

HUD Guide to Assistance Animals*

FIRST STEP FOR REQUESTING AN ASSISTANCE ANIMAL: Tenant must request in writing, to management, the desire for an assistance animal.

In the letter, the tenant must ask for the packet of required materials to apply for permission to be mailed to the tenant. **INCLUDE:** full name, residence address and mailing address if applicable. It must be signed and dated and mailed to PO Box 184, Dell Rapids, SD 57022.

When request letter is received, the tenant will be mailed a packet which includes the rules and regulatory ADA requirements, a questionnaire to be filled out by an appropriate person certifying your need and the nexus of the animal to your needs.

A self-certification of need and nexus. A description of animal and signed and initial documents from the tenant certifying they understand their obligations under law and our lease.

Once the appropriate paperwork is returned to the management, you will be sent a decline or approval letter to go ahead. At this point, any other lease requirements will need to be reviewed and signed.

Please remember that an animal comes with responsibility to the property, the quiet enjoyment and or safety of other tenants and staff, and the upkeep of the property inside and outside. Proof of annual shots/check-up will be required. If applicable, proof of appropriate training and/or certification will be required.

What is an assistance animal?

Certain animals provide assistance or perform tasks for the benefit of a person with a disability. Such animals are often referred to as “service animals,” “assistance animals,” “support animals,” “therapy animals,” “companion animals,” or “emotional support animals”. HUD regulations do not use or define any of these terms. Instead, in its amended public housing ruleⁱ, HUD makes clear that the use of assistive animals in the housing context is governed by reasonable accommodation law.ⁱⁱ

When must a landlord or manager allow a tenant to have a service animal?

Under both the Fair Housing Act and Section 504, in order for a requested accommodation to qualify as a reasonable accommodation, the requester must (1) have a disability, and (2) the accommodation must be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the person’s disability.ⁱⁱⁱ In the case of assistance/service animals, an individual with a disability must demonstrate a nexus between his or her disability and the function the service animal provides. Examples of disability-related functions, include, but are not limited to:

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- guiding individuals who are blind or have low vision,
- alerting individuals who are deaf or hard of hearing to sounds,
- providing protection or rescue assistance,
- pulling a wheelchair,
- fetching items,
- alerting persons to impending seizures, or
- providing emotional support to persons with disabilities who have a disability-related need for such support.

What verification can a landlord require?

Housing providers are entitled to verify the existence of the disability, and the need for the accommodation—if either is not readily apparent. Persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability.

When can a request for an assistance animal be denied?

Housing providers are not required to provide any reasonable accommodation that would:

- (1) pose a direct threat to the health or safety of others
- (2) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation
- (3) pose an undue financial and administrative burden; or
- (4) fundamentally alter the nature of the provider's operations.

A housing provider may exclude an assistance animal from a housing complex when that animal's behavior poses a direct threat and its owner takes no effective action to control the animal's behavior so that the threat is mitigated or eliminated. The determination of whether an assistance animal poses a direct threat must rely on an individualized assessment that is based on objective evidence about the specific animal in question, such as the animal's current conduct or a recent history of overt acts. The assessment must consider the nature, duration, and severity of the risk of injury; the probability that the potential injury will actually occur; and whether reasonable modifications of rules, policies, practices, procedures, or services will reduce the risk. In evaluating a recent history of overt acts, a provider must take into account whether the assistance animal's owner has taken any action that has reduced or eliminated the risk. Examples would include obtaining specific training, medication, or equipment for the animal. This direct threat provision of the Fair Housing Act requires the existence of a significant risk—not a remote or speculative risk. Accordingly, the determination cannot be the result of fear or speculation about the types of harm or damage an animal may cause, or evidence about harm or damage caused by other animals.^{iv}

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What are the assistance animal's owner's responsibilities?

A person with a disability who uses an assistance animal is responsible for the animal's care and maintenance. A housing provider may establish reasonable rules in lease provisions requiring a person with a disability to pick up and dispose of his or her assistance animal's waste.

What if the animal damages the rental unit?

A housing provider may not require an applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep assistance animal.^v However, if a tenant's assistance animal causes damage to the unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Footnotes:

ⁱ24 CFR part 5.

ⁱⁱ HUD's position is consistent with federal cases involving emotional support animals in the housing context, that recognize that whether a particular accommodation is reasonable is a fact-intensive, case-specific determination. *Janush v. Charities Hous. Dev. Corp.*, 159 F. Supp. 2d 1133 (N.D. Cal. 2000); *Majors v. Hous. Auth. of the County of DeKalb, Ga.*, 652 F.2d 454, 457–58 (5th Cir. 1981).

ⁱⁱⁱ The HUD/DOJ Joint Statement and HUD's policy manuals and handbooks, including the Public Housing Occupancy Guidebook and the Multifamily Occupancy Handbook, provide applicable guidance on reasonable accommodation law.

^{iv} See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "*Reasonable Accommodations Under the Fair Housing Act, 2004*". www.usdoj.gov/crt/housing/joint_statement_ra.pdf or www.hud.gov/offices/fheo/library/huddojstatement.pdf

^v See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "*Reasonable Accommodations Under the Fair Housing Act, 2004*". www.usdoj.gov/crt/housing/joint_statement_ra.pdf or www.hud.gov/offices/fheo/library/huddojstatement.pdf

*For more information on HUD and Americans With Disabilities Act (ADA) or the Fair Housing Act please go to www.hud.gov.

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