



HUD's Notice on Assistance Animals

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Imagine a newly-minted real estate licensee acting as a rental agent for residential property. The agent knows the property inside and out, including all restrictions applicable to the use of the property. Those restrictions include a prohibition against animals of any kind weighing more than 50 pounds. If an applicant with no obvious disability appears in the rental office with a large, menacing Doberman Pinscher and asks to rent an apartment where he can live with the dog, what are the agent's duties?

First, the agent should understand that her duties are set forth in Section 54.1-2133 of the Virginia Code, concerning licensees engaged by landlords to lease property. Subsection 7 of that statute requires the agent to comply with all fair housing statutes. The agent knows that the Fair Housing Act prohibits discrimination in housing against persons with disabilities and that disabled persons sometimes use service animals to assist with the disabilities. Because she cannot plainly see the applicant's disability, however, or how the animal is meant to help, she is unsure how to proceed.

Fortunately, the U.S. Department of Housing and Urban Development (HUD) published its notice No. FHEO-2013-01 (the Notice) in April of 2013 to provide the agent with some guidance. The Notice addresses a housing provider's obligation with respect to service animals and assistance animals for people with disabilities under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act. Because the Fair Housing Act is the broadest of those three laws, and most likely to apply to the agent in this hypothetical, only the guidance in the Notice under the Fair Housing Act will be discussed in this column.

The Fair Housing Act requires housing providers to implement reasonable accommodations to avoid discrimination against persons with disabilities in housing. Reasonable accommodations include allowing the use of assistance animals in housing even when the housing provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals. According to HUD, an assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates

one or more identified symptoms or effects of a person's disability. Assistance animals perform various functions, such as guiding individuals who are blind, alerting individuals who are deaf to sounds, pulling a wheelchair, alerting persons to impending seizures or providing emotional support to persons with disabilities who have a disability-related need for such support. The Fair Housing Act does not require an assistance animal to be individually trained or certified.

In evaluating a request for a reasonable accommodation to possess an assistance animal, the housing provider initially must answer two questions. First, does the person seeking to use and live with the animal have a disability, i.e., a physical or mental impairment that substantially limits one or more major life activities? Second, does the person making the request have a disability-related need for an assistance animal, meaning that the animal does work, provides assistance or performs tasks or services for the benefit of the disabled person, or provides emotional support that alleviates one or more of the person's identified symptoms? If the answer to either of those questions is no, then the Fair Housing Act does not require any accommodation of a prohibition against animals.

If the answers to the two foregoing questions are yes, the Fair Housing Act requires the housing provider to make an exception to the animal prohibition allowing the disabled person to live with and use the assistance animal in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services. The housing provider may also deny the accommodation if (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Each specific assistance animal must be considered on a case-by-case basis. Generalizations about the breed, size and weight of the animal may not be considered.

In our example, the agent was uncertain whether or not the applicant had a disability or whether the Doberman Pinscher was an assistance animal. The Fair Housing Act permits housing providers to ask persons with disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and the need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the need for the assistance animal. Documentation from a physician, psychiatrist, social worker or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability will suffice, but the housing provider may not ask an applicant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of the person's physical or mental impairments.

The agent may thus ask the applicant for reliable, but not invasive proof of the disability and the need for the dog as an assistance animal. As long as the applicant provides that reasonable proof, a request for a reasonable accommodation made for the assistance animal may not be unreasonably denied or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. If the applicant believes that his

request for a reasonable accommodation has been improperly denied, he may file a complaint with HUD.

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