

Emotional Support Animals: Do They Have To Live Here?

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Recognizing the drastic increase in the number of requests being made to housing providers for “emotional support animals” by residents who do not appear to be disabled, at the end of January 2020, the U.S. Department of Housing and Urban Development (HUD) issued guidance that contains what HUD considers to be the best practices for housing providers when they are presented with these requests. The guidance replaces HUD’s prior guidance and clarifies the amount and type of information that a housing provider may require when a request is made for an emotional support animal in order to ensure compliance with the Fair Housing Act (FHA). However, it only contemplates housing providers’ responsibilities under the FHA, which covers virtually all types of housing, including privately owned housing, and not any obligations under the Americans with Disabilities Act (ADA).

Under the FHA, housing providers are required to make exceptions to pet and no animal policies for assistance animals, including those policies relating to common areas. It is important to note that assistance animals are categorically not pets, and cannot be referred to as pets. There are two types of assistance animals: (1) service animals, which are dogs that have been specially trained and are governed by the ADA; and (2) emotional support animals that provide emotional support for people with disabilities that are governed by the FHA. It is this second category of assistance animals, support animals, that is the primary focus of the guidance.

The guidance lists a number of questions a housing provider should use when a resident requests permission to have an emotional support animal. It is vital that housing providers comply with the FHA when they are presented with a request for an emotional support animal. If a housing provider denies such a request, it could be on the receiving end of a complaint filed against it with HUD. The guidance says that complaints based upon denials of requests for emotional support animals make up almost 60% of all FHA complaints.

If you have any questions, please contact Rebecca Rhoden or any member of the Real Estate Group.