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# Assessing Animal-Related Reasonable Accommodation Requests **Step-By-Step Guide**

In the January 2020 issue of *Residential Resource*, I examined the growing trend of tenants and prospective tenants using easily obtainable and facially dubious online letters to establish their need for emotional support animals (ESA) as reasonable accommodations under the Fair Housing Act (FHA). My prior article concluded that a “lack of clarity in federal regulations” was creating an atmosphere that gave tenants significant leverage over housing providers with no-pet policies. While I sincerely doubt that the U.S. Department of Housing and Urban Development (HUD) was motivated by my article, HUD has now attempted to provide this requested clarity.

A HUD guidance released earlier this year offers advice on how to assess – and just as important, how to document – requests for service animals and ESAs. If a housing provider has not yet done so, the issuance

with a disability that may not be observable and are not connected to specific work or tasks. ESAs also need not necessarily be dogs. For example, a trained guide dog that performs tasks for a person who is blind is a service animal, whereas a cat who helps to comfort a person with post-traumatic stress disorder is an ESA.

ESAs are often looked upon with skepticism, especially because viral news stories and social media posts frequently emphasize unconventional ESAs, such as peacocks or snakes. However, as discussed below, reasonable accommodations related to ESAs are often appropriate and legally required. This skepticism of ESAs is exacerbated by the proliferation of letters that are easily procured online for a nominal fee and require only a relatively brief phone call with a provider who may not even be located in the same state as the owner. Ultimately, and while there is nuance

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of this guidance presents the perfect opportunity to review and update procedures for all animal-related requests, especially because online-based ESA letters and telehealth evaluations will only grow in prevalence due to the COVID-19 crisis.

This article offers a step-by-step guide for evaluating animal-related reasonable accommodation requests under the FHA, as informed by the new HUD guidance and best practices.

### **SERVICE ANIMALS AND ESAS**

As a brief refresher, ESAs (Emotional Support Animals), or therapy animals, generally differ from service animals in their purpose and legal protections, albeit in nuanced ways. As defined by the Americans with Disabilities Act (ADA), service animals are dogs individually trained to perform work or tasks to help their owners perform functions of their lives that a disability may preclude or limit them from performing. ESAs, meanwhile, provide support or comfort for an owner

in every situation, a properly prepared online letter from a licensed medical provider is as legitimate as a document procured from a tenant’s regular, in-person medical provider.

No matter how a tenant’s reasonable accommodation request for an ESA is presented, now that HUD has provided a guidance for all animal-related requests, property owners and managers have a comparatively clearer path to follow when dealing with these situations. The specific application of these principles in a particular scenario is often challenging and requires consultation with knowledgeable counsel, but the basic framework can and should be consistently followed.

### **ASSESSING ANIMAL-RELATED REQUESTS**

Much of the confusion and potential for disputes surrounding animal-related requests stems from housing providers’ uncertainty about what they are allowed to ask tenants and when they are allowed to ask them.

**Continued next page**

HUD's guidance provides a recommended process for landlords to follow when faced with an animal-related accommodation request, which I have summarized and supplemented in the following eight-step procedure:

**1. Is the animal a dog?**

If yes, proceed to the next question. If no, the animal is not a service animal, but it still may be another type of assistance animal and you should proceed to question No. 4.

**2. Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of an individual with a disability?**

If yes, further inquiries are unnecessary and inappropriate. The animal is a service animal and must be accommodated. If no, proceed to the next question.

The key to this second step is whether the dog's ability to do work or perform tasks is "readily apparent" (e.g., guiding an individual with a vision impairment, pulling a wheelchair, stabilizing a person with an observable balance/mobility disability).

**3. Is the dog required because of a disability, and what work or task has the dog been trained to perform?**

If the answer to the first part of the question is yes and, in response to the second part of this question, the tenant can identify at least one action the dog is trained to perform to help with the disability (other than emotional support), the dog qualifies as a service animal and must be accommodated. If the answer to either part of this question is no or none, the dog does not qualify as a service animal. However, it may yet qualify as an assistance

animal that is eligible for a reasonable accommodation.

**4. Has the individual requested a reasonable accommodation, i.e. asked to get or keep an animal in connection with a physical or mental impairment or disability?**

This request may be oral or written, or made by others on behalf of the individual, including a person residing in the unit with the requesting individual or a legal guardian or representative. Nevertheless, if there is no request, the housing provider does not need to grant a reasonable accommodation for the animal.

That being said, housing providers are advised that no "magic words" are required to make a reasonable accommodation request. If a housing provider is unsure whether a tenant has made a reasonable accommodation request, they should err on the side of assuming a request has been made and clarify the tenant's intent.

**5. Does the person making the request have an observable disability or does the housing provider already have information giving them reason to believe the person has a disability?**

If yes, proceed to question No. 7. If no, continue to the next question.

When answering this, keep in mind that the FHA's definition of a disability is a physical or mental impairment that substantially limits one or more major life activities. Observable disabilities include physical impairments, such as blindness, deafness, or mobility impairments, as well as some neurological conditions, such as Parkinson's disease or epilepsy. Observable disabilities tend to be obvious, even to a non-medical lay person.

**Continued on page 30 "Guide"**



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Continued from page 17 “Guide”

**6. Has the person requesting the accommodation provided information that reasonably supports that the person making the request has a disability?**

If yes, proceed to question No. 7. If no, the housing provider is not required to grant the accommodation unless this information is provided, but the housing provider must provide the tenant with a reasonable opportunity to provide such information. The housing provider is also encouraged to direct the tenant to HUD’s new guidance.

Here, the guidance makes a special note on documentation from the internet, or online ESA letters. It reads, “In HUD’s experience, 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. By contrast, many legitimate, licensed health care professionals deliver services remotely, including over the internet. One reliable form of documentation is a note from a 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.” Despite the unfavorable language of the first sentence of this quotation from the HUD guidance, the remaining sentences of this quotation make it clear that licensed medical providers can provide sufficient diagnoses and documentation remotely via the telephone or internet.

**7. Has the person requesting the accommodation provided information that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual’s disability?**

If yes, proceed to question No. 8. If no, as in the previous question, the housing provider is not required to grant the accommodation unless this information is provided, but the housing provider must provide the tenant with a reasonable opportunity to provide such information. The housing provider is also encouraged to direct the tenant to HUD’s new guidance.

**8. Is the animal commonly kept in households?**

If yes, the reasonable accommodation should be provided under the FHA. If no, a reasonable accommodation does not typically need to be provided.

If a tenant is making a request for a unique animal, such as a monkey, kangaroo, or other non-domesticated animal that is not commonly kept in households, the tenant has the “substantial burden” of demonstrating the need for that specific type of animal, which typically requires documentation from a health care professional. The HUD guidance defines “animals commonly kept in households” to include dogs, cats, small birds, small rodents (e.g., hamsters, rabbits, gerbils, guinea pigs), fish, turtles, or other small domesticated animals typically kept for non-commercial purposes.

**DOCUMENTATION FOR ASSISTANCE ANIMALS**

The HUD guidance also includes best practices and recommendations for any potential required documentation. These documentation points are best practices, but they are not mandatory. Thus, failure to adhere to this guidance is not by itself sufficient reason to deny a request. Housing providers cannot require that medical documentation be notarized, made under oath, or use a specific form.

- **General information:** All documentation from a health care provider should include the tenant’s name, whether the provider

has a professional relationship with the tenant involving the provision of health care or disability-related services, and the type of animal(s) for which they are seeking the accommodation. All documentation should also be signed and dated by the health care provider.

- **Disability-related information:** Health care providers should include whether the tenant has a physical or mental impairment, whether the impairment(s) substantially limit one major life activity or bodily function, and whether the animal works, provides assistance, performs at least one task that benefits the patient because of their disability, or alleviates a symptom or effect of the disability.
- **Unique animal information:** If an assistance animal is not of a species commonly found in households, tenant may want health care providers to share the date of their last consultation, any unique circumstances justifying the tenant’s need for the specific animal or type of animal, and any reliable information about the specific animal and whether they recommend it.

**PRIVACY AND CONSISTENCY**

Following a reasonable accommodation request, housing providers must maintain the tenant’s privacy. All documentation and information received must be kept strictly confidential and stored in a safe, private area, and/or a secure password-protected computer. Employees should not openly discuss or disclose this information. If a tenant asks why a different tenant is allowed to own a dog or other animal, the housing provider should not reveal any information about the tenant’s disability. Landlords are advised to simply avoid the question or, if pushed, say that they cannot comment further.

It is also strongly recommended to have a consistent process for evaluating current and future requests to ensure fairness and efficiency. HUD’s guidance provides a good framework to create a procedure to process requests. Any employees

who will handle these requests should be properly trained on this process.

**GOING FORWARD**

While we now have more clarity regarding animal-related requests, this remains a rapidly evolving issue. Property owners and managers must monitor for future HUD updates or changes to the law. Notably, this HUD guidance is a guidance. Thus, while it is highly instructive, it does not itself have the effect of a statute or regulation.

If a manager or employee is in doubt about a particular request, they should inform the current or prospective tenant that they need time to process the request and, then, should discuss the request with an attorney. Housing providers should be very cautious in giving an outright “no” to a request without careful consideration and dialogue with the tenant. Neglecting to follow these practices could risk a HUD complaint or litigation – a result neither party wants. Therefore, it is best to consult counsel in a situation where a tenant’s request creates any doubt or confusion.

The FHA envisions an interactive process between housing providers and tenants when a request for a reasonable accommodation is made. In this spirit, a housing provider’s meaningful efforts to make the process collaborative with the tenant will not only align with the FHA’s goals, but will also help the process go more smoothly – and hopefully prevent the landlord and tenant from fighting like cats and dogs about cats and dogs. 🐾

