



REASONABLE ACCOMMODATIONS IN HOUSING

SEPTEMBER 6, 2023
9:15-NOON



Fair Housing Law



1/ Fair Housing Background





Determine which law does (or doesn't) apply

- Fair Housing Act
- Section 504 of the Rehabilitation Act
- The Americans with Disabilities Act

State and Local Laws

📍 Unique categories

❓ What happens when state and local laws are different from federal Fair Housing Act?



What is prohibited?

- Discrimination based on someone's membership in a protected class
- What is a "protected class"?



Protected Classes

Federal Fair Housing Act

- ★ Race
- ★ Color
- ★ National Origin
- ★ Religion
- ★ Sex
- ★ Familial Status
- ★ Disability



➔ State and local law considerations

Prohibited Discrimination



In sale or rental



Design and construction



Terms and conditions



Failure to allow reasonable modification



Advertising



Failure to make reasonable accommodation



2/ Reasonable Accommodations

“Reasonable Accommodation” Under the Fair Housing Act

- Providing an exception to an equally applicable rule, policy, practice, or service that everyone must follow.
- Examples of “equally applicable” policies, etc.:
 - Unassigned parking
 - Pet policies
 - No pets
 - Limit on number of pets
 - Limit on where tenants may take pets
 - Mail delivery
 - Rental payment
 - All tenants must drop off rent at the rental office



“Reasonable Modification” Under the Fair Housing Act

- Allowing a tenant to make a change to an existing building at his/her own expense that is necessary because of the tenant’s disability.
- Examples of modifications:
 - Grab bars
 - Shower seat
 - Roll-in shower
 - Installing a ramp
 - Widening a bathroom door
 - Adding a lower peephole



“Reasonable Accommodation” Under Section 504

- Any request by an applicant or tenant for an exception to a policy or physical modification to the property that is needed because of a disability
- What is required:
 - “Qualified person with a disability”
 - Necessary because of disability
 - Housing provider provides accommodation
 - Housing provider pays for modification



Reasonable Accommodation Process

1. Identify the request
2. Engage in the interactive process to determine if the accommodation is necessary
3. Evaluate if the requested accommodation is unreasonable
4. Discuss alternatives
5. Make the decision

Step 1: Identify the Request



Identify the Request

Person with a disability must request a reasonable accommodation.

HUD/DOJ Joint Statement:

- “The person with a disability must make “clear to the housing provider that she is requesting an exception, change, or adjustment to the rule, policy, practice, or service because of her disability”; and
- “If the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability”
- Request can be written, verbal, or other means
- Request can come from applicant, tenant, or their representative

Request Forms

Consider creating request forms

- Identify specific reasonable accommodation being requested
- Identify disability
- Identify why you believe the accommodation is necessary because of your disability
- Identify a reliable third party that can provide verification
- Include statement that if assistance is needed in completing the form to contact the manager
- Include signature line to acknowledge the information is accurate

Every request is eventually documented in some manner on the form



Step 2: The Interactive Process

Primary Considerations for the Interactive Process

- ❑ Does the person have a “*disability*”?
- ❑ Is the accommodation *necessary* to provide the person an equal opportunity to use and enjoy the housing?
- ❑ Is the accommodation *reasonable*?

Does the person have a “*disability*”?

- Buyer or renter with a disability
- A person with a disability who is residing in or intending to reside in the housing after it is sold or rented
- A person with a disability who is “associated” with the buyer or renter

“Associated with”

- “Associated”

FHA prohibits “not only discrimination against the primary purchaser or named lessee, but also prohibits denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”

(Congressional History and Preamble to HUD’s regulations)





“Obvious” Disability

- If the disability and the need for the accommodation are obvious, a housing provider cannot request a verification.



“Obvious” Disability

- If the disability and the need for the accommodation are obvious, only evaluate the reasonableness.
- If reasonable, grant the accommodation.
- If not, explore alternatives.

Not “Obvious”

- If a housing provider has a reasonable question as to whether the applicant/tenant has a disability or need for the accommodation, it may request certification.



Verification



What do we need to know?

Does the person requesting the accommodation have a “disability”?

Does the person requesting the accommodation need the accommodation because of the disability?

Verifying Disability

Joint Statement

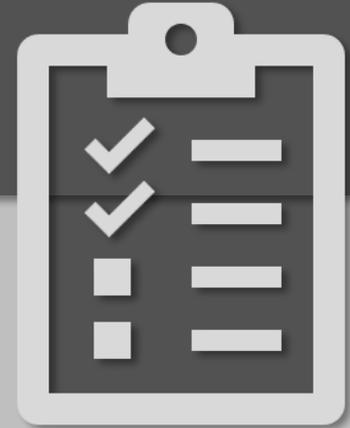
“A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability may also provide verification of a disability. In most cases, an individual’s medical records or detailed information about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

Verifying Necessity



Person requesting the accommodation must establish that the accommodation is necessary because of their disability to provide him or her an equal opportunity to use and enjoy the housing.

Verification Form



Consider creating verification form

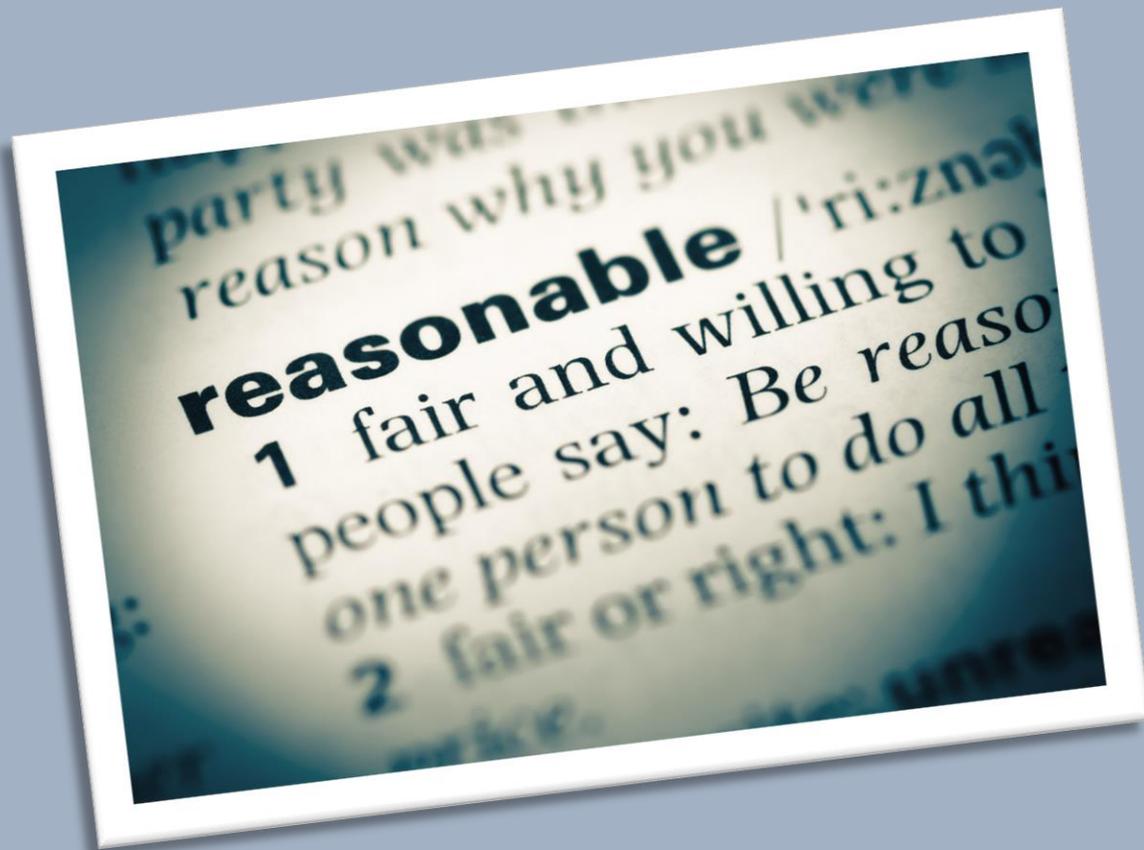
- Include definition of disability
- Include request to identify the impairment and how it substantially limits the person in a major life activity
- Include request to explain how the accommodation is necessary for the individual to use and enjoy housing as compared to a person without a disability
- Consider requesting whether there is another accommodation available that is equally effective

Follow Up

If applicant/tenant is not providing sufficient information or if the verification is reasonably suspicious, call the verifier to clear up any questions.



“Reasonable”



Even if the person has a disability and the requested accommodation is necessary because of his or her disability, the accommodation must be **reasonable**.

“Reasonable”

Three factors to consider:



Undue
Financial and
Administrative
Burden



Fundamental
Alteration



Direct Threat

“Reasonable”

Fundamental Alteration

- »» What is fundamental to your business?
 - Rent
 - Peace and Quiet Enjoyment
 - Health and Safety
 - Request to provide services you do not otherwise provide

“Reasonable”

“Direct Threat”

- »» Tenancy would cause a direct threat to the health or safety of other individuals
- »» Tenancy would result in substantial property damages to the property of others

“Reasonable”

“Direct Threat”

- “A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts).”
- The assessment must consider:
 - 1) The nature, duration, and severity of the risk of injury;
 - 2) The probability that injury will actually occur; and
 - 3) Whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat.

Accommodation Topics of Interest

- ✓ Hoarding
- ✓ Rent Payments
- ✓ Assistance animals





Hoarding





~~Excusing Conduct~~ v. Giving More Time





Payment of Rent



Section 8

- *Klossner v. IADU Table Mount MHP, LLC, (8th Cir. Apr. 10, 2023)*
 - Owner refused to accept Section 8 voucher as a reasonable accommodation
 - Court held owner was not required to accept voucher
 - “Nothing in the law suggested that the duty of ‘reasonable accommodation’ extended to the downstream action of alleviating economic effects of a handicap”
 - Concurrence: Forcing landlord to accept voucher is unreasonable



Assistance Animals



HUD ASSISTANCE ANIMAL GUIDANCE

HUD Notice

January 28, 2020



Statistics

- 60% of HUD FHA complaints involve reasonable accommodation requests
- Assistance animal complaints “are one of the most common”
- Most HUD charges after investigation involve hidden disabilities



Guidance

Provides a set of best practices for assessing requests for reasonable accommodations to keep animals in housing.

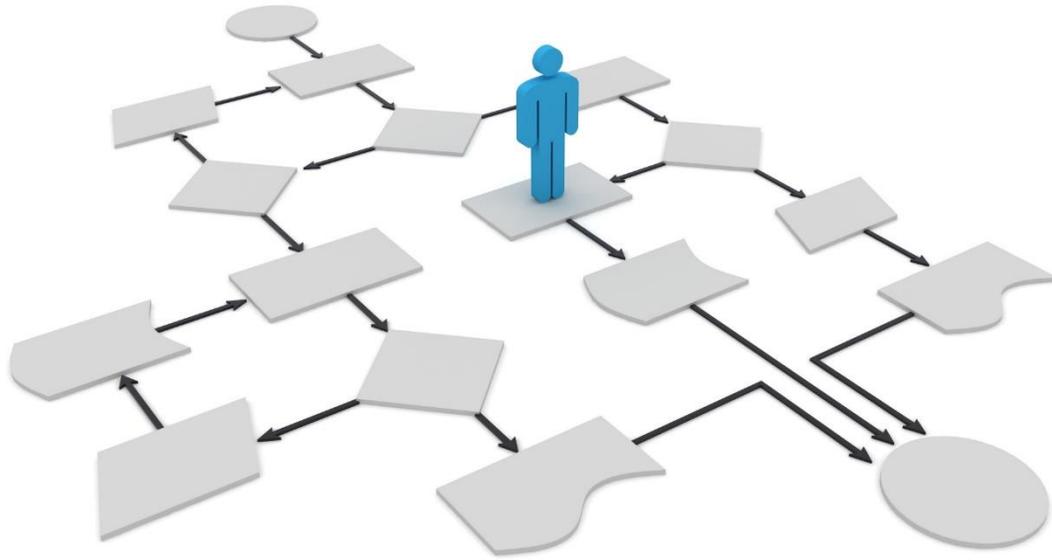


Guidance

Replaces HUD's prior guidance, FHEO-2013-01, on housing providers' obligations regarding service animals.



Guidance



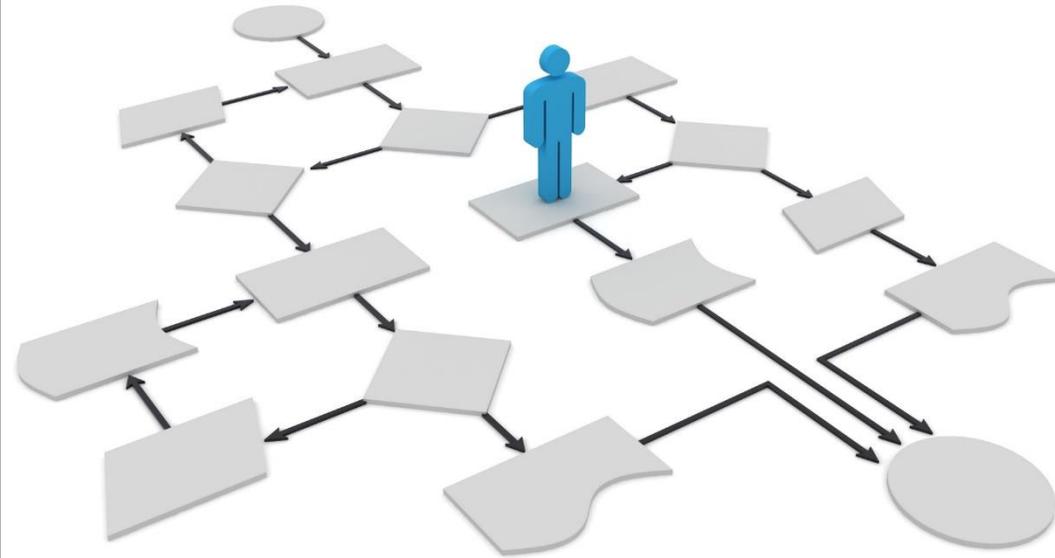
Provides a set of best practices regarding:

- The type and amount of documentation a housing provider may ask an individual with a disability to provide in support of an accommodation request for a support animal, or
- A disability-related need for a support animal when the disability or disability-related need for the animal is non-obvious and not known to the housing provider.

Guidance

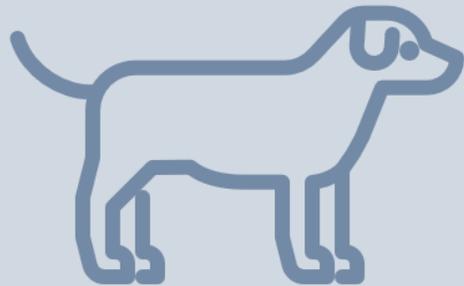
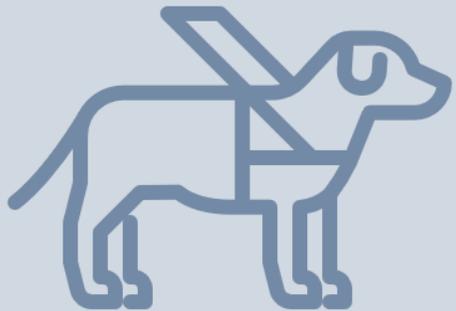
Section 504/ADA.

Does not address how HUD will process complaints against housing providers under Section 504 or the ADA.



Two Types of Animals

1) “Service Animals” as defined by the ADA



2) “Support Animals” – “other trained or untrained animals that do work, perform tasks, provide assistance, and/or therapeutic emotional support for individuals with disabilities”



“Service Animals”

Housing providers should initially follow the analysis that DOJ has determined in using for assessing whether an animal is a “service animal” under the ADA.

What is a “Service Animal”?

- 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.





What is a “Service Animal”?

- 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.

“Service Animal” Best Practice

1. Is the animal a dog?
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?



“Service Animal” Best Practice

It is readily apparent when the dog is observed:

- ➔ Guiding an individual who is blind or has low vision
- ➔ Pulling a wheelchair
- ➔ Providing assistance with stability or balance to an individual with an observable mobility disability



Two Questions



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

THAT'S IT

Two Questions



- ⊘ Do not ask about the nature or extent of the person's disability, and do not ask for documentation.
- ⊘ However, you make the truth and accuracy of the information part of the process if it is also required under the lease

Support Animals

- ① 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 equal opportunity to use and enjoy a dwelling, including public and common use spaces.

Request

Has the individual requested a reasonable accommodation – that is, asked to get or keep an animal in connection with a physical or mental impairment or disability?



Request

- The request for a reasonable accommodation with respect to an assistance animal may be oral or written.
- It may be made by others on behalf of the individual.



Timing of Request



- A resident may request a reasonable accommodation either before or after acquiring the assistance animal.

Timing of Request



- An accommodation also may be requested after a housing provider seeks to terminate the resident's lease or tenancy because of the animal's presence, although such timing may create an inference against good faith on the part of the person seeking a reasonable accommodation.

Timing of Response

Provide response to request within ten days of receiving verification information from tenant.





Disability

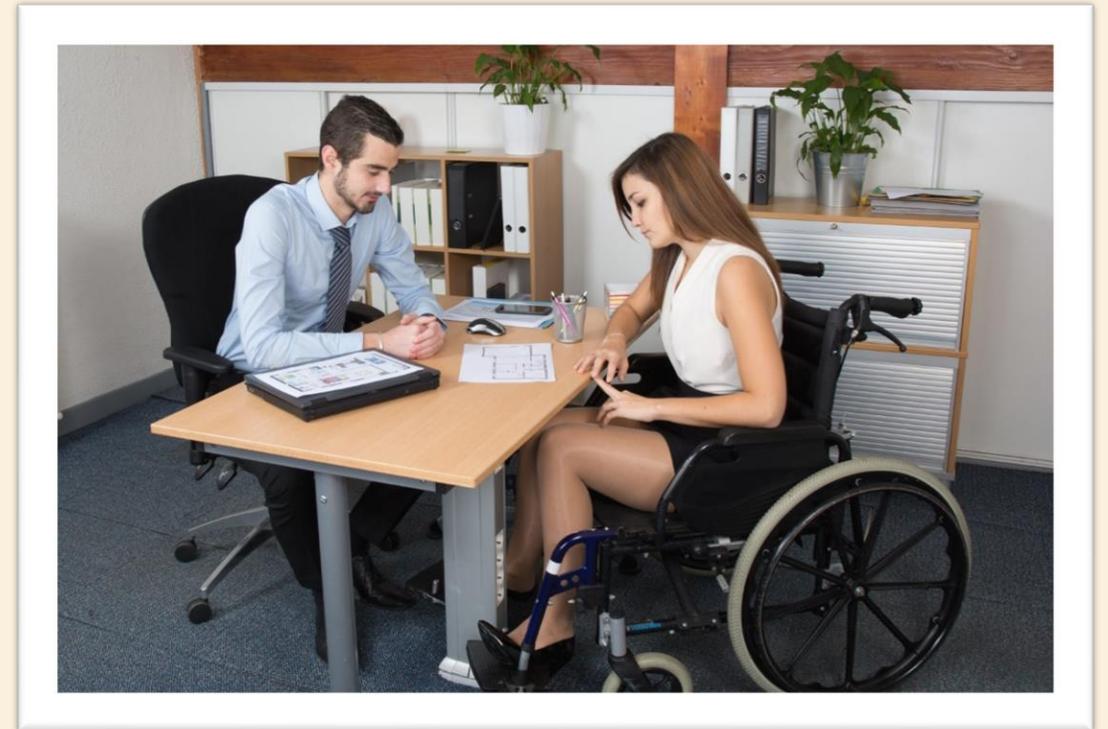
Observable
(Obvious)

v.

Non-Observable
(Non-Obvious)

Support Animals “Observable” Disability

Does the person have an observable disability or does the housing provider already have information giving them reason to believe that the person has a disability?



Support Animals “Non-Observable” Disability

Has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?



Examples of Disability Information

- A determination of disability from a federal, state, or local government agency.

Examples of Disability Information

- Receipt of disability benefits or services (Social Security Disability Income (SSDI)), Medicare or Supplemental Security Income (SSI) for a person under age 65, veterans' disability benefits, services from a vocational rehabilitation agency, or disability benefits or services from another federal, state, or local agency.

Examples of Disability Information

- Eligibility for housing assistance or a housing voucher received because of disability.

Examples of Disability Information

- Information confirming disability from a health care professional – e.g., physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse.

“Reasonably Supporting Information”

- ⊕ Information from a licensed health care professional (e.g., physician optometrist, psychiatrist, psychologist, physician’s assistant, nurse practitioner, or nurse)

“Reasonably Supporting Information”



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

Information Requested

- The patient's name;
- Whether the patient's impairment substantially limits at least one major life activity or major bodily function;
- Whether the patient needs the animal(s) because of disability-related work or therapeutic emotional support.



Information Requested

- Whether the patient has a physical or mental impairment;
- Whether the health care professional has a professional relationship with the patient involving the provision of health care of disability-related services; and
- The type of animal(s) for which the reasonable accommodation is sought



General Considerations

May not require:

- A specific verification form
- A notarized statement
- A statement under penalty of perjury
- Provide an individual's diagnosis
- Provide detailed information about a person's physical or mental impairment

Online Verifications

“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.”





Online Verifications

However, “many legitimate, licensed health care professionals deliver services remotely, including over the internet.”

Type of Animal

- Domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes



Type of Animal

🐾 Dog

🐾 Rabbit

🐾 Other Rodent

🐾 Cat

🐾 Hamster

🐾 Fish

🐾 Small Bird

🐾 Gerbil

🐾 Turtle



Unique Animals

In “very rare circumstances” a unique type of animal may be reasonable.

Person has the “substantial burden” of demonstrating a disability-related therapeutic need for specific type of unique animal.



Unique Animals



- The animal is individually trained to do work that cannot be performed by domesticated animal.
 - » Allergies prevent the person from using a dog; or
 - » Without the animal, the symptoms or effects of the disability will be significantly increased.



For Unique Animal

- ⇒ The date of the last consultation with the patient;
- ⇒ Any unique circumstances justifying the patient's need for the particular animal; and
- ⇒ The reliable information about this specific animal or whether they specially recommend this type of animal.

“Reasonable”

Fundamental Alteration

- »» What is fundamental to your business?
 - Rent
 - Peace and Quiet Enjoyment
 - Health and Safety
 - Request to provide services you do not otherwise provide

“Reasonable”

“Direct Threat”

- »» Tenancy would cause a direct threat to the health or safety of other individuals
- »» Tenancy would result in substantial property damages to the property of others

“Reasonable”

“Direct Threat”

- “A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts).”
- The assessment must consider:
 - 1) The nature, duration, and severity of the risk of injury;
 - 2) The probability that injury will actually occur; and
 - 3) Whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat.

Multiple Animals

Requests sometimes involve more than one animal.

Examples:

- »» A person with a disability has a disability-related need for both animals
- »» Two people living together each have a disability-related need for a separate assistance animal



Assistance Animals v. Pets



“Assistance animals
are not pets”

Assistance Animals:



Cannot charge a “pet deposit” or other fee



Cannot require the animal to have special training or certification



Cannot require that the animal perform work or tasks



Cannot limit assistance animals based solely on type, breed, or size



Cannot require tenant to use a leash if the disability prevents the tenant from using a leash and the tenant can otherwise control the animal



Cannot limit assistance animal solely because of local ordinance bars the specific animal



Cannot require insurance or indemnification

Assistance Animals:

- ✔ Can require tenant to ensure animal does not disrupt peace and quiet enjoyment of others
- ✔ Can require tenant to prove the animal is current on vaccinations, etc.
- ✔ Can require tenant to prove the animal is licensed, if required by law
- ✔ Can require tenant to maintain custody and control over animal
 - ➔ Clean up waste
 - ➔ Animal is not a direct threat to the health and safety of others
 - ➔ Animal is not a direct threat to cause substantial property damage



“Providing Solutions in Affordable Housing”



Scott P. Moore
Attorney

spmoore@bairdholm.com

(402) 636-8268



BAIRDHOLM^{LLP}
ATTORNEYS AT LAW