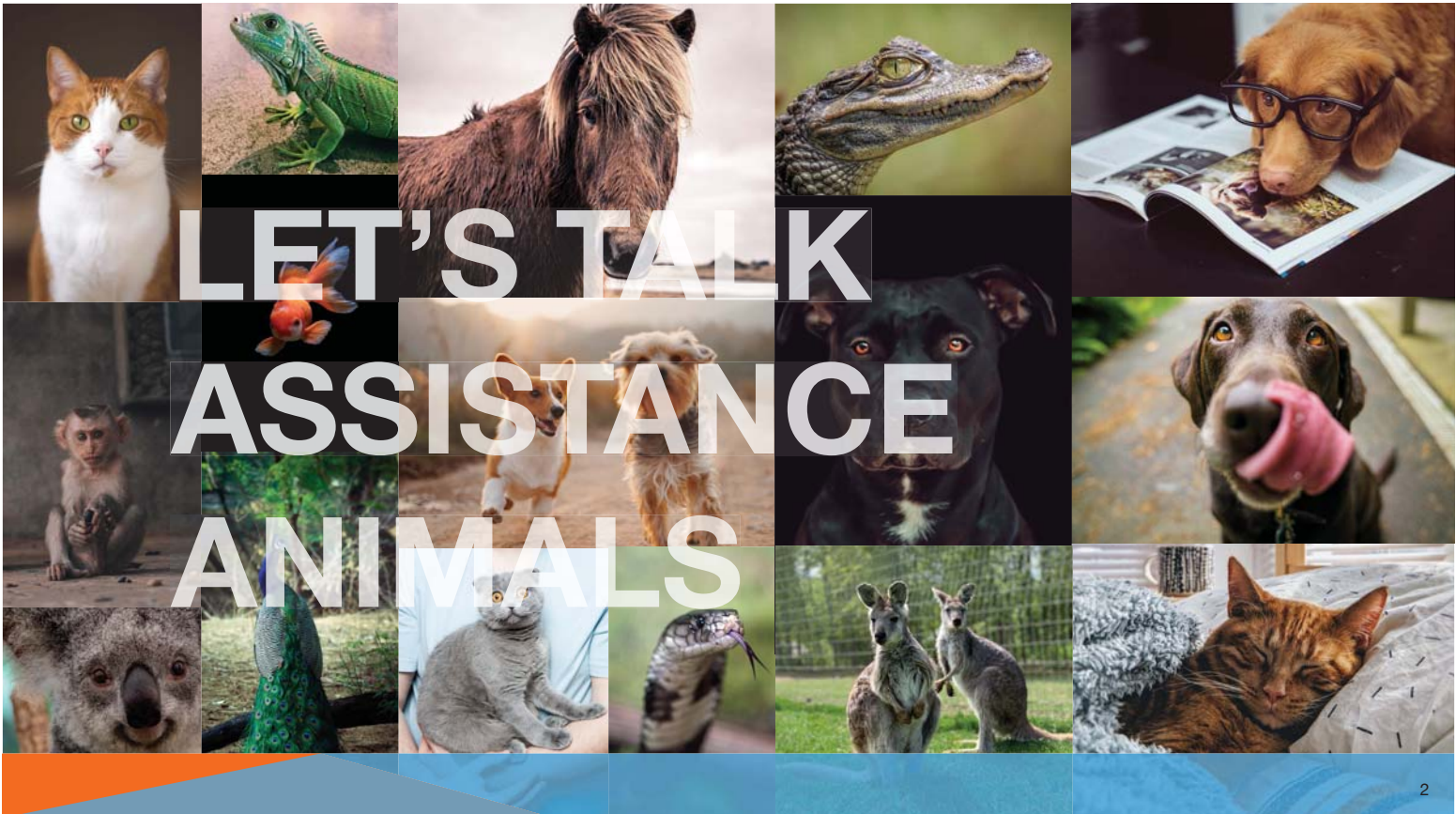


HUD GUIDANCE REGARDING ASSISTANCE ANIMALS

LEAH SYKES



BACKGROUND

- Released on January 28, 2020
- Replaces HUD Guidance from 2013
- Explains types of Assistance Animals with more clarity
- Creates “best practices” for assessment and documentation of requests for reasonable accommodation relating to assistance animals
- Applies to all housing providers governed by the Fair Housing Act

CHANGE IN TONE

- Much language focusing on health care providers as verifiers
- Language about people using reasonable accommodation as a way around pet fees and policies
- Laying out stricter standards for applicants requesting assistance animals

APPLICABILITY

- Any reasonable accommodation requests related to assistance animals from January 28, 2020 should be assessed under the new guidelines
- Landlords may not reassess prior reasonable accommodations for assistance animals granted prior to January 28, 2020

DEFINITION OF “ASSISTANCE ANIMAL”

Assistance animals are animals that:

- Do work
- Perform tasks and/or,
- Provide therapeutic emotional support for individuals with disabilities

TYPES OF ASSISTANCE ANIMALS

Service Animals:

- Governed by ADA and most frequently relate to public spaces
- Much stricter than rules for housing providers under the FHA but can be present in housing context
- Service animals must be:
 - Dogs only (except for miniature horses in limited circumstances)
 - Individually trained to do work for perform tasks for a disabled person

TYPES OF ASSISTANCE ANIMALS

Service Animals (continued):

- If it is not readily apparent that the animal has been trained to do work or perform tasks (i.e. guiding an individual who is blind) housing providers or landlords of public spaces may only ask:
 - Is the animal required because of a disability?
 - What work or task is the animal required to perform?

TYPES OF ASSISTANCE ANIMALS

Service Animals (continued):

- Performing “work or tasks” means that the dog is trained to take a specific action when needed by the disabled person
- At least one action the dog is trained to take is helpful for something other than emotional support must be identified to qualify as a service animal

TYPES OF ASSISTANCE ANIMALS

Service Animals (continued):

- Support Animals are animals that do not meet the above qualifications as service animals but are needed:
 - as a result of reasonable accommodation
 - because the animals do work, perform tasks and/or provide therapeutic emotional support for individuals with disabilities

Reasonable accommodation is a change, exceptions 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 the dwelling unit (including common spaces).

REMINDERS REGARDING REQUESTS FOR REASONABLE ACCOMMODATION

Reminders given by HUD re. reasonable accommodation in assessments of support animals:

- People don't have to use "magic words" like reasonable accommodation or assistance animal to qualify under the FHA
- Reasonable accommodation may be requested before or after the assistance animal is acquired, even if served with a termination notice
- Requests may be oral or written and can be made by others on behalf of the individual (i.e. person legally residing in the unit with the individual, legal guardian, etc.)

REMINDERS REGARDING REQUESTS FOR REASONABLE ACCOMMODATION

- Landlords should not require specific forms to be completed for a request for reasonable accommodation (but may continue to offer forms for the convenience of the residents if no other form provided)
- Responses should be given within 10 days
- Landlords should engage in the interactive process prior to denying a request for reasonable accommodation

HOW TO ASSESS WHETHER TO GRANT A REQUEST FOR A SUPPORT ANIMAL

Step One:

Has the individual requested reasonable accommodation?

- If yes, proceed to Step Two
- If no, the animal should be treated as a pet (if not qualifying as a service animal)

HOW TO ASSESS WHETHER TO GRANT A REQUEST FOR A SUPPORT ANIMAL

Step Two:

Does the person have an “observable disability”* or does the housing provider already have information leading them to believe the persona has a disability?

- If yes, proceed to Step 4
- If no, proceed to next question (Step 3)

**The guidance describes “observable disabilities” as ones that can readily be observed or “obvious”, meaning not reasonably attributable to non-medical causes by a lay person. Examples given are: blindness/low vision, deafness/hard of hearing, mobility impairments, intellectual impairments (including some types of autism) neurological impairments (e.g. Parkinson’s disease, cerebral palsy, epilepsy, brain injury) mental illness.*

HOW TO ASSESS WHETHER TO GRANT A REQUEST FOR A SUPPORT ANIMAL

Step Three:

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

- If yes, then proceed to next question (Step 4)
- If no, then the accommodation may be denied (as long as person requesting the accommodation has been given a reasonable opportunity to provide the information)

HOW TO ASSESS WHETHER TO GRANT A REQUEST FOR A SUPPORT ANIMAL

Step Four:

Has the person requesting the accommodation provided information which reasonably supports that the animal does work, performs tasks, provides assistance and/or provides therapeutic emotional support?

- If yes, then proceed to assess the animal for eligibility
- If no, then the accommodation may be denied (as long as person requesting the accommodation has been given a reasonable opportunity to provide the information)

ASSESSMENT OF ANIMAL

Guidance heavily favors animals “commonly kept in households”:

- Dogs, cats, small birds, rabbits, hamsters, gerbils, other rodents, fish, turtles, or other small domesticated animals traditionally kept in the home for non-commercial purposes*

**Reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals.*

ASSESSMENT OF ANIMAL

“Unique” animals

- Residents requesting a unique animal have a “substantial burden” to show:
 - Disability-related therapeutic need for:
 - That specific animal, or
 - That specific type of animal
 - Use of health care professional verification “encouraged”
 - Without the animal, the disability would “significantly” be increased

ASSESSMENT OF ANIMAL

Examples of when a “unique” animal would be appropriate:

- Individuals with allergies preventing them from having a dog
- Monkeys that can perform manual tasks that a dog could not such as opening water bottles for persons with paralysis due to spinal cord injuries
- The individual seeks a reasonable accommodation to a land use and zoning law, HOA rule, condominium or co-op rule
- The individual seeks to keep the animal outdoors at a house with a fenced yard where the animal can be appropriately maintained

ADDITIONAL CLARIFICATION REGARDING ASSESSMENT OF SUPPORT ANIMALS

- Breed and size restrictions are still prohibited. Landlords may only refuse specific animals (that otherwise qualify) because that animal in particular poses a direct threat that can't be eliminated or reduced to an acceptable level
- Pet fees and deposits cannot be charged
- Landlords can restrict the animal's behavior and charge for any damages caused by the animal
- Residents are responsible for feeding, maintaining, providing veterinary care for the animal

GUIDANCE ON DOCUMENTING AN INDIVIDUAL'S NEED FOR ASSISTANCE ANIMALS IN HOUSING

- Additional clarification was also provided in the Guidance relating to what should be contained in a Request for Reasonable Accommodation form or documentation for assistance animals
- Landlords seeking to create their own forms are strongly encouraged to seek the advice of an attorney when creating those forms

LEAH SYKES

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