



REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT

Allyssa Wheaton-Rodriguez
Trial Attorney

Dept. of Housing and Urban Development

HUD Fair Housing Enforcement

Fair Housing and Equal Opportunity (FHEO) Office:

- Intake/Assessment Branch
- Enforcement Branch
- Compliance Branch

HUD has 10 regional offices and HQ

- FTW office covers a 5-state area: TX, OK, LA, AR, NM. Within each state, there are also field offices (e.g., San Antonio, Houston).

Enforcement mechanisms under the Fair Housing Act (FHA)

Complaints to HUD under 42 U.S.C. § 3610 that may lead to an administrative hearing or suit in federal district court

Direct court actions under 42 U.S.C. § 3613

Suits by the attorney general under 42 U.S.C. § 3614

Texas FHIPs and FHAPs

FHIPs

- **Austin Tenants Council, Inc.**
- **Greater Houston Fair Housing Center, Inc.**
- **Money Management International Inc.**
- **North Texas Fair Housing Center**
- **San Antonio Fair Housing Council, Inc.**
- **Texas Department of Housing and Community Affairs**

FHAPs

- **City of Austin Equal Employment/Fair Housing Office**
- **Corpus Christi Human Relations Commission**
- **City of Dallas Equity and Human Rights Office**
- **City of Fort Worth Department of Diversity and Inclusion**
- **Texas Workforce Commission**

The Fair Housing Act Protected Bases

- Race
- Color
- National Origin—country of an individual's origin or the country from which the individual's ancestors came
- Religion—Limitation based on religious beliefs, but lacks “reasonable accommodation” provision
- Sex
- Handicap/disability
- Familial Status—presence of children under 18; pregnancy; persons in the process of getting legal custody

The Fair Housing Act Overview

Prohibits any of the following actions with respect to the sale or rental of housing:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions, or privileges for sale or rental of a dwelling
- Provide different housing services or facilities

§804(a) or (f)(1)

§804(b) or (f)(2)

FHA Overview (continued)

Prohibits any of the following actions with respect to the sale or rental of housing:

- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting)
- Deny anyone access to or membership in a facility or service (such as multiple listing service) related to the sale or rental of housing

§804(d)

§804(e)

§806

FHA Overview (continued)

Prohibits any of the following actions related to residential mortgage lending:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase or package loans
- Set different terms or conditions for purchasing a loan

§805

FHA Overview (continued)

Makes it illegal to:

- Threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on a protected basis. *Note:* Applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act

§818

§804(c)



DISABILITY DISCRIMINATION

Multiple Laws May Apply

The Fair Housing Act applies to virtually all housing, regardless of whether the housing is linked to federal funding.

- Covered housing includes apartments, condominiums, cooperatives, single family homes, nursing homes, assisted living facilities, group homes, college and university dormitories and faculty housing, shelters, supportive housing, and services in connection with housing.

Section 504 of the Rehabilitation Act applies to all programs or activities conducted by recipients of federal financial assistance.

The Americans with Disabilities Act (ADA)

- Title II of the ADA applies to public entities, including public entities that provide housing; e.g. public housing agencies and state and local government housing, housing provided at state universities and other places of education.
- Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of education.
- DOJ promulgates ADA regulations.

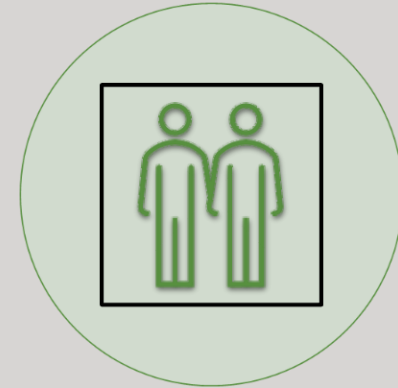
How Is Disability Defined? FHA



ANY PERSON WHO HAS A PHYSICAL OR
MENTAL IMPAIRMENT THAT SUBSTANTIALLY
LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES



OR HAS A RECORD OF SUCH AN
IMPAIRMENT



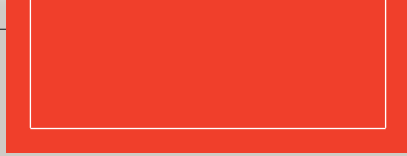
OR IS REGARDED AS HAVING AN
IMPAIRMENT

Inquiries Made of All Applicants

Housing providers may make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

24 CFR § 100.202



REASONABLE ACCOMMODATION

What Is Prohibited?

A
housing
provider
may not:

- Refuse to let a disabled person make reasonable modifications to a dwelling or common use areas, at his/her expense, if necessary for the disabled person to use the housing. §804(f)(3)(a)
- Refuse to make reasonable accommodations in rules, policies, practices or services if those accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. §804(f)(3)(b)
- §804(f)(3)(c)-design and construction of accessible units

Reasonable Accommodation FHA



However, a housing provider must make an accommodation unless it imposes an undue financial and administrative burden on a provider or requires a fundamental alteration in the nature of its program



How should the RA be made?



Can be orally or in writing



Doesn't have to be on a special form or process—housing provider must still give RA request adequate consideration



Doesn't have to be made personally



Doesn't need to mention any magic words, like "FHA or RA"



Only requirement- makes clear to the housing provider that s/he is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of his/her disability

After a RA request, what inquiries are allowed?

A HP may not ordinarily inquire as to the nature and severity of an individual's disability.

A HP is entitled to obtain info that is necessary to evaluate if a requested RA may be necessary because of a disability.

In response to a request for a RA, a HP may request reliable disability-related info that:

1. is necessary to verify that the person meets the Act's definition of disability,

2. describes the needed RA, and

3. shows the relationship b/w the person's disability & the need for the RA.

Observable and Non-Observable Disabilities

If the disability is observable or if the housing provider had information that gave or should have given them reason to believe that the person has a disability, the housing provider should not ask for more information.

Observable Impairment

Generally tend to be obvious and would not be reasonably attributable to non-medical causes by a lay person.

A housing provider should not ask for further information to determine whether an individual has a disability.

Certain impairments may not be observable

Often includes impairments that may form the basis for a request for an animal providing therapeutic emotional support.

In those instances, a housing provider may request information to verify that the person has a disability if it's not already known to the housing provider.

Inquiries-Disability and Need Known



If disability is obvious or known, and if the need for the RA is also obvious or known, then no request for add'l info about disability or need for the accommodation.

DOJ/HUD Joint Stmt



A tenant w/ an obvious mobility impairment who regularly uses a walker asks her HP to assign her a parking space near the entrance to the building. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the RA are both readily apparent, the HP may not require the tenant to provide any add'l info about her disability or the need for the RA.

Inquiries-Disability Known



If the disability is known or readily apparent, but the need for the RA is unknown, the provider may request only info that is necessary to evaluate the disability-related need for the accommodation.

Joint Stmt



A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent, but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide info about the disability-related need for the dog.

Inquiries-Disability Unknown

Joint Stmt

Information verifying the person's disability can usually be provided by the individual himself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits or a credible statement by the individual).

A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed info about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the info that is necessary to evaluate if the RA is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a RA request or unless disclosure is required by law.



ASSISTANCE ANIMALS AS A RA REQUEST

New Notice on Assistance Animals FHEO-2020-01



HUD has seen an increasing number of fair housing complaints regarding assistance animals.



New Notice replaces FHEO-2013-01



Two sections to the guidance:

- 1. Step-by-step guidance for how to assess a request.
- 2. Guidance on documentation.



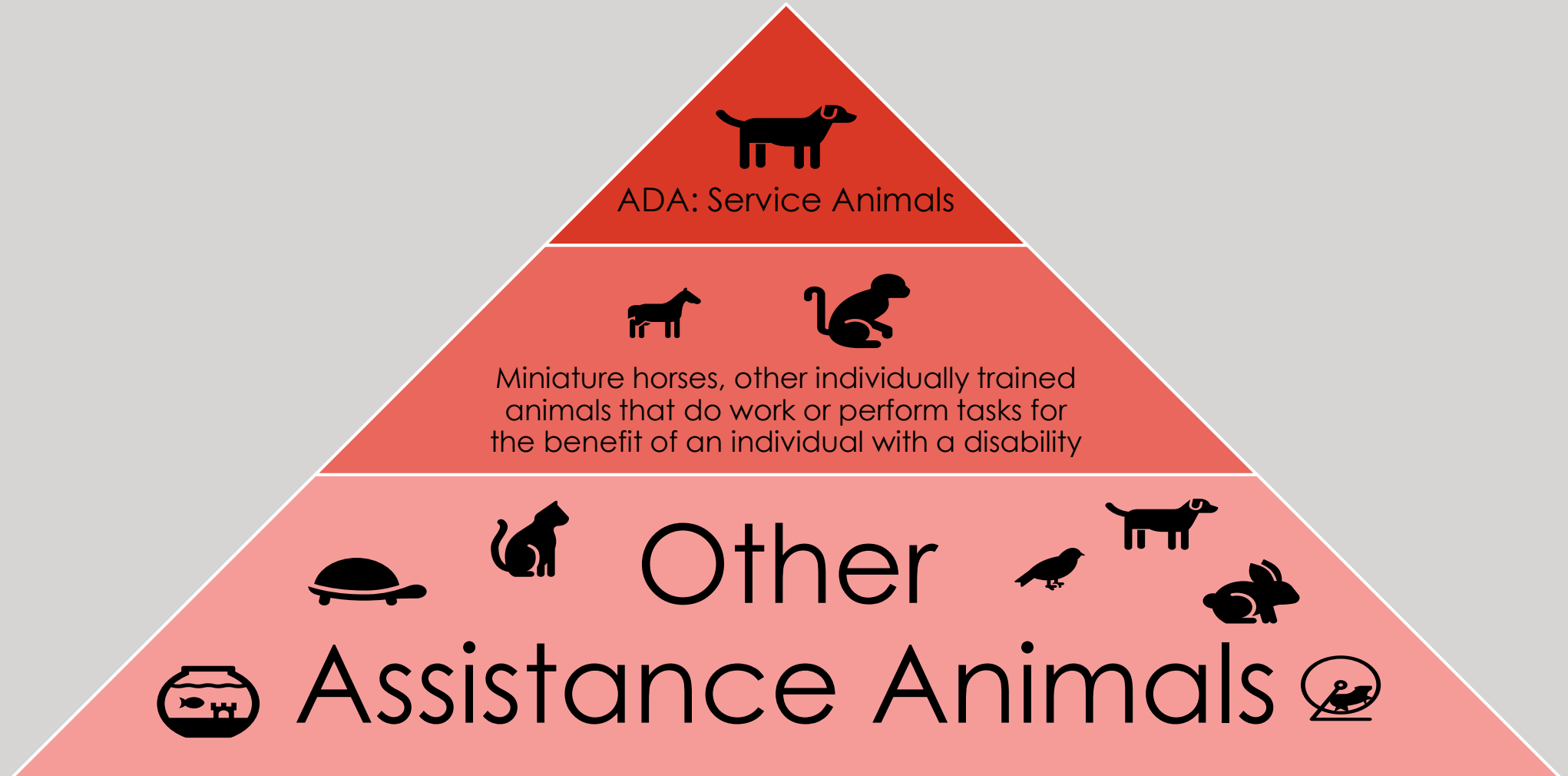
Assistance Animals: Animals that do work, perform tasks, assist, and/or provide therapeutic emotional support for individuals with disabilities.



Assistance Animals are not pets.



“Assistance Animals” is a Broad Term



Part I: Service Animals under the ADA

Service Animals

Reasonable
Accommodations

Other
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Documentation
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First Steps: An ADA Analysis

- Service Animal is defined by DOJ:
 - “Any **dog** that is **individually trained** to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability.” 28 C.F.R. §§ 35.104; 36.104.
- Emotional support, comfort, well-being, and companionship are not a specific work or task for purposes of an ADA analysis.

Is the Animal a Service Animal?

Is it a Dog?

If yes:

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:

Service
Animal

If no:

Limited
Inquiry

Limited Inquiry under the ADA

- (1) Is the animal required because of a disability?
- (2) What work or task has the animal been trained to perform?

Housing providers may not make further inquiries or ask for documentation if the answer to the first question is “yes” and the individual specifies work or a task.

Part II: Reasonable Accommodation Requests for Other Assistance Animals

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graph LR; A[Service Animals] --> B[Reasonable Accommodations]; B --> C[Other Considerations]; C --> D[Documentation Guidance]
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Service Animals

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What if the Animal Isn't a Service Animal?

- Housing providers are required to grant reasonable accommodations for other assistance animals.
- Reasonable accommodations must be made for individuals with disabilities who are:
 - Applicants, tenants, or residents;
 - Their family members;
 - Other persons associated with residents, tenants and applicants.
- A reasonable accommodation may be requested before or after the assistance animal is acquired (See Part II of the guidance).
- Guidance provides a series of questions for housing providers.

Disability- Related Need for an Animal

If the housing provider does not already have it, and this information is not obvious...

..the housing provider MAY ask for...

...information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the individual's disability.

- Reasonably supporting information often consists of information from a licensed health care professional general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.
- See Question 7 of the guidance.

Types of Assistance Animals

- Assuming all other information is established/ provided, housing providers should grant a reasonable accommodation for an animal that is commonly kept in households.
- See Question 8 of the guidance.



Dogs



Cats



Small Birds



Rabbits



Hamsters, Gerbils,
Other Rodents



Fish



Turtles



Other small, domesticated animals that are
traditionally kept in the home for pleasure
rather than for commercial purposes

Animals Not Commonly Kept in Households

- Does not mean the request may be immediately denied.
- The requestor has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal.
- Housing providers must conduct an individualized assessment.
- Examples of when a unique animal may be necessary include:
 - The animal is individually trained to do work or perform tasks that cannot be performed by a dog.
 - Information from a healthcare professional confirms:
 - Allergies prevent the person from using a dog; or
 - Without the animal, the symptoms or effects of the person's disability will be significantly increased.
 - The individual seeks to keep the animals outdoors at a house with a fenced yard where the animal can be appropriately maintained.
 - Other appropriate circumstances on a case-by-case basis.

Example: Capuchin Monkey

- An individually trained capuchin monkey performs tasks for a person with paralysis caused by a spinal cord injury.
- The monkey has been trained to retrieve a bottle of water from the refrigerator, unscrew the cap, insert a straw, and place the bottle in a holder so the individual can get a drink of water.
- The monkey is also trained to switch lights on and off and retrieve requested items from inside cabinets.
- The individual has a disability-related need for this specific type of animal because the monkey can use its hands to perform manual tasks that a service dog cannot perform.



Part III: Other Considerations

Service Animals

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Direct Threat

The FHA does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. See 24 C.F.R. § 100.202(d).

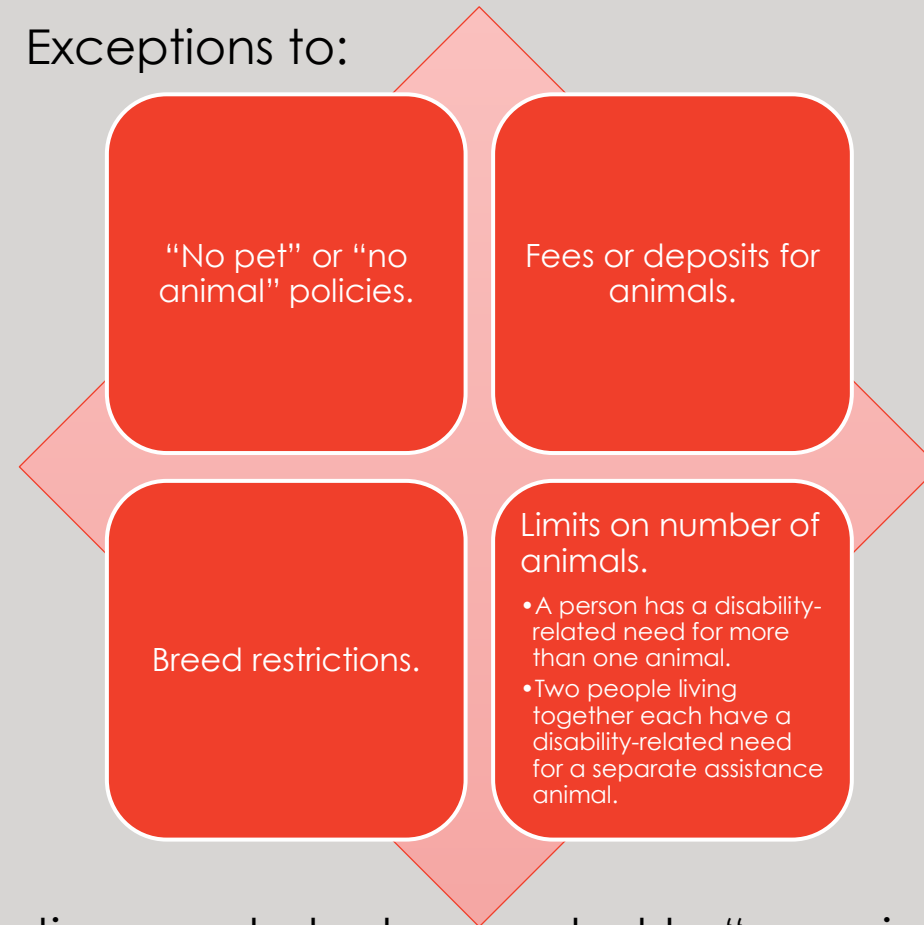


A housing provider may refuse a reasonable accommodation for an assistance animal if the **specific animal** poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (e.g., keeping the animal in a secure enclosure).

- Cannot deny a request based on stereotypes about a specific breed or size of the animal.
- Determination that animal poses a direct threat must be based on specific issues with the animal's conduct.

Types of Reasonable Accommodations

Exceptions to:



Reasonable accommodations must also be granted to “no animal” rules in common areas. E.g., Lobbies, rental offices, elevators, lounges, clubhouses, grounds.

Part IV: Documentation Guidance

Service Animals

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Types of Information

As previously explained, in some circumstances, a housing provider **may** request information that reasonably supports that the person seeking an accommodation has a disability or a disability-related need for an animal.

A letter from a healthcare professional is the most common type of documentation.

See page 10 of the guidance for other examples.

Letter should be general to the condition but specific as to the individual with a disability and the assistance or therapeutic emotional support provided by the animal.

E.g., from a physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse.

Should use **personal knowledge** when providing the information.

“Guidance on Documenting an Individual’s Need for Assistance Animals in Housing”

- The second section of the guidance provides guidance on the type of information that is helpful to include in documentation.
- It is not a form, and housing providers may not require its use.
- Housing providers may not require:
 - Use of any specific form;
 - Notarized statements;
 - Statements made under penalty of perjury; or
 - That the information discloses the individual's diagnosis or other detailed information about an individual's physical or mental impairments.

Information to Include

General information:

- The patient's name,
- Whether the healthcare 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.

Disability-related information:

- Whether the patient has a physical or mental impairment,
- Whether the impairment substantially limits 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).

If the animal is one not traditionally kept in the home, more information about why that animal is necessary.

Limits on Requests for More Information

Housing providers are not entitled to:

- Ask for an individual's diagnosis or impairment.
- Require disclosure of details about the diagnosis or severity of a disability.
- Request medical records or a discussion with a complainant's health care provider.
- Request an independent evaluation or diagnosis specifically obtained for the housing provider.
- Engage in their own direct evaluations.

Housing providers are **not required** to ask for more information.

Documentation from the Internet

- Some websites sell certificates, registrations, and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee.
 - Generally, these documents are not sufficient, because they are not written with **personal knowledge**.
 - However, many legitimate, licensed healthcare professionals deliver services remotely (telemedicine) and have personal knowledge.
 - Housing providers may not reject this type of documentation simply because the services were delivered remotely.



Questions?

817-978-5994

allyssa.d.wheatonrodriguez@hud.gov

Resources

- FHEO-2020-01, *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*:
 - <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>
- Joint Statement Of the Department Of Housing And Urban Development And the Department Of Justice on *Reasonable Accommodations Under The Fair Housing Act*:
 - <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>