

Reasonable Accommodations/Modifications and Assistance Animals

Kelly Kuchera, Equal Opportunity Specialist, Enforcement, FHEO

Beth Crosby, Equal Opportunity Specialist, Enforcement, FHEO

Vera Schneider, Equal Opportunity Specialist, Enforcement, FHEO

Agenda

- **Legal Framework and Definitions**
- **Differences between Reasonable Accommodations and Reasonable Modifications under FHA, Section 504 and ADA**
- **Requests for Assistance Animals as a Reasonable Accommodation**
 - **Support Animal v. Service Animal**

Legal Framework

- **Fair Housing Act as Amended (Title VIII)**
 - 24 CFR part 100
- **Section 504 of the Rehabilitation Act**
 - 24 CFR parts 8 & 9
- **Americans with Disabilities Act**
 - Title II – 28 CFR part 35

Fair Housing Act (FHA)


- Prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, **disability**, familial status or national origin
- Applies to both privately funded and federally funded housing
- Protections for persons with disabilities includes reasonable accommodations/reasonable modifications

Section 504 of the Rehabilitation Act (Section 504)

- Prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance or in programs conducted by any Executive Agency or the Postal Service
- Applies to “Recipients” of “Federal financial assistance,” both terms are broadly defined in HUD’s Section 504 regulation
- HUD funded programs or activities, including: public housing authorities; HUD-assisted housing; states, cities and counties that receive Federal funds

Americans with Disabilities Act of 1990, as amended (ADA)

- Provides comprehensive access for individuals with disabilities
- Does not depend on receipt of Federal financial assistance
- Protects qualified individuals with disabilities from discrimination
- **Title II of the ADA- state and local government services**
 - Covers all programs, services, and activities of state and local governments
 - Applies to housing built, operated, or sponsored by state or local governments




What is a Reasonable Accommodation or Modification

- A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces
- A “reasonable modification” is a structural change to the existing premises if such a change may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces
 - 24 CFR § 100.204 (FHA)
 - 24 CFR §§ 8.21, 8.24, 8.33 (Section 504)

Differences Between a Reasonable Accommodation and a Reasonable Modification under the FHA and Section 504

- A request made solely under the FHA for a structural change is considered a reasonable modification (24 CFR §100.203)
- If the property is covered by Section 504 and there is a request for a structural modification to a unit or public use or common areas, this qualifies as a request for a reasonable accommodation.
 - Example: addition of a ramp, grab bar



Differences Between a Reasonable Accommodation and a Reasonable Modification under the FHA and Section 504

- If only the FHA applies, the tenant must request permission to make the modification, is responsible for payment of the costs of the modification, and may be required to restore the premises to its original structure
- If Section 504 applies, the tenant must request a reasonable accommodation and the provider must make and pay for the accommodation unless it is an undue financial and administrative burden or a fundamental alteration of the program



Requests for Assistance Animals as a Reasonable Accommodation

A significant percentage of fair housing complaints received by HUD involve assistance animals.

Several Federal Laws May Apply

- **The FHA** – Applies to all housing, regardless of whether the housing has federal funding.
- **Section 504:** applies to all programs or activities conducted by recipients of federal financial assistance
- **ADA** - Title II of the ADA applies to public entities, including public entities that provide housing

FHEO Notice on Assistance Animals

January 28, 2020

- FHEO-2020-01 replaces HUD's prior guidance which was issued in 2013
- There are two types of assistance animals under FHA:
 - (1) support animals; and
 - (2) service animals

Definition: Support Animal

- Support animals are:
 - Other trained or untrained animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities

Support Animals Assist Persons with Disabilities

- Persons with psychiatric disabilities benefit from routinely caring for animals
- Persons with neurological or intellectual disabilities benefit by calming, becoming more engaged and expressive, accepting touch, and/or becoming alert to hazards
- Persons with physical disabilities benefit from animals that can retrieve items, alert the presence of others, assist with balance, and/or provide protection in case of loss of consciousness


Definition: Service Animal

- The DOJ issues ADA regulations.
- Service Animal is defined by the DOJ as any **dog** that is individually trained to do work or perform tasks for the benefit of an individual with a disability.
- Emotional support, companionship, and comfort are not a specific work or task under the ADA.

Service Animal: Work or Tasks


- Performing work or tasks means:

The dog is trained to take at least one action which is helpful to the disability but is not emotional support.




Assistance Animals as a Reasonable Accommodation

- Reasonable Accommodation analysis under Section 504 and the FHA is different than ADA “service animal” analysis
- In situations where the ADA, the FHA, and Section 504 apply simultaneously, providers must meet obligations under both the reasonable accommodation standard of the FHA and Section 504 as well as the service animal provisions of the ADA



Assistance Animals as a Reasonable Accommodation under the FHA

- No certification is required
- There are no breed, size, or weight restrictions
- There are no fees, deposits, supplemental insurance, hold harmless agreements, extra inspections, “pet rules,” or veterinary certificates



Assistance Animals as a Reasonable Accommodation under the FHA

- Bases for Denial:
 - Direct threat
 - Undue financial and administrative burden
 - Fundamental alteration to the program
 - no disability-related need for the accommodation

Interactive Process

- The housing provider is encouraged to engage in a good faith dialogue with the individual making the request called the “interactive process.”
- Disclosure of details about the diagnosis or severity of the disability or medical records or medical examination cannot be required
- Housing providers may not require a health care professional to use a specific form

Guidance for Documenting Disability-Related Need for Assistance Animals

When can additional documentation be required?

- Documentation **may be** necessary to evaluate a reasonable accommodation request – case-by-case analysis
 - If the disability is obvious or otherwise known, and need for requested accommodation is readily apparent or known: ***no further information***
 - If the disability is known but the need for the accommodation is not readily apparent or known: ***provider may request only information that is necessary to evaluate disability-related need***
 - All documentation must be kept confidential

Denial of Request

- Housing providers must grant requests unless they are not reasonable, such as:
 - if it would impose an undue financial and administrative burden on the housing provider or
 - fundamentally alter the nature of the provider's operations
- A housing provider may also deny a request for a reasonable accommodation if there is no disability-related need for the accommodation

Medical Letters from the Internet

- Some companies on the internet sell registrations, certificates, and licensing documents for assistance animals to persons who answer questions, participate in short interviews, and pay a fee
- These documents are often insufficient because they are not written by a medical provider with personal knowledge
- Many legitimate, licensed medical providers offer their services remotely and have personal knowledge

Resources

- *Joint Statement on Reasonable Accommodations under the Fair Housing Act*
 - https://hudgov-my.sharepoint.com/personal/mary_e_crosby_hud_gov/Documents/Desktop/Joint%20Statement%20on%20Reasonable%20Accommodations%20under%20the%20Fair%20Housing%20Act.pdf
- Joint Statement on Reasonable Modifications under the Fair Housing Act
 - https://hudgov-my.sharepoint.com/personal/mary_e_crosby_hud_gov/Documents/Desktop/Joint%20Statement%20on%20Reasonable%20Modifications%20-%20March%205,%202008.pdf
- January 28, 2020 FHEO Notice on assistance animals
 - https://hudgov-my.sharepoint.com/personal/mary_e_crosby_hud_gov/Documents/Desktop/Assistance%20Animal%20Guidance%202020.pdf



Questions

Kelly Kuchera Kelly.a.Kuchera@hud.gov (202) 826-9848
Beth Crosby Mary.E.Crosby@hud.gov (413) 285-2863

Save the Date

UNDERSTANDING FAIR HOUSING

Training for Landlords, Property Managers and Realtors

This training is designed to assist landlords, property managers and realtors in understanding Fair Housing laws and obligations, including who is protected, what types of housing are covered, prohibitions, and more.

HUD Fair Housing staff will also take participants through the process of how fair housing investigations are conducted. A question-and-answer session will follow the training.

Date: Thursday, May 26, 2022

Time: 11:00am

[Click here to Register](#)

To join the webinar, an email will be sent out prior to the event.



Questions regarding Fair Housing laws and requirements may be submitted in advance by emailing Jon.P.Thomas@hud.gov