, in its experience thus far, documentation from the internet is **NOT**, by itself, sufficient to reliably establish that an individual has a non-observable disability OR the disability related need for an **assistance animal**.

Many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from the person's health care professional that confirms a person's disability and/or need for an animal when the provider has personal knowledge of the individual.

Take home point: If the existence of a disability or the disability-related need for an **assistance animal** are not obvious or already known, a housing provider may ask for reliable documentation of the disability itself and the disability-related need for the **assistance animal**. Online certification of an **assistance animal** alone does not establish either criteria.



Information Confirming Disability-Related Need for an Assistance Animal

- 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. This is particularly the case when the disability is non-observable, and/or the animal provides therapeutic emotional support. In cases where the disability and the disability-related need are obvious or previously known, no additional information should be requested.
- For non-observable disabilities and animals that provide therapeutic emotional support, a housing provider may ask for information that is consistent with that identified in the Guidance on Documenting an Individual’s Need for Assistance Animals in Housing in order to conduct an individualized assessment of whether it must provide the accommodation under the Fair Housing Act. The lack of such documentation in many cases may be reasonable grounds for denying a requested accommodation.

Part 4 – Type of Animal

Cats and Dogs and Peacocks and Turtles, oh my.

Is the animal commonly kept in households?

Yes

Animals commonly kept in households: Dogs, cats, small birds, rabbits, hamsters, gerbils, other rodents, fish, turtles, or other small, domesticated animals that are traditionally kept in the home for pleasure rather than commercial purposes

The accommodation should be provided under the FHA...

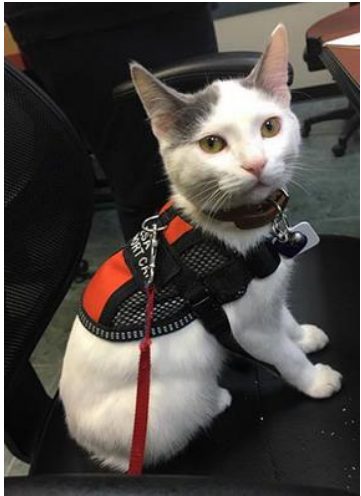
...Except reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.

No

A reasonable accommodation may not need to be provided except in very rare circumstances...

If the individual is requesting to keep a unique animal, then the requestor has the substantial burden of demonstrating the disability-related need for the specific animal

If the requestor submits documentation from a health care professional confirming the need for this specific type of animal



Part 5: General Considerations

- The Fair Housing Act does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. In this case, a housing provider may refuse a reasonable accommodation for an assistance animals if the **specific animal** poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain control of the animal, such as keeping the animal in a secure enclosure.
- Determinations for reasonable accommodations regarding assistance animals should, generally, be handled within 10 days.
- A reasonable accommodation may include an accommodation to a land use law, zoning law, Homeowners Association (HOA) rule, or co-op rule.
- A housing provider may not charge a fee for processing a reasonable accommodation request, even if the request is denied or specious.
- An **assistance animal** is **not** a pet. Therefore, a housing provider's pet rules do not apply to assistance animals. A housing provider may **not** limit the breed or size of a dog used as an assistance animal just because of the size or the breed itself.
- A housing provider **may** limit individual animals based on specific issues with that individual animal's conduct because it poses a direct threat or a fundamental alteration of the nature of the business.



Part 5: General Considerations (cont'd)

- A housing provider may **not** charge a pet deposit or pet fee or surcharge for an assistance animal. However, a housing provider **may** charge a tenant for damage an assistance animal causes if it is the provider's usual practice to charge for damage caused by tenants, or deduct that amount from the standard security deposit (provided all tenants are required to pay a security deposit).
- A person with a disability is responsible for feeding, maintaining, providing veterinary care, and controlling their assistance animal(s). The individual may do this on their own or with the assistance of friends, family, volunteers, or service providers.
- Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an assistance animal, the housing provider is encouraged to engage in a good-faith dialogue with the requestor called the "interactive process."
- A housing provider may **not** insist on specific types of evidence if the information which is provided or actually known to the housing provider meets the requirements of this guidance. Disclosure of details about the diagnosis or severity of a disability or medical records or a medical examination **cannot** be required.
- If a reasonable accommodation request is denied because it would impose an undue financial and administrative burden, or because it would impose a fundamental alteration of the nature of the provider's operations, the provider should engage in the interactive process to discuss whether an alternative accommodation may be effective in meeting the individual's disability-related needs.





Guidance on Documenting an Individual's Need for an Assistance Animal in Housing

What Do I Need to Do to Request a Reasonable Accommodation?

Basic guidelines for what you might need

- There are three criteria you need to satisfy:
 - Establish that you have a disability;
 - Identify the accommodation that you need; and
 - Establish the disability-related need for the accommodation
- Some disabilities are readily apparent.
 - Individuals using wheelchairs or walkers → likely mobility disability
 - Individuals with a white/red/yellow cane → likely visual impairment/disability
 - Readily apparent disabilities already satisfy the first criterion



What Should My Documentation Include?

- HUD recommends that, when requesting an accommodation for an assistance animal, requestors should have documentation from a health care provider that includes the following:
 - The patient's name
 - Whether the health care professional has a professional relationship with that patient/client involving the provision of health care or disability-related services
 - The type of animal(s) for which the reasonable accommodation is sought
- HUD recommends the following disability-related information be included in the documentation:
 - Whether the patient has a physical or mental impairment
 - Whether the patient's impairment(s) substantially limits at least one major life activity or bodily function
 - Whether the patient needs the animal
 - Whether the animal does work, provides assistance, or performs at least one task that benefits the requestor because of the requestor's disability, or provides therapeutic emotional support to alleviate a symptom or effect of the disability of the requestor and is not merely a pet.
- Information relating to an individual's disability and health conditions must be kept confidential and cannot be shared with other persons unless the information is needed to evaluate whether to grant or deny a reasonable accommodation or unless disclosure is required by law.



What if My Animal is Not a Commonly Kept Animal?

- HUD recommends that the documentation include the following additional information:
 - The date of the last consultation with the patient/requestor
 - Any unique circumstances justifying the requestor's need for the particular animal (if already owned or identified by the requestor) or particular type of animal(s)
 - Whether the health care professional has reliable information about this specific animal or whether they specifically recommended this type of animal



Best Practice for Requesting a Reasonable Accommodation for an Assistance Animal

- This is just best practice and is **not** required in order to make a reasonable accommodation request for an **assistance animal**. If your request includes all of this information, it will significantly reduce or even eliminate issues surrounding the approval of your request, and lessen the time it takes.
- Obtain a statement from your health care provider that shows they have a professional relationship with you and provide services or care related to your disability. This statement should indicate:
 - Your name
 - Date of last consultation
 - That you have a disability or a physical or mental impairment (it does not need to disclose the diagnosis)
 - That this impairment substantially limits at least one major life activity or bodily function
 - What accommodation(s) is being requested
 - The type of animal for which the reasonable accommodation is sought
 - The disability-related need for the assistance animal (whether it performs work, a task, or provides therapeutic emotional support to alleviate a symptom or effect of the disability)
 - Any unique circumstances justifying your need for the particular animal or type of animal
 - That the health care professional has reliable information about this specific type of animal or that they specifically recommended this type of animal to you

What if My Housing Provider Denies My Request?

- Don't be afraid to be your own advocate
 - Ask the provider for the reason why the request was denied
 - Keep copies or originals of all the documentation you submitted
 - If feasible, make your request in writing or by email, keep records of the request.
 - A housing provider may not require you to submit your reasonable accommodation request via a specific method or on a specific form
 - A housing provide may not require specific types of evidence if the information you provide them meets the requirements covered in this webinar and in HUD's guidance
 - The housing provider may not require you to provide notarized statements or to make statements under penalty of perjury
- File a complaint with the Department of Housing and Urban Development (HUD)
 - HUD administers many housing programs in the United States and will be able to forward your complaint to the proper jurisdiction
 - Contact information for HUD is on the next slide
- File a complaint with the Texas Workforce Commission's (TWC) Civil Rights Division
 - TWC is the agency in Texas responsible for enforcing the Fair Housing Act
 - Contact information for TWC is on the next slide
- Does the housing provider participate in any of TDHCA's programs, such as the Low Income Housing Tax Credit (LIHTC) program?
 - File a complaint with TDHCA online or in writing. If an accommodation is required you may also file a complaint by phone. Contact information is on the next slide



Contact Information

U.S. Department of Housing and Urban Development

Fort Worth Regional Office of FHEO
U.S. Department of Housing and Urban
Development

801 Cherry Street, Unit #45
Suite 2500

Fort Worth, Texas 76102

(817) 978-5900 or (800) 669-9777
TTY (817) 978-5595

https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint



Texas Department of Housing and Community Affairs

P.O. BOX 13941, Austin, TX 78711-
3941

(512) 475-3800 or (800) 525-0657

Fax: (512) 482-8851

Relay Texas (TDD) (800) 735-2989 or 7-
1-1 (Voice)

info@tdhca.state.tx.us

<https://www.tdhca.state.tx.us/complaint.htm>



Thank you for attending!

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