

HUD Issues New Guidance on How to Evaluate Requests for Reasonable Accommodation Request for Assistance Animals

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Over the last several years, community associations have experienced an increase in the number of residents claiming the need of assistance animals. These claims are often supported by documentation readily obtained by answering a few questions online. The ease of qualifying “assistance animals” has led to abuse by those who want to keep a pet, despite association rules and restrictions that might prevent them from doing so. This abuse has also caused confusion for associations without guidance on how to evaluate the claims for reasonable accommodations by residents with a real need for assistance animals. The Community Associations Institute (CAI) raised this issue with the Department of Housing and Urban Development (HUD), and HUD has now responded. On January 28, 2020, HUD released a new [Guidance Sheet](#) and [Fact Sheet](#) on how to evaluate requests for reasonable accommodations for assistance animals. In the new guidance, HUD provides best practices to assist housing providers, including community associations, with a detailed step-by-step checklist to follow when evaluating requests for reasonable accommodations related to service animals. HUD also provides guidance on the additional information those seeking accommodations may need to provide with requests.

HUD RECOGNIZES THAT INTERNET CERTIFICATES MAY NOT BE RELIABLE

One of the most interesting and important aspects of the new guidance is that HUD acknowledges that requests for an accommodation for an assistance animal are often supported only by a certificate obtained by answering a few questions on a website. The validity of these certificates is often questionable. HUD even states, “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.” Such documentation issued online without personal knowledge of the disability is insufficient to establish the need for a reasonable accommodation.

GUIDANCE ON WHAT INFORMATION MAY SUPPORT A REQUEST FOR ACCOMMODATION

Additional guidance is provided regarding what information should be provided to confirm a non-observable disability-related and the need for an assistance animal. HUD states that a housing provider may request reliable information to demonstrate the disability related for an assistance animal. As a best practice, HUD recommends that the following information be included in a letter supporting an accommodation request: 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, and the type of animal(s) for which the reasonable accommodation is sought (i.e., dog, cat, bird, rabbit, hamster, gerbil,

other rodent, fish, turtle, other specified type of domesticated animal, or other specified unique animal).

As to providing information on a non-observable disability, it is recommended that individuals seeking reasonable accommodations for support animals ask health care professionals to provide information related to the following: whether the patient has a physical or mental impairment, whether the patient's impairment(s) substantially limit at least one major life activity or major bodily function, and whether the patient needs the animal(s) (because it does work, provides assistance, or performs at least one task that benefits the patient because of his or her disability, or because it provides therapeutic emotional support to alleviate a symptom or effect of the disability of the patient/client, and not merely as a pet).

Associations must keep in mind that assistance animals are not pets. Associations may not apply any pet related rules or restrictions in an attempt to limit assistance animals in an association. However, HUD now has differentiated between animals that are commonly kept in households vs. unique animals, which are not commonly kept in households. HUD states that animals normally kept in a household are "a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes." These types of animals would typically qualify for a reasonable accommodation that would not substantially interfere with the operations of a condominium or homeowners association.

If the animal for which the reasonable accommodation is requested is a "unique" animal, meaning not one commonly kept in households, then the person requesting the accommodation has the "substantial

burden" of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal. Such unique animals include "reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals." HUD also affirms that a reasonable accommodation is not required if the animal would pose a direct threat to the health or safety of the other individuals or would result in substantial damage to property. To support a requested reasonable accommodation for such a unique assistance animal HUD states it may be helpful for patients to ask health care professionals to provide the following additional information: the date of the last consultation with the patient, any unique circumstances justifying the patient's need for the particular animal (if already owned or identified by the individual) or particular type of animal(s), and whether the health care professional has reliable information about this specific animal or a whether they specifically recommended this type of animal. It is also recommended that the health care professional sign and date any documentation provided and provide contact information and any professional licensing information.

Lastly, as a best practice, HUD states that housing providers should make a determination promptly, generally within 10 days of receiving documentation supporting the need for assistance animals. This may prove difficult for many associations whose boards of directors may require an emergency meeting to evaluate the request and make a determination in response to such a requested accommodation.

Responding to requests for a reasonable accommodation can often be tricky and

require the parties to engage in an interactive process to determine what if any accommodation should be made available when a person has a disability. Associations should involve skilled legal counsel to help them through the process. For additional information on the new HUD Guidance on Reasonable Accommodations for Assistance animals, contact Robert DeNichilo of Richardson|Ober|DeNichilo at robert@RODLLP.com.



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