

November 13, 2020 TDHCA Webinar: Assistance  
Animals.

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>> The broadcast is now starting. All attendees are in listen-only mode.

>> Good morning, everybody. We're going to be starting the webinar here in just about five minutes. We just wanted to take a quick minute to let you know that we're here. You won't hear anything for a few minutes, but we're here.

While we're waiting, go ahead and if you don't mind go ahead and check your sound. The slide that is showing on the screen right now will show where to check, where to check the box -- which link to check to test your sound and audio to make sure that you won't have any issues during the webinar.

And we're going to get started here in about five minutes, so if you just hang tight with us, we'll be starting soon.

>> Good morning, everybody. We'll be starting our webinar here in just a moment. I want to give everybody a chance to log in to the software. I know that it's -- usually takes a few minutes for everybody to get logged in so I don't want to cut anybody off. So we'll start here in the next couple of minutes.

Right now a little bit of housekeeping, right now we have everybody on mute so we won't be able to hear you speak even if you've got your microphone on. However, this is a great time to go ahead and if you haven't done so, make sure you check your audio.

The slide that you can see right now will show you where to go to do that.

During the presentation itself if you have questions, Go-to webinar has a panel called questions where you can ask us and we'll be able to either answer you there or share that answer with everybody else.

So if you at any point have a question, go ahead and type it there and we'll try to answer it either when we see it or we may wait until the end of the webinar when we take questions.

If during the course of the webinar we aren't able to answer your question today we will be contacting you individually to answer your question. So we may need to get a little more information or time to do research to make sure you get fullest answer that you can.

We may also things up for people who want to ask their question vocally. If we do that, then we will let you know how to go about doing that, but we will be able to unmute you and call on you at that point in time.

Finally, while we are taking your questions at the end -- during the course of the webinar, we're going to be putting up some questions for you to answer in the form of a poll. When you see that poll go up, go ahead and answer as best as you can. It isn't a test. There's no -- you're not going to fail or pass. We just want to get a feel for what people think, what they believe and what their answers are going to be.

You will notice that we do have closed captioning at the bottom of the screen, so even if you aren't able to listen in you won't be missing any content if you follow along with just the video. The video, handouts and transcript of this video will be provided on our website under the training section. There you will find other webinars that we have presented around Fair Housing. And we will also be sending you an email as soon as the webinar is available to the

website.

So now that we have some of that administrative stuff out of the way, let's get into the presentation. My name is Nathan, I'm the Texas Department of Housing and Community Affairs Fair Housing research specialist. With me is Erin Phillips, our Fair Housing training specialist. Erin, do you want to say hello?

>> Hello.

>> Erin will be helping out with your questions and with the polls that we have up possibly.

So let's go ahead and get into HUD's guidance on assistance animals. First a quick disclaimer. This material is based upon work supported by the U.S. Department of Housing and Urban Development under the Fair Housing Information Partnership grant number FHEO 1900455. Any opinion, findings, conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the U.S. Department of Housing and Urban Development.

Another quick message before we start, all

materials and recordings of this webinar will be available on TDHCA's website. If you have questions during the course of the webinar, please enter them into the question box. After every segment we'll try to answer the questions as they come in.

And this training is informational only. It does not satisfy the requirements in 10 TAC 10.402(e)(1)-(2) for post bond closing documentation for the multi-family bond transactions or for documentation submitted for the 10% test for housing tax credits.

Your presenters today are going to be myself, Nathan Darus, and with me again is Erin Phillips.

So a little bit of background. At least anecdotally, TDHCA and the Texas Workforce Commission and the Department of Housing and Urban Development, have noticed that there were-- there was a lot of confusion around the topic of assistance animals. If you're one of the people who wasn't clear on it, don't feel bad. You aren't alone. HUD estimates that almost 60% of all of their Fair Housing complaints had to do with reasonable accommodations and

accessibility.

And indications were that an increasing number of those were specific to assistance animals. In the State of Texas 2019 Analysis of Impediments, TDHCA staff analyzed complaints in Texas and found a similar pattern. Almost one in three Fair Housing complaints filed in Texas mentioned denial of reasonable accommodations as one of the issues.

In fact, this confusion was so widespread that HUD in January released -- released updated guidance on the topic of assistance animals as a reasonable accommodation. That guidance is going to make up the bulk of this webinar and we split it into two major areas just like HUD did.

First we'll talk about assessing a person's request for an assistance animal and then second we'll talk about how to document the need for an assistance animal.

The first part of this is going to be especially useful for property managers, and the second part will be very helpful for tenants and tenant representatives or advocates.

So the first section, how should a property go about assessing a request for an assistance animal?

Well, let's get started with actually a different question. I'm going to go ahead and put up our first poll. The Fair Housing Act -- the Fair Housing Act allows a property manager to deny a reasonable accommodation for an assistance animal based upon which of these: The breed or species of animal, the size or weight of the animal, the specific animal's history or none of the above, there are no restrictions.

Okay. It looks like about two-thirds of you have voted so far. I'm going to leave it up for just another minute here. To make sure that everybody has a chance to vote in this poll.

Okay. I'm going to dead and close this poll and let's see what the results are. It looks like 10% of you said the breed or the species of animal is a reason why you can deny an assistance animal.

About 20ish% said the specific animals history. And two-thirds of you said none of the above, there are no restrictions.

Well, you will be happy to know that two-thirds of you were wrong and that's a good thing.

So there are restrictions on what type of -- what animal can be an assistance animal. And the 20% of you that said the specific animal's history are correct. You can look at a specific animal's history to make sure that it is not a safety issue for your tenants or your property.

So there's no need to despair. You probably aren't going to be having dangerous animals running amuck on your property.

You might notice throughout this webinar that there are a few bolded terms, assistance animal, service animal and emotional support animal. These words are bolded because there are a lot of confusions around these terms and people tend to use the terms interchangeably. The next few slides are going to help clear this up.

So what is an assistance animal? It's an animal that does work, performs tasks, safes or provides therapeutic emotional support and is not just a pet.

There are two basic types of assistance animals.

Service animals and other animals that do those things that we just said.

Not a very helpful grouping so we're going to dig a little bit deeper.

Sometimes it helps to talk about what an assistance animal is not. An assistance animal is not a pet. They should not be treated as a pet by housing providers. This means that you can't charge your pet fees, pet deposits, pet rent for an assistance animal.

This also means that your breed and size restrictions such as no pit bulls or only dogs under 45 pounds do not apply to assistance animals.

And this last part is also very important. Not all assistance animals are service animals, but all service animals are assistance animals.

While HUD does spend some time discussing service animals specifically, I found it easier to use the term assistance animal so there's no confusion.

So what is the difference here? Well, the purposes of the Fair Housing Act, assistance animals refers to both service animals and emotional support

animals. This diagram is a good way to think about service animals and emotional support animals interact and how they are related to assistance animal.

If a assistance 16 -- if an animal is a service animal it is an assistance animal.

If an animal is an emotional support animal it is an assistance animal.

If the animal is an assistance animal, it is not a pet. So for the purposes of the Fair Housing Act it makes sense to disregard the term service or emotional support and focus on assistance animals.

What laws govern assistance animals? Why the distinction here?

There are several different laws at work here. The Americans with Disabilities Act covers public accommodations and only requires that service animals be allowed in public accommodations or in state or local government programs, activities or services.

People often assume that this means the ADA applies to privately owned apartment complexes or properties because they have public or common areas. However, the Fair Housing Act requires reasonable

accommodations be made to allow assistance animals in dwelling units. Such as apartment complex -- such as apartment units or any common area that is available to tenants of the apartment complex.

This means that assistance animals, the more inclusive definition, must be allowed not just in the apartment unit of the tenant, but the mailroom, office, common rooms and so on.

So while the ADA may apply to some areas of the apartment complex, such as the leasing office, the Fair Housing Act applies to nearly all parts of an apartment complex and places greater restrictions on the property as far as what they must allow.

OK let's back up just a little bit further here and say what is a reasonable accommodation? A reasonable accommodation is a change, alteration or adjustment to a rule or a policy or a procedure or service or practice that may be necessary for a person with a disability to use and enjoy a dwelling and its public and common use spaces.

It does not have to be written. There are no magic words. A person doesn't need to say reasonable

accommodation. If they ask to change a rule and mention that they have a disability or even describe a condition that a reasonable person would recognize as a disability, such as I have trouble seeing or I can't hear well, that is enough to constitute a request for a reasonable accommodation.

At this point you should jump into the following flow charts to help you determine what to do next. Best practice is always to keep a copy of any and all requests they receive and keep documentation provided along with or in response to the request. Do not share that information with anybody else unless the person you are sharing it with is necessary to processing the reasonable accommodation request.

So now let's get into service animals specifically. We've already used the terms assistant animal and service animal so far. So let's clarify what we mean by these terms in specific.

The ADA has a specific definition of a service animal. Most importantly, the service animal can only be a dog. It must be trained to do work or perform tasks. There is one exception to this definition.

The Department of Justice has determined that in very specific circumstances that are unlikely to ever apply to typical multi-family apartment complexes, miniature horses can also be considered as a service animal.

Additionally, and we'll cover this later, as a barn yard animal, miniature horses are not considered to be commonly kept animals. Like I said, we'll cover this a little bit later. That's going to come up again.

So the only reason why for the purposes of the Fair Housing Act you would need to consider whether an assistance animal is a service animal is that there are specific types of questions that are allowed for an assistance animal to be a service animal. So this chart should take you step by step through it, but the simplest way -- the simplest way to think of this is in the form of a few easy questions.

One, is the animal a dog? Two, is the animal obviously performing work or a task for an individual with a disability?

If you answer yes for both of those, stop, do not pass go, do not collect \$200, do not ask any more

questions. The dog is a service animal and further inquiry is not only not required, but is inappropriate.

So what does readily apparent mean? In the words of Justice Potter Stewart, you know it when you see it, but we do have some examples.

So if you answered yes, the animal is a dog, but no, it is not obviously performing work or a task for a person with a disability, then you may ask essentially two questions? Is the animal required because of a disability and what work or task has the animal been trained to perform?

And if the animal is required because of a disability and the individual identifies at least one action the dog is trained to take to help with disability, other than emotional support, it's a service dog and you should grant the reasonable accommodation.

But wait, even if you answered no to any or all of these questions, it doesn't mean that this animal isn't another type of assistance animal.

Fortunately the process for determining whether or

not to approve an assistance animal is basically the same as it is for a service animal. Firstly, does the requester have a readily apparent impairment or disability or were you already aware of the requester's disability? Second, does the requester have information that reasonably supports that the animal performs work or tasks, provides assistance or provides therapeutic emotional support with respect to the disability?

If the answer is yes to both of these, great, you will move on to the next step.

If the disability is not already known or readily apparent, then did the requester provide information that reasonably supports that the requester has a disability?

If yes, and they have information supporting the need for the animal as discussed already, then move on to the next step. If not, the housing provider is not required to grant the accommodation.

But you can't expect that every requester is going to have all of their assistance ducks in a row when they come to you. You do need to give them a

reasonable opportunity to provide the necessary information. And a good rule of thumb here is if you haven't asked them for the information and given them a chance to bring it to you, then you can't deny this request yet.

While it is not required, per TDHCA, it is recommended to let the requester know about the document in the handouts and the need for the importance of documenting the need for the assistance animal, which we will also cover later.

So what kind of information would reasonably establish that the individual has a disability? When in doubt, government documents are always an acceptable source. Federal, state or local government provides disability benefits or services to the requester and then that's good enough to establish that a disability exists.

But that isn't the only source. Receiving Social Security disability income, Medicare or Supplemental Security Income while under 65 also counts as do veteran disability services or benefits.

If the person has a voucher for a housing program

or receives housing assistance because of after disability, that also counts.

If a health care professional confirms the individual has the disability, also counted.

Note that this does not mean just doctors. Just because an individual doesn't qualify as having a disability for a benefit or program does not mean they do not have a disability as defined by Federal law.

So this is a list of possible disabilities. This list is not exclusive and just because a condition is not listed here does not mean that the condition is not considered a disability. Individuals with disabilities that are not observable may voluntarily provide details about their disability.

Sometimes these details will be more than you as a housing provider need to make decisions on accommodation requests. This information when provided should be considered by the housing provider.

Just because a disability isn't obvious or readily apparent doesn't mean that it doesn't exist or isn't real. Diabetes is an excellent example of this. One of the possible side effects of diabetes is called

diabetic neuropathy, which is the dulling of the extremities which can make it hard to walk, open jars or other activities. However, it is not readily apparent when a person is diabetic or experiences diabetic neuropathy.

Even though the disability might not be clear to the housing provider, the provider is not entitled to know the individual's diagnosis, just that the individual has a disability.

So this is one of the biggest concerns the TDHCA has heard anecdotally as well as Texas Workforce Commission. Housing providers and -- we here at TDHCA have also seen the websites that advertise that they'll make your dog or cat or weasel a certified emotional support animal for a nominal fee.

This documentation alone is not enough or sufficient to establish that the requester has a disability or to establish the disability-related need for the animal.

Remember, if the disability is not observable it is acceptable to request documentation to reasonably indicate that the requester has a disability and the

disability related need for the animal. Having a certificate saying an animal is an emotional support or assistance animal only indicates that the person paid for a certificate. It doesn't prove that the animal is really an assistance animal.

The requester may have legitimately thought that assistance animals have to be certified. They do not.

Just like with determining whether the requester has a disability, a health care professional is one of the primary sources for supporting information on the disability-related need for an assistance animal.

However, if the disability and disability-related need are obvious or already known, don't ask for additional information. For example, if you have a requester who has already asked for grab bars in the shower and you installed them and they come down in their wheelchair to the leasing office everyday to say hello, when they email you a request to allow an assistance animal to help them with mobility, you don't need to ask for any new information. You already have all of the information that you would need to make that determination. The disability is

obvious and previously known and the mobility needs are previously known. And the request says that the dog is to help with mobility.

The disability and the nexus between the assistance animal and the need is established.

But what if the animal isn't a dog. What if it's not a cat? What if it's that peacock? There's one easy question you can ask yourself in this situation. Is the animal the requester is asking about commonly kept in households? If the animal is commonly kept in households, you don't need to ask for any more information about the animal or work or tasks or therapeutic support it provides.

Dogs easy. Cats normal. Fish normal. Turtles, yeah. Rodents, personally gross, but also normal. Even small birds like parakeets and finches.

While not expressly mentioned in the guidance, ferrets, which are not technically rodents, are small domesticated animals that are traditionally kept in the home for pleasure, so this means they would also be considered to be commonly kept.

Once you get outside of that group you start to

fall into barn yard or unique animals. If the requester is requesting for a snake, a monkey, a peacock, a Texas horned lizard or an elephant, then the requester has the substantial burden of demonstrating the disability need for that specific type of animal.

Not only that, but they need to demonstrate that the same benefits could not be achieved by a different commonly kept household animal.

If the requester doesn't have that documentation upfront, don't deny the request right away. You still need to give them a reasonable opportunity to obtain that information.

All this is to say don't worry, you are most likely never going to see an emotional support peacock in your complex.

So some things to think about here. What about dangerous dog breeds? Well, breeds of dogs aren't inherently dangerous, but specific dogs might have a history of dangerous behavior that would pose a direct threat to the health and safety of others. Does that mean you can say no to all pit bulls? No, but you can

say no to that one chihuahua that has a history of biting. HUD guidance indicates that you should be able to handle the response within 10 days. In many cases even 10 days might be too long or it might not be enough time.

If the need or disability are obvious and the animal is a service dog, it should probably not take you 10 days. But in unique circumstances it may take a little longer than 10 days.

HOA rules are not exempt from reasonable accommodations. The same goes for zoning laws, land use laws or co-op rules. If your homeowner's association prohibits dogs of a certain breed, that restriction does not apply to assistance animals. The same goes with local ordinances. A city with a breed restriction also does not apply to assistance animals.

A housing provider may not charge for processing or granting a reasonable accommodation. The requester may be responsible for paying for any structural modifications, but there may not be any fee, charge, deposit or surcharge for the reasonable accommodation itself.

Housing providers may however charge for damages caused by assistance animals if they usually charge for damage caused by tenants. This can include deductions from security deposits if all tenants have to put down a deposit obviously. If the housing provider only charges pet deposits, but no security deposits, there would be no deposit for an assistance animal.

Housing providers are also not responsible for taking care of an assistance animal. That responsibility falls on the individual with a disability or one of their -- or someone designated by the individual. So this may mean friends, family, service providers, but it does not mean the housing provider.

Even if denying a reasonable accommodation request for any reason, a housing provider should try to engage in an interactive process with the requester to try to identify alternative accommodations that can be made.

Housing providers may not require specific types of evidence or forms to be used when requesting

information from a requester and they should never ask for or require that a requester disclose their diagnosis.

The requester may offer that information voluntarily, and if they do, that should be considered as information related to the request. And it should never be shared with anybody who is not responsible for making a determination of whether to accept or deny a request.

So this is going to lead us into our second section which is guidance on documenting an individual's need.

So this is probably a good place to take a quick minute to look over some of the questions that have been submitted.

>> All right. Well, we have just one main question that came in a couple of times, a few times with regard to how do you find out an animal's history or whether an animal or dog has a dangerous history?

>> So yes, that's difficult because as someone noted under one of the questions I see, it's not like there's a criminal history database for dogs.

However, quite often an animal will be already known to people that are on the property. A lot of times it's not somebody moving in to a property with their assistance animal, so other tenants will know whether or not the animal was dangerous or had a history.

You can ask the tenant if the animal has a -- any kind of history of biting, being dangerous, destruction of property.

Let's say it is somebody new that is moving on to your property. You already often get information about a tenant's previous rental history. That information will be in there. And also has someone pointed out, veterinary clinics will also know the behavioral history of specific pets sometimes.

So all of these are going to be ways that you can find out if there's a history of aggression in a specific animal.

Do we have any other questions right now?

>> I don't see any right now. Nope.

>> Okay. Just remember if you have questions, go ahead and type them into the questions box. We are

going to have some time at the end of this to answer questions again so you may not think of them now, but you might think of them here in the next couple of minutes. I know that's almost always how it happens, about two minutes after a question session ends I have a question.

So better go ahead and move on to the next section.

At the heart of any reasonable accommodation there are three major things that you need to establish in order to qualify for a reasonable accommodation. The first is you need to have a disability and you need to be able to demonstrate this to the housing provider.

Second, you need to tell the housing provider exactly what accommodation you need. What rule, what procedure are you seeking a change to or an exception to?

In the case of an assistance animal you're currently requesting an exception to the housing provider's pet policies.

And third, you need to establish that you have a need for the change in policy because of a disability.

This is called the disability-related need.

Just having a disability does not necessarily mean that you have a disability-related need for what you're asking for.

So for example, a requester may have epileptic seizures. The requester asks for an accommodation allowing for an emotional support pig. In this case there's no connection between the disability and the request.

That is there's no disability related need for the pig.

However, there may be a disability-related need for an assistance animal such as a dog that is trained to get underneath an individual's head during a seizure to protect against brain damage.

And just as a note, all of the examples that I am giving are real world examples of some of the work that assistance animals do. This should help you identify some of the common and even uncommon assistance animal types.

Sometimes all of these things are readily apparent. A requester uses a cane for the blind and

requests an accommodation for a dog to help guide them. This individual has already established the existence of a disability, identified the needed accommodation and connected the accommodation to a disability-related need.

So this page is going to feel like a lot, but it isn't really too bad if you realize that this page is telling us what HUD recommends. These are best practices. Following these steps to the letter will help you get a faster response and will make it less likely that the request is denied incorrectly or mistakenly.

So what does HUD recommend? When you are speaking to your health care professional or provider, ask them for a letter or prescription that includes your name stating that they treat you for a disability. They don't need to say what the disability is. And what kind of animal the accommodation would be for.

This covers the first two criteria from last slide. Documenting that you have the disability and identifying the accommodation that you need.

To cover the third and final criteria, HUD

recommends that the health care professional's assessment or letter includes the reason why the animal is needed as it relates to the requester's impairment.

What kind of work or support or assistance does the animal provide, how does it help alleviate the impairment?

You do not have to disclose your diagnosis, however, if you do, a housing provider should never share that or any other information from your request with anybody else unless that person is needed to evaluate the request.

So what if I really do need that peacock or an anteater or a monkey?

In this case you will have to provide a little more documentation. HUD recommends that your documentation includes the last time that your health care professional consulted with you, identifies the unique circumstances that justify the need for the particular animal, and if the health care professional has reliable information about that specific animal or whether they specifically recommend that animal or

type of animal.

Does that seem like a lot? Probably. But the next slide should help.

If you take this bulleted list with you to your health care provider, make sure that they can answer each of these items, that will cover any reasonable accommodation request for any type of assistance animal.

Remember, this is your health care provider so let them know what you need so that you can -- so they can give you the answers you need so you can be in your home with your assistance animal as quickly as possible and with the least amount of difficulty possible.

Get your health care professional to write your name, the date of the last appointment with you, the impairment that limits at least one more life activity. What accommodation is needed. What type of animal the accommodation is for. The disability-related need for the animal. Does it perform a task, work, therapeutic emotional support that alleviates a symptom or effect of the disability

or impairment.

Any unique circumstances justifying the need for the particular animal. If it's unique, any information that explains the health care professional has reliable information about this unique animal or that they specifically recommend this type of animal for you.

Taking this slide into your health care provider will help you make sure you get the documentation you need so you can get the assistance animal you need quickly and smoothly.

That said, a housing provider may still deny your request for a service animal.

So what should do you if that happens? Don't be afraid to be your own advocate. Make sure you calmly ask why the request was denied. Make sure that you have kept copies or originals of all documentation that you submit to the housing provider.

I always recommend that you submit your request by email or in writing so that you can keep it and that there is a paper trail. However, you don't have to do that. And you do not have to submit your request on a

specific form and the housing provider may not require specific types of evidence.

If your documentation meets the requirements set out in the HUD guidance, then let the housing provider know this and point them to the HUD guidance document or to this webinar. The housing provider may not require you to have your statement notarized or given under penalty of perjury.

If they do require either of those things point them to this webinar or to the HUD guidance.

This may still not be enough and the housing provider might still deny your request. Don't panic.

HUD administers a variety of housing programs in the United States and can direct or forward your complaint to the agency with jurisdiction.

Find out if the housing provider participates in any of TDHCA's programs, such as the low income housing tax credit program, the home investment partnerships program, emergency solutions grants program, Amy young barrier removal. Bootstrap loan program and so on.

You can always look in TDHCA's vacancy

clearinghouse to see if they are listed there as well.

If they participate in a TDHCA administered program, file a complaint with TDHCA. Also file a complaint with the Texas Workforce Commission's Civil Rights Division. Texas Workforce Commission is the agency responsible for enforcing the Fair Housing Act in Texas.

Here's the contact information for all of those. I'm going to give you a chance to write any of this down and this is probably another good time to see if we have any questions. So while Erin is collating those questions, I'm going to go ahead and put up our second poll.

Okay. Looks like about half of you have answered this. I'm going to go ahead and close it.

Let's see what the results are. A tenant comes into the office in a wheelchair asking you to waive the pet fees for his guide dog. What can you ask them? 75% of you said nothing. Seven percent said if the tenant has a disability and which tasks. 17 percent medical documentation verifying the need for the animal. And none of you said what the

tenant's disability is and why they -- great, I'm glad none of you said that last one.

The answer to this question is nothing.

If the disability is obvious and the need is obvious as well, there is no need to ask them for any more information.

So let's go ahead and take a look at the questions. Erin, have any of them stood out?

>> Yeah. We've got a few questions coming in.

Firstly we did talk about how assistance animals were not pets. Some of the questions is can you require assistance animals to have shots essentially as if you require them have rabies shots, any other type of shot and proof of that like a pet?

>> Okay. So the answer to that is a qualified yes. If your local jurisdiction requires that for any animals, then you may also require it.

But if you live in a city that doesn't have any requirement for a rabies vaccination, you cannot require that of an assistance animal. You can require it for pets, but not for assistance animals. So you will want to look at what your local ordinances say in

order to answer that question.

>> Okay. And then with respect to history of an animal or need of an emotional support animal or service animal, can a resident use a letter or documentation that is five years old requiring that need and can the property request a more updated or current letter?

>> So I would hesitate to say that you should ask for a newer letter. The Fair Housing Act definition of a disability doesn't generally include temporary impairments. So if a person has a disability five years ago it's quite likely they still have that same disability and that same impairment now.

So I would not request a new letter. Whether or not you can that is -- there is no hard and fast answer to that question. Just know that if do you ask for it, it is possible that that could be asking for too much information which is why I recommend not doing it.

>> Right. And review the letter itself, like you said, to make sure that that isn't a temporary impairment.

Correct.

>> Another question was if the physician should list what disability is on a statement or documentation with respect to the animal, is that okay to use?

>> Yes.

>> Obviously it's going to be the tenant's choice as to whether or not they use that letter. So yes, absolutely there's nothing stopping you from requesting a reasonable accommodation from disclosing your disability and disclosing your diagnosis. But if you're not comfortable with disclosing it, ask your physician, maybe redact that particular portion and simply focus on what the impairment is.

>> Right.

Okay. Here's a question with respect to other tenants in the building. What if a new tenant with a service animal, a neighbor of a new tenant with a service animal has a fear of any animal, who has the right-of-way here?

>> It's better not to think of it as who has the right-of-way. If the person has a fear of animals and

that fear rises to the level of an impairment or disability because remember a disability doesn't have to be physical, it can be mental or emotional, then you may want to consider accommodating a transfer for that individual so they do not have to be near the assistance animal.

You cannot stop somebody from living on your property because they require an assistance animal.

>> Right. And you I would also say you can't necessarily prioritize a fear over someone's need to live comfortably and safely.

>> Unless it rises to the level of a disability.

>> Yes, yes.

If a complex does not receive any type of TDHCA funding, any barrier busting funds, etcetera, are the complaints then addressed to the Texas Workforce Commission?

>> Yes, that's correct. So in any situation if there are no funds or even if there are TDHCA funds, the Texas Workforce Commission is still the agency responsible for enforcing the Fair Housing Act. So you would want to address a complaint to the Texas

Workforce Commission.

We have administrative rules that govern our programs and sometimes we're able to step in and offer guidance and technical assistance that will handle a situation quickly, more quickly than even the use of a mediator or conciliation with Texas Workforce Commission.

Still pursue both avenues, but you should always include Texas Workforce Commission in this situation.

>> Let's do this one. What if a tenant refuses to spay or neuter their animal and they have offspring or children, animal children?

>> Well, the offspring would not be considered assistance animals.

>> Right, it would be a pet.

>> So in that case you can apply your pet policies to them.

That may in fact require them to get rid of some of those animals, not the assistance animal, but the ones that are not considered assistance animals, yes.

>> Okay. Let me see if I am understanding this question in this scenario.

An individual moves in to a property and they pay pet deposit fees and they do not present their animal as a service animal at the time of move-in, but months or years later they are saying -- basically they come back months later, years later with the same animal with a letter from the doctor saying they need that animal as a service or assistance animal.

And how would they handle that or how necessarily would a -- how would they handle that or how would a property go about that process of waiving a potential fee or fine for the pet?

>> So one of the most important things in answering this question, it's actually in response to part of the pretense of the question that is that they're just trying to get out of paying a pet deposit or rent.

Housing providers are not in the -- in a position to determine the legitimacy of an individual's disability or disability-related need. So when you receive documentation from a medical professional that identifies the need for an assistance animal, from that point on the animal is considered an assistance

animal.

So if you're, say, six months into a lease and a tenant comes to you and says, my animal is now an assistance animal, here's my letter, at that point in time you stop charging pet rent.

Whether or not you refund the pet deposit, you will probably want to work that out with the individual because the pet deposit will still probably go towards damages.

You could also consider refunding the pet deposit and then at the end of the lease charging for any damages that go above and beyond normal wear and tear.

>> Okay. This is I think the last question I have coming in. It's a question -- so if a person with an assistance animal does not pick up the waste of their animal every time they walk their animal, can the property give them a lease violation or a fine? However, this tenant does say that they cannot bend down to pick up the waste of their animal.

>> So then they are still responsible for finding someone who can, and that does not include you as the housing provider. So yes, you can still give them

whatever lease violation and fine there would be.

>> Some people are sending in a couple more questions. I'm seeing some questions with respect to dates of letters and longer spans of time with respect to the date of the letter to the current year, but we did address that before. I don't know if you want to repeat.

>> Yeah. So this is where I would say is it sounds like you have a very specific situation in mind and I would recommend that you would reach out to us individually so that we have all of the details so that we can provide the proper kind of guidance and technical training and assistance necessary.

It's often hard to know -- it's hard to make any kind of determinations when you don't have all of the information.

So I'm seeing the Year 2000 is when the letter is dated and it's 2020, I'm having a hard time thinking of an assistance animal that's commonly kept that has that kind of a life-span.

So is it the same animal? Probably not. But if it's specifically saying that they just need a dog, I

don't know. I'd have to see what the letter -- what the physician's letter looks like and all that sort of thing.

So if you have very specific situations, please reach out to us specifically on those.

>> Looks like we have another one. Resident with special needs, fully capable of living independently with check-ins.

Is a cat which is always getting out of the apartment. Would he qualify to have an accommodation excusing the animal from the rules? Being on a leash.

Yes, so this is -- this gets at a really good question.

The animals still must be under the individual's control. That will usually mean a leash of some sort. Some sort of tether or harness. It's very rare to see any animal that can only be controlled by voice commands.

If they are able to control them by voice commands, A, can I hire them to train my dog, and B, then in that case they clearly have control. So no, you can't require them to use a leash then. But for

the most part you can say a leash.

If the animal is aggressive can you withdraw the reasonable accommodation? Yes. If the animal is aggressive after you have allowed the animal as part of a reasonable accommodation, absolutely. You can withdraw it.

Always, though, remember document, document, document. Your best friend is documentation. So show that you have received either complaints or take statements from staff that have seen it. Make sure that you have plenty of documentation before you go ahead.

>> Yeah.

>> The question with respect to refunding pet fees as accommodation, I think we talked about that, but with respect to someone gave me documentation after they've already paid a pet deposit fee, the accommodation would be refunded.

>> Yeah. So one thing to look at is always look at the date of a letter. So if a physician's letter is dated before the move-in, it may simply be -- remember, not everybody knows how to ask for an

assistance animal as a reasonable accommodation. And that's a lot of people who have legitimate assistance. All assistance animals are legitimate, excuse me, I shouldn't have said it that way.

But people who have assistance animals don't always know how to ask for it as a reasonable accommodation. There are a lot of people who still unbeknownst to them are paying pet deposits on an assistance animal. They don't know that they don't have to.

So if the letter is clearly dated before the beginning of the lease term, you probably want to consider refunding the deposit and the pet rent at that point.

But if the letter is dated yesterday, maybe a little bit different unless the letter also specifically says that this has been a thing for a long time.

So take each individual situation on its own and look at the situation that way as well.

Should a service animal have an ID? Can you clarify what you mean by that? And while you do that

I'm going to get to a question, what if you get a lot of complaints about a service dog barking a lot?

Dogs bark, babies cry. Unfortunately there are -- if you have provisions in your lease about noise and noise becomes excessive and even a after you have spoken with the tenant about the excessive noise and nothing has happened, you can probably -- I say probably because I don't want to say for certain. This is a situation where it depends on what your tenant selection criteria and policy and procedures say.

It depends upon who is complaining and for what reason in a lot of cases. You might be able to issue a lease violation in that case. I hesitate to say anything further than might be able to.

>> Nathan, really quickly, could you remove the poll so we can see the captioning?

>> Oh. My goodness. I am so sorry.

>> No problem. Okay. Continue.

>> Luckily we will have the transcript available for this. That was my fault entirely. All of these questions and answers will be available in the

transcript. I apologize.

So I'm going to try to answer Mr. Rivas' question even though we haven't gotten necessarily the clarification on what he means.

Can you require a service animal or an assistance animal to have a certification? No, you cannot require an assistance animal to be certified. There's no such thing as a certified assistance animal.

Service animals, yes, because they've been trained on a specific task. But from a Fair Housing Act perspective the difference between the two -- between a service animal and every other assistance animal is simply in the questions that you can ask, so whether or not the animal is certified is not something that would fall into that. You can request that from somebody who comes into your leasing office before they're a tenant because that would be specific to the Americans with Disabilities Act, but for your tenants, no, don't require them to have certification.

As far as identification goes, if local ordinances require a dog to be registered or an animal to be registered, then yes, you can require them to be

registered in that way.

It's not considered a burden to make sure that an animal is properly registered in the way that it would have to be -- if it weren't an assistance animal. So yes, you can have it registered with whatever local animal control there is. That's rare. It's really rare that it's ever required.

>> Okay. I don't see any additional questions that are coming in. Our email is not on here, but our email is available for any additional questions that you guys might have.

But yeah.

>> Okay.

Yeah, I don't see any new questions coming in either.

If you come up with any questions, again, like Erin said, please feel free to email us at [fheoi@TDHCA.state.tx.us](mailto:fheoi@TDHCA.state.tx.us).

All right. Thank you all for attending today and we hope to see you next week. We'll have reasonable accommodations and reasonable modifications that go beyond just assistance animals or specific to

assistance animals. We do hope to see you there as well and thank you all for attending.

>> Have a great weekend.

[End of webinar].