



Assistance Animals in Housing

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Housing is Unique and Treated Differently under the Law than Other Places



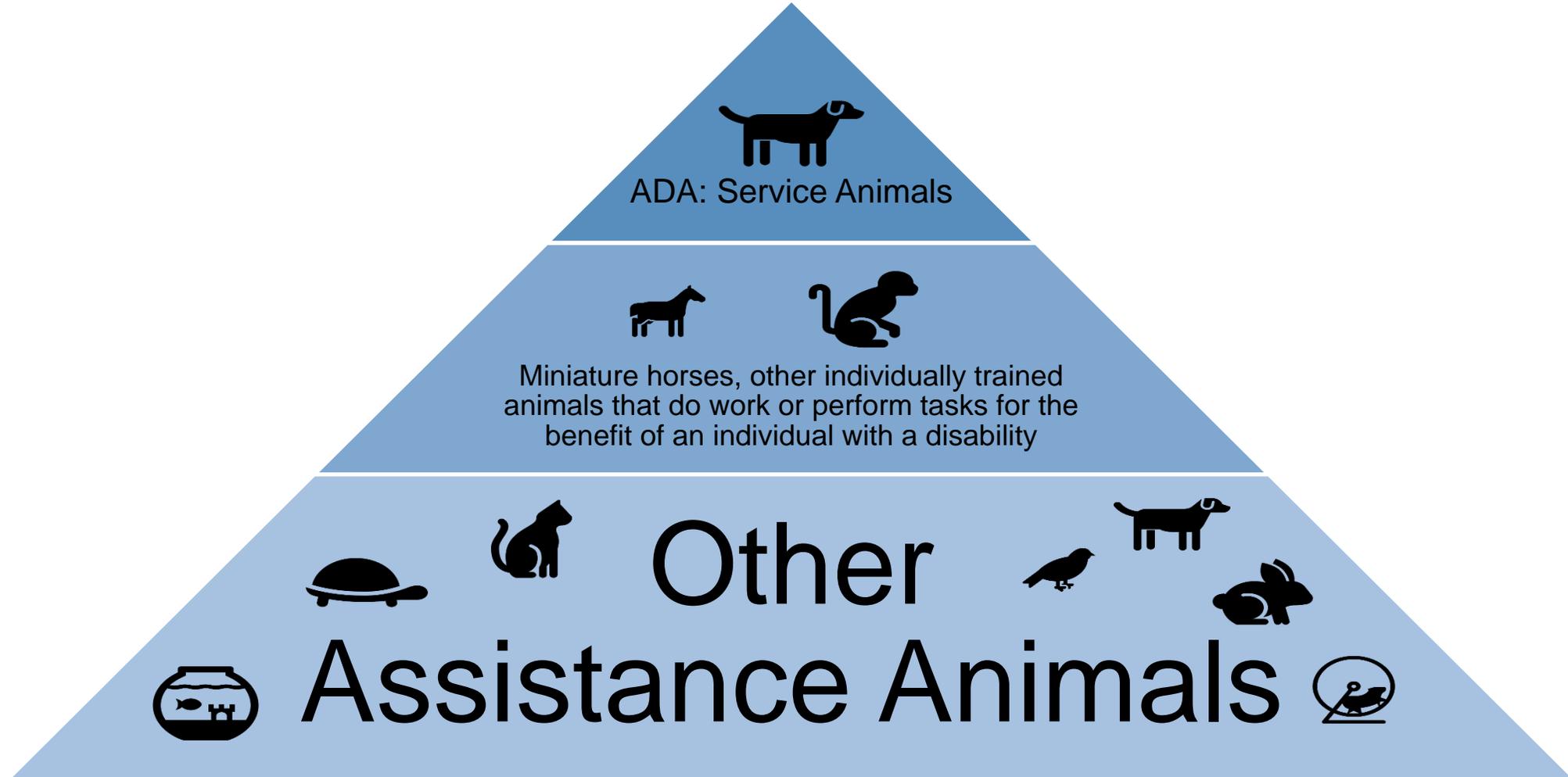
- Other federal laws address contexts where services or activities are:
 - Of shorter duration or
 - Involve closer engagement with other members of the public
- Places of public accommodation under the ADA (libraries, grocery stores, medical offices, recreation centers, etc.)
- During air travel under the Air Carriers Access Act
- In the home, a person may need:
 - Help in round-the-clock self-care or activities of daily living
 - Consistent therapeutic emotional support of an animal in coping with the pervasive, chronic or reoccurring symptoms of a disability

“Assistance Animals” is a Broad Term

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

Assistance Animals are not pets.

Assistance Animals in Housing include Several Categories



Notice FHEO-2020-01

- HUD has seen an increasing number of fair housing complaints regarding assistance animals.
- New Notice FHEO-2020-1
- Two sections to the guidance:
 - 1. Step-by-step guidance for how to assess a request.
 - 2. Guidance on documentation.
- Notice is only about housing (including private housing and housing-related zoning)

FY Filed	Cases with Reasonable Accommodation Issue						Disability - Service/Assistance Animal					
	HUD RA		FHAP RA		Total RA		HUD ASST ANML		FHAP ASST ANML		Total ASST ANML	
	#	%	#	%	#	%	#	%	#	%	#	%
FY2009	583	27.0%	1,676	20.7%	2,259	22.0%	154	7.1%	368	4.5%	522	5.1%
FY2010	569	27.4%	1,990	24.6%	2,559	25.2%	157	7.6%	521	6.4%	678	6.7%
FY2011	535	28.8%	1,876	25.0%	2,411	25.8%	158	8.5%	538	7.2%	696	7.4%
FY2012	603	32.4%	1,885	27.1%	2,488	28.2%	207	11.1%	556	8.0%	763	8.7%
FY2013	623	32.7%	1,947	30.0%	2,570	30.6%	181	9.5%	674	10.4%	855	10.2%
FY2014	580	33.3%	2,096	31.0%	2,676	31.5%	221	12.7%	631	9.3%	852	10.0%
FY2015	538	40.4%	2,319	33.2%	2,857	34.4%	185	13.9%	774	11.1%	959	11.5%
FY2016	597	42.7%	2,809	39.8%	3,406	40.3%	207	14.8%	1,042	14.8%	1,249	14.8%
FY2017	581	43.3%	2,811	40.6%	3,392	41.1%	240	17.9%	1,029	14.9%	1,269	15.4%
FY2018	841	47.0%	2,472	41.3%	3,313	42.6%	419	23.4%	866	14.5%	1,285	16.5%
FY2019	823	46.6%	2,493	42.0%	3,316	43.0%	375	21.2%	906	15.2%	1,281	16.6%

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.
 - Department of Justice (DOJ) promulgates ADA regulations.

How to Use the Notice



Part I: Service Animals under the ADA

Service Animals

Reasonable
Accommodations

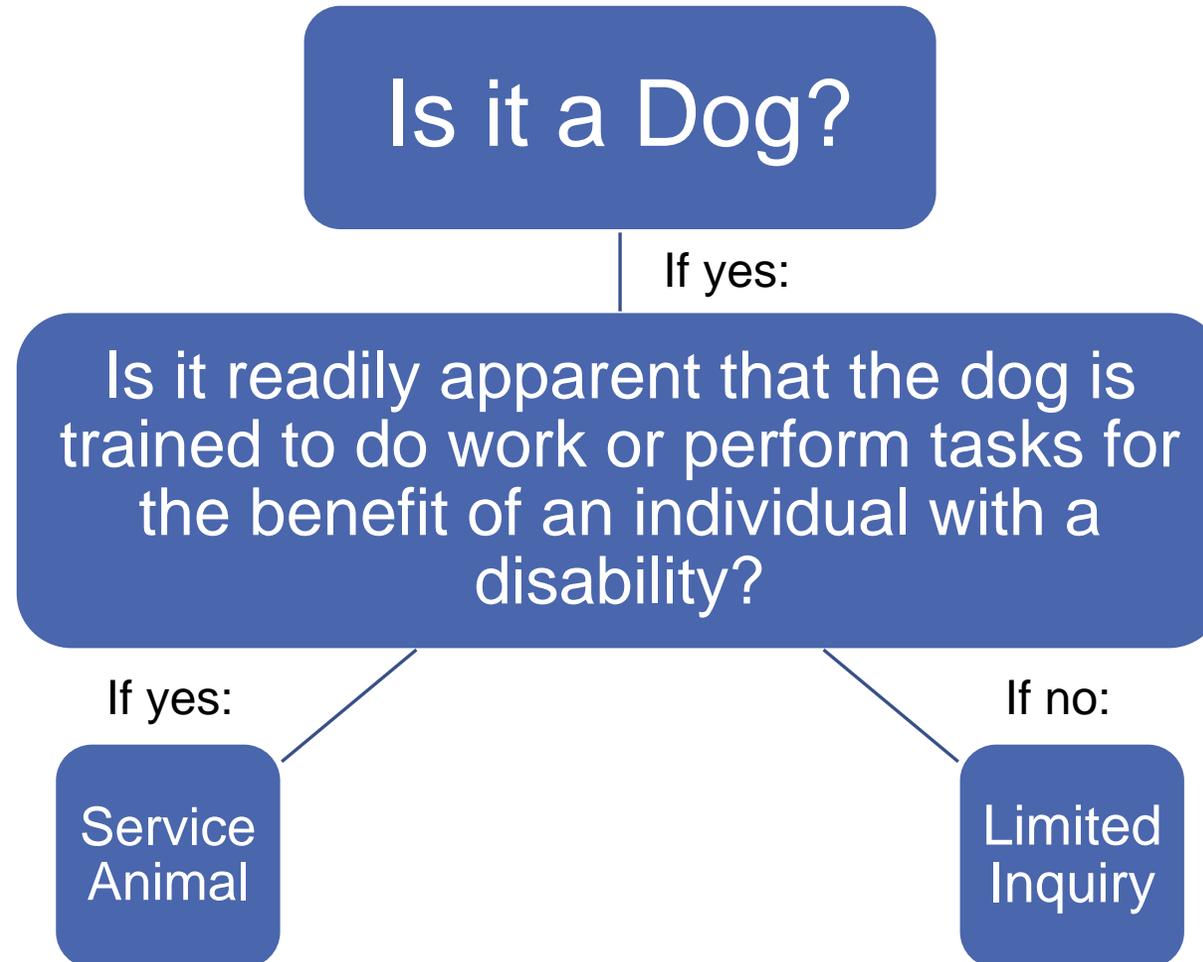
Other
Considerations

Documentation
Guidance

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?



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?

Under the ADA, 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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What if the Animal Isn't a Service Animal?

- Housing providers are required to grant reasonable accommodations to allow 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.

Does the Individual Have a Disability?

- Under the Fair Housing Act, a disability is a physical or mental impairment that substantially limits one or more major life activities. See 24 C.F.R. § 100.201.
 - Some types of impairments will, in virtually all cases, be found to impose a substantial limitation on a major life activity resulting in a determination of a disability. See 28 C.F.R. §§ 35.108(d)(2), 36.105(d)(2).
- This does not mean that other conditions are not disabilities.
- See Questions 5 & 6 of the guidance.

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.

Disability- Related Need for an Animal



- 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:
 - “No pet” or “no animal” policies.
 - Fees or deposits for animals.
 - Breed restrictions.
 - Limits on number of animals.
 - A person has a disability-related need for more than one animal.
 - Two people living together each have a disability-related need for a separate assistance animal.
 - Land use and zoning laws, Homeowners Association rules, co-op rules.
- Reasonable accommodations must also be granted to “no animal” rules in common areas.
 - E.g., Lobbies, rental offices, elevators, building lounges, clubhouses, grounds.

Part IV: Documentation Guidance

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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 may not:
 - 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 an individual's health care provider.
 - Request an independent evaluation or diagnosis specifically obtained for the housing provider.
 - Engage in their own direct medical 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**.
 - If an individual provides this type of documentation, a housing provider does not need to accept this particular documentation.
- 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?
