

# ASSISTED HOUSING MANAGEMENT INSIDER®

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SPECIAL ISSUE

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## HUD Releases 2013 Annual Adjustment Factors

On May 22, HUD released Annual Adjustment Factors (AAFs) for the Section 8 Housing Assistance Payments (HAP) program for fiscal year 2013. The AAFs, published annually by HUD in the *Federal Register*, are used to adjust contract rents for units during the initial term of the HAP contract and for all units that are in the Project-Based Certificate program.

The factors are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. Owners who participate in HAP programs such as the New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs; Loan Management and Property Disposition programs; and the Project-Based Certificate program must provide annual adjustments to monthly rentals for units covered by the contracts.

For more information on the adjustment factors, go to [www.huduser.org/portalldatasets/laaf.html](http://www.huduser.org/portalldatasets/laaf.html). ♦

## FEATURE

## How to Handle Reasonable Accommodation Requests for Assistance Animals

According to HUD's Office of Fair Housing and Equal Opportunity (FHEO), disability-related complaints, including those that involve assistance animals, are the most common discrimination complaint they receive. To help explain reasonable accommodation obligations in housing and HUD-funded programs, on April 25, the FHEO issued Notice 2013-01. The notice explains reasonable accommodation obligations regarding assistance animals for people with disabilities under three laws: the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

Under the FHA and Section 504, a disabled person must be allowed to use an assistance animal even in housing that otherwise prohibits pets. The notice stresses that assistance animals are not pets. Assistance may include animals that provide emotional support for people with disabilities. The guidance also describes the Department of Justice's (DOJ) revised definition of "service animal" under the ADA, as well as housing providers' obligations when multiple nondiscrimination laws apply. The DOJ's definition of "assistance animal" under the ADA is limited to dogs that are individually trained, and it expressly prohibits use for emotional support. Under the ADA, an assistance animal may not be denied access to an ADA-covered facility, unless one of three exceptions apply to the specific dog.

To help you sort requests by residents for assistance animals as a reasonable accommodation for an individual with a disability, we'll explain the federal fair housing requirements and suggest five rules that you can follow to comply with them.

### Reasonable Accommodation Considerations

Some sites enforce a no-pet policy, while others restrict the number, size, weight, breed, or species of animals, or impose conditions, such as pet fees or deposits. Whatever your policy, you must consider a

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**Assistance Animals** (continued from p. 1)

request for an exception to allow an individual with a disability to have an assistance animal as a reasonable accommodation.

To qualify for the accommodation, two questions must be answered in the affirmative:

1. Does the person seeking to use and live with the animal have a disability—that is, a physical or mental impairment that substantially limits one or more major life activities?

2. Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of the person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of the person's existing disability?

If the answer to question (1) or (2) is “no,” then the FHA and Section 504 do not require a modification to a housing provider's “no-pets” policy, and the reasonable accommodation request may be denied. However, if the answers to questions (1) and (2) are “yes,” the FHA and Section 504 require the site owner to modify or provide an exception to a “no-pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services.

For example, in a 2006 memo, HUD officials specifically addressed insurance policy restrictions as a defense to refusing to grant reasonable accommodation requests involving a breed of dog that the owner's insurance carrier considers dangerous. If the site's insurer would cancel or substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, then HUD will find that this imposes an undue financial and administrative burden on the housing provider, according to the memo. Nevertheless, the memo warned that investigators will check the owner's claim by verifying with the owner's carrier “and consider whether comparable insurance, without the restriction, is available on the market.”

Aside from that, sites may deny a request for an assistance animal if it would pose a direct threat to the health and safety of others—or would cause substantial physical damage to the property of others—which can't be reduced or eliminated by reasonable accommodations.

Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct—not on mere speculation or fear about the types

of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.

The determination of whether an assistance animal poses a direct threat must rely on an individualized assessment 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, HUD said that the housing 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 specific training, medication, or equipment for the animal.

## 5 RULES FOR HANDLING REQUESTS FOR ASSISTANCE ANIMALS

### **Rule #1: Think FHA—not ADA—When It Comes to Animals**

Don't get confused by differences in the ADA and FHA rules regarding the use of animals by individuals with disabilities. Although the laws have much in common, the FHA—not the ADA—primarily governs the use of assistance animals at multifamily housing sites.

In large part, the rules are different because they apply to different places: the ADA to a wide variety of public establishments, and the FHA to private areas in and around people's homes. With only one exception (for miniature horses), the ADA rules narrowly define "service animals" as dogs that have been individually trained to do work or perform tasks for a person with a disability. The regulations recognize psychiatric service dogs, which perform tasks such as reminding individuals to take medication, but they specifically exclude animals that provide only emotional support. Your leasing office, as well as the offices of any social services agencies that operate on your site for the benefit of both residents and non-residents, would be considered public establishments

under the ADA. So in those spaces, you must allow service animals as they're defined by the ADA, but may restrict the presence of all other animals.

The FHA, however, takes a different approach on the use of animals by individuals with disabilities. HUD officials emphasize the ADA rules limiting the use of service animals don't affect reasonable accommodation requests under the FHA (or Section 504 of the Rehabilitation Act of 1974, which also applies to federally assisted sites). Under the FHA, disabled applicants and residents may request a reasonable accommodation for "assistance animals," which includes species other than dogs, with or without training, and animals that provide emotional support.

### **Rule #2: Don't Take Narrow View of Assistance Animals**

Don't underestimate the types of animals that may qualify as assistance animals under the FHA. Many would also qualify as service animals under the ADA—dogs specially trained to provide tasks or services for individuals with disabilities. There are hearing dogs, which alert people who are deaf and hard-of-hearing to various sounds, and dogs trained to assist individuals with mobility impairments with tasks, such as pulling wheelchairs, retrieving objects, and summoning help. Diabetic alert dogs are trained to identify a scent when their owner's blood sugar drops and perhaps retrieve a snack if the owner's blood sugar gets too low. Seizure alert dogs have been trained to alert others when an individual has a seizure or to lie down next to the individual to prevent injuries; in some cases, they can learn to detect a seizure before it happens.

In addition to these "working" animals, the FHA allows assistance animals other than dogs that provide aid or emotional support to individuals with disabilities. Recognizing that assistance animals often provide aid that doesn't require training to provide necessary support to persons with emotional or psychiatric disabilities, HUD says there's no formal training or certification requirement.

Though most requests for assistance animals involve dogs, other assistance animals that may qualify include cats, birds, reptiles, and many other types of animals. But that doesn't mean you have to allow any species as assistance animals. There may be state

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## *Assistance Animals* (continued from p. 3)

or local laws banning farm animals or wild or exotic species from residential or rental housing.

### **Rule #3: Don't Treat Assistance Animals as Pets**

Sites with no-pet policies are most at risk for fair housing complaints if they enforce the policy to refuse requests for assistance animals. In an example from the federal guidance on reasonable accommodations, a deaf resident asks for an exception to a site's no-pet policy so he can keep a dog in his unit. The resident explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, the sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The guidelines state that the housing provider must make an exception to its "no-pets" policy to accommodate this resident.

It's more complicated at sites that allow pets, but have restrictions based on size or weight, number, species, or breed of the animals. Don't make the mistake of flatly refusing to consider requests for exceptions to those policies. Instead, consult your attorney and follow your standard policy on reasonable accommodations to thoroughly evaluate the request based on the particular circumstances.

If possible, get the request in writing. Follow up to determine whether the individual has a disability and a disability-related need for the animal. If so, then consider whether the request imposes an undue financial and administrative burden on your site. If, for example, the request involves a restricted breed, check with your insurance agent to find out if there are any insurance restrictions. If so, then you may have good reason to reject the request as unreasonable, particularly if comparable coverage for the restricted breed isn't readily available.

Also check whether state or local laws ban specific breeds or impose strict liability on owners for dog bites caused by tenants' restricted breeds. If so, you'd probably have a valid reason for rejecting the request as unreasonable.

Otherwise, get legal advice before rejecting the request based solely on the animal's breed. The issue is whether the animal poses a direct health and safety risk—and HUD has suggested that sites should perform an individualized assessment of the particular

animal involved based on its past behavior or history, as opposed to on fear or speculation about the harm or damage caused by other animals. Even then, you may have to consider alternatives proposed by the individual to reduce the threat, such as training or restraining the animal.

### **Rule #4: Understand When and How to Ask for Documentation**

When faced with a request for an assistance animal, make sure you don't step over the line when it comes to asking for disability-related information. It's a particular problem when the request comes only after the management discovers a resident has violated site rules for some time by keeping the animal. You may suspect that the resident isn't really disabled or that the animal is merely a household pet. But the law allows requests for reasonable accommodations at any time during the tenancy, so you must follow the rules on when and how to ask for disability-related information from the resident.

HUD recognizes that housing providers are entitled to obtain information that's necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. But don't make the mistake of thinking that you can ask for documentation for any request for an assistance animal. If both the nature of the resident's disability and his disability-related need for an assistance animal are both known or apparent, then you can't ask for additional information about his disability or disability-related need for the animal.

Otherwise, you can get more information—but only enough so that you can properly evaluate the accommodation request. For instance, you can't ask about an individual's disability if it's known or obvious, but you can request additional information if it's unclear why he needs an assistance animal.

In another example from the federal guidelines, an applicant who uses a wheelchair says that he wishes to keep an assistance dog in his unit even though the site has a "no-pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not, so the site may ask the applicant to provide information about the disability-related need for the dog.

Oftentimes, an applicant or resident will produce information from his doctor. You can't refuse to consider documentation from sources, including medical

professionals, peer support groups, and non-medical service agencies. Even a reliable third party who's in a position to know about the individual's disability may also provide verification of a disability, according to federal guidelines.

In fact, HUD says that the individual himself may provide the required information, for example, with proof that he receives Social Security disability benefits or "a credible statement by the individual." Despite that broad language, a statement from the individual may not be enough to justify a request for an emotional support animal.

### **Rule #5: Waive Pet Deposits and Fees for Assistance Animals**

The FHA bans sites from imposing conditions on the tenancy because the resident requires a reasonable accommodation. Among other things, you may not require the payment of a fee or a security deposit as a condition of allowing the resident to keep the assistance animal as a reasonable accommodation, according to HUD guidelines. In addition to waiving

pet deposits or additional monthly rental charges, you may have to waive liability insurance requirements applicable to pet owners.

Despite these restrictions, sites aren't without recourse if a resident's assistance animal causes damage to the unit or common areas. The federal guidelines state that the housing provider may charge the resident for the cost of repairing damages (or deduct it from the standard security deposit imposed on all residents), if it's the site's practice to assess residents for any damage they cause to the premises.

Furthermore, individuals with disabilities who use assistance animals are also responsible for the animal's care and maintenance, according to HUD. In its comments on pet ownership at housing for elderly and disabled individuals, HUD said that sites may establish reasonable house rules requiring a person with a disability to pick up after and dispose of his assistance animal's waste. ♦

## IN THE NEWS

### ***HUD, DOJ Issue Joint Statement on Accessibility Under the Fair Housing Act***

On April 30, HUD and the U.S. Department of Justice (DOJ) issued a joint statement concerning the Fair Housing Act requirement that multifamily housing be designed and constructed so as to be accessible to persons with disabilities. The new guidance aims to help design professionals, developers, and builders better understand their obligations, and help persons with disabilities better understand their rights regarding the "design and construction" requirements of the federal Fair Housing Act (FHA).

The FHA prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability. One of the types of disability discrimination prohibited by the FHA is the failure to design and construct covered multifamily dwellings with certain features of accessible design.

The latest joint statement provides guidance regarding the persons, entities, and types of housing

that are subject to the accessible design and construction requirements of the FHA. The joint statement also formalizes for the first time some practices or interpretations that the agencies have followed in the past.

For example, the time limit to file an accessible design claim is clarified in the statement. In addition, the statement makes clear that the failure to comply with HUD's Accessibility Guidelines constitutes a violation of the FHA. This seems to expressly contradict statements made by HUD when the Guidelines were issued in 1991: that the Guidelines were intended to serve as a safe harbor and were not a measure of violation of the FHA.

With the issuance of the latest joint statement, it's clear that the Justice Department and HUD now agree on a wide range of design issues that

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## *In the News* (continued from p. 5)

arise under the FHA, which may clear the way for increased enforcement efforts. HUD is the agency with the primary responsibility of investigating individual complaints of discrimination. The secretary of HUD, on his own initiative, may also file complaints alleging discrimination. And the attorney general may commence a civil action in federal court when there's reasonable cause to believe that someone is engaged in a pattern or practice of discrimination or that a group of persons has been denied rights protected by the FHA.

To help you comply with federal accessibility laws, we'll discuss the time limits formalized in the joint statement and review the various laws that protect the rights of persons with disabilities.

### **Time Limit for Disabled Person to File Complaint**

In the joint statement, HUD and the DOJ insist that the statute of limitations—or the time limit to file a complaint on accessible design claims—begins to run on the date of the injury. The joint statement encourages a person to file a complaint as soon as possible after becoming aware that he or she has been or may be harmed because a property may not be constructed in compliance with the accessibility requirements of the FHA.

Under the FHA, “[a]n aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint” with HUD [42 U.S.C. §3610(a)] and “may commence a civil action [in Court]... not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice” [42 U.S.C. §3613(a)(1)(A)].

HUD and the DOJ believe that the FHA is violated, and the one- or two-year statute of limitations begins to run, when an “aggrieved person” is injured as a result of the failure to design and construct housing to be accessible as required by the act. In other words, a failure to design and construct a site in accordance with the FHA may cause an injury to a person at any time until the violation is corrected.

In addition, HUD has interpreted the FHA to hold that “with respect to the design and construction requirements, complaints can be filed at any time that the building continues to be in noncompliance,

because the discriminatory housing practice—failure to design and construct the building in compliance—does not terminate” until the building is brought into compliance with the FHA and the continuing violation terminates.

Although not all courts have agreed with these interpretations, HUD uses them in determining whether to accept a complaint. Some courts have applied a tighter interpretation that starts the clock from the date of issuance of the final certificate of occupancy for a site.

### **FHA Accessibility Standards**

If any buildings at your site opened for first occupancy after March 13, 1991, they must have been built in compliance with the FHA's accessibility requirements. These requirements say that all ground-floor and elevator-accessible units (meaning all units in a building with an elevator), public use areas, and common areas must be accessible to people with mobility impairments. The law defines “first occupancy” as a building that has never before been used for any purpose.

In addition, rehabilitation projects applying for tax credits and/or HUD program funds must also meet the design and construction standards of the FHA if the first use of the building was after March 13, 1991.

Also, if your site has four or more units, it's covered by the FHA even if those units are separated by a breezeway, stairway, or firewall. Detached single-family houses, duplexes, triplexes, and multi-story townhouses without elevators are not covered.

The FHA and its regulations list seven design and construction requirements that covered sites must follow:

- Accessible building entrance on an accessible route;
- Accessible and usable public and common use areas;
- Usable doors;
- Accessible route into and through the dwelling unit;
- Environmental controls in accessible locations;
- Reinforced walls for grab bars; and
- Usable kitchens and bathrooms.

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## SITE ACCESSIBILITY CHECKLIST

The following checklist is a good start to assess the accessibility of your site. It represents some, but not all, of the accessible and adaptive design and construction requirements of the Fair Housing Act. The IRS, Justice Department, and HUD have jointly prepared it.

Please note that adoption of these items into the design and construction of a project will not guarantee that your site complies with all applicable FHA accessibility requirements.

### ACCESSIBLE BUILDING ENTRANCE ON AN ACCESSIBLE ROUTE

- The accessible route is a continuous, unobstructed path (no stairs) through the development that connects all buildings containing covered units and all public and common use facilities.
- The accessible route also connects to parking lots and to at least one public street, public sidewalk, and to a public transportation stop, when provided.
- All slopes on the accessible route are no steeper than 8.33 percent.
- All slopes on the accessible route between 5 percent and 8.33 percent have handrails.
- Covered units have at least one entrance on an accessible route.
- There are sufficient numbers of curb cut ramps for a person using a wheelchair to reach every building in the development.
- Ramp slope and cross slope meet specifications.

### ACCESSIBLE COMMON AND PUBLIC USE AREA

- At least 2 percent of all parking spaces serving covered units are designated as accessible handicapped parking spaces.
- At least one parking space at each common and public use amenity is designated as handicapped-accessible parking.
- All handicapped-accessible parking spaces have adequate signage.
- All handicapped-accessible parking spaces are at least 96" wide with a 60" wide access aisle that can be shared between two spaces.
- The accessible aisle is adjacent to the accessible route.
- The rental office is readily accessible and usable by persons with disabilities as required by both the Fair Housing Act and the Americans with Disabilities Act.
- A sufficient number of mailboxes, swimming pools, tennis courts, clubhouses, restrooms, showers, laundry facilities, trash facilities, drinking fountains, public telephones, and other common and public use amenities offered by the development that are readily accessible and usable by persons with disabilities.

### USABLE DOORS

- All doors into and through covered units and common use facilities provide a clear opening of at least 32" nominal width.
- All doors leading into common use facilities have lever door handles or other operating hardware that does not require grasping and twisting.
- Thresholds at doors to common use facilities are no greater than one-half inch.

- All primary entrance doors to covered units have lever door handles or other operating hardware that does not require grasping and twisting.
- Thresholds at exterior primary entrance doors to covered units are beveled and no greater than three-quarters of an inch.

### ACCESSIBLE ROUTE INTO AND THROUGH THE COVERED UNIT

- All routes through all rooms in the covered units are no less than 36" wide.

### ACCESSIBLE ENVIRONMENTAL CONTROLS

- All light switches, electrical outlets, thermostats, and other environmental controls are no less than 15" and no greater than 48" from the floor.

### REINFORCED BATHROOM WALLS FOR GRAB BARS

- Reinforcements are built into the bathroom walls surrounding toilets, showers, and bathtubs for the later installation of grab bars.

### USABLE KITCHENS

- There's a 30" x 48" clear floor space centered at each fixture and appliance.
- There are 40" of clear floor space between opposing elements (such as cabinets, appliances, etc.).
- U-shaped kitchens with a sink or cooktop at the end have 60" diameter turning space or have a sink or cooktop base with removable cabinets.
- Appliances and controls conform to the required accessibility design standards.

### USABLE BATHROOMS

Bathrooms must comply with the clear floor space requirements of Type A or Type B. If Type A is selected, the clear floor spaces apply to all of the bathrooms in the unit and each fixture in those bathrooms. If Type B is selected, the clear floor spaces apply to just one bathroom and to just one of each type of fixture in the bathroom.

#### ► Type A Bathroom

- 30" x 48" clear floor space outside the swing of the door.
- 30" x 48" clear floor space at the lavatory (if centered for parallel approach, cabinet may be fixed).
- Toilet next to the tub allowing a perpendicular approach.
- Centerline of toilet is 18" from bathtub and 15" from lavatory
- Toilets shall comply with the required design standards for height and location.

#### ► Type B Bathroom

- 30" x 48" of clear floor space outside swing of door.
- 30" x 48" of clear floor space centered in front of sink.
- 30" x 48" of clear floor space adjacent to the bathtub.
- Toilets comply with the required design standards for height and location.

## *In the News* (continued from p. 6)

The specific design and construction standards can be found in the appropriate requirements of the American National Standards Institute (ANSI), Fair Housing Accessibility Guidelines (FHAG), and in HUD's Fair Housing Act Design Manual. To help you with your site's initial assessment, you can use our Site Accessibility Checklist.

It's important to note that the FHA Guidelines contain a narrow "Site Impracticality Exception," which provides that first-floor units don't have to meet all of the law's requirements when it's impractical to have an accessible entrance to the building because of the natural hilly terrain or other unusual characteristics of the site.

### **Section 504 Accessibility Standards**

The FHA accessibility requirements apply whether or not your site receives federal funds if it "opened for first occupancy after March 13, 1991." And if your site was built after July 1988 and is federally assisted, your site must also comply with Section 504 accessibility requirements.

Section 504's accessibility requirements rely on the Uniform Federal Accessibility Standards (UFAS), which establish specific and detailed standards to determine accessibility.

Section 504 also calls for sites constructed after July 1988 that have six or more units to have a minimum of 5 percent of units that are "physically accessible" for persons who have mobility impairments, and 2 percent of units accessible for people with vision and hearing impairments.

In addition to physical accessibility requirements, Section 504 regulations require site owners and managers to ensure that the housing program itself is accessible, when that program is viewed in its entirety. Examples of discrimination include refusing to permit the use of service animals, having a policy prohibiting residents from having live-in aides, or even having the leasing office in an inaccessible location, such as up a flight of stairs in a building that has no elevator or other way for a person who uses a mobility aid to reach it.

For a detailed checklist of the physical requirements, you can view the UFAS Accessibility

Checklist for HUD Recipients at [www.hud.gov/offices/fheo/library/UFASAccessibilityChecklistforPHAs-5-7-08.pdf](http://www.hud.gov/offices/fheo/library/UFASAccessibilityChecklistforPHAs-5-7-08.pdf).

### **ADA Requirements**

Generally, the requirements of the ADA aren't as restrictive as the requirements under Section 504. The ADA guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunication. It's divided into five titles.

Title III prohibits disability-based discrimination and requires privately owned "places of public accommodation" be designed, constructed, and altered in compliance with certain accessibility standards. For most sites' purposes, the leasing office is considered to be a public accommodation, notes compliance expert Gregory Proctor of Windsor Compliance. Also, van-accessible spaces are required at office and community rooms for rent by nonresidents.

The ADA doesn't apply to the pool or other amenities that are available for use only by residents and their invited guests. The ADA applies only if you make those facilities available to the public—for example, by renting them out to groups or individuals who are not otherwise associated with your site. Consequently, the new ADA rules for pools and other amenities don't apply in most conventional housing communities—if your pool wasn't covered by the ADA before the new rules were issued, then the new ADA requirements for pools don't apply.

However, if you have areas within your site that are open to the public—such as day care centers, medical offices, or other facilities—you should get legal advice to ensure that you comply with all applicable accessibility requirements.

For a checklist of ADA Accessibility Guidelines to apply to areas of your site that are open to the general public, you can check out [www.access-board.gov/adaag/checklist/a16.html](http://www.access-board.gov/adaag/checklist/a16.html). ♦

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**RECENT COURT RULINGS****► PHA Improperly Denied Son Remaining Family Member Status**

**Facts:** The son of a deceased resident claimed succession rights to his mother's unit located in a public housing complex. The deceased resident had lived in the unit for approximately 50 years, and throughout her tenancy, paid her rent on time and was in good standing with the owner.

In 2004, the then 74-year-old resident requested that her son be permitted to move in with her to take care of her. Her written request described her poor health and various medical needs, which included congenital heart failure, diabetes, remission from cancer, and use of an oxygen tank 24 hours a day. She then completed the required form requesting to add a tenant to a lease. That year, the son was 50 years old, psychiatrically disabled, and receiving Supplemental Security Income as his sole source of income.

The PHA didn't act on this application within 90 days as required by internal rules. But the mother informed the management office that her son had moved in with her and she listed him and his income on her subsequent income affidavits for the unit. She also named him in the section of the affidavit of income requiring a description of "family composition" as a person living with her in her unit. The PHA's notes indicate that the mother went to the management office in 2005, regarding an "unauthorized occupancy," but that the PHA told her that "everything was okay."

In 2006, the PHA conducted a criminal background check on the son, and found that he had a 10-year-old burglary conviction. Under the PHA's internal rules, the resident should have been given the opportunity to show that her son was rehabilitated, but the PHA made no inquiry of the resident or her son in 2006 as to the conviction, and gave neither of them an opportunity to present evidence of rehabilitation at that time.

Having deemed the son ineligible due to a criminal conviction, the site manager was required to notify the son that he had to vacate the premises within 15 days, and then to initiate Termination of Tenancy proceedings if the son didn't leave. But no one told the residents that the son had to vacate the premises in 2006, and no termination proceeding was initiated.

In fact, the record contained no evidence that the PHA issued any oral or written decision on the 2004 application to add the son to the lease.

When the resident died, the son promptly notified the PHA of his mother's death, and he continued to pay the monthly rent for the unit. In 2007, he filed a second request to be added to the lease, and the PHA issued a written order denying the application on the grounds that the mother had died prior to its filing and that he was ineligible to gain any rights to his mother's tenancy until May 2008.

A hearing officer denied the son remaining family member status. She ruled that the PHA had "belatedly but properly disapproved" the mother's permanent permission request in 2006 when a criminal background check revealed a burglary conviction in 1996 that made the son ineligible for residence until May 2008. The son then asked the court to reverse the hearing officer's decision.

**Ruling:** A New York appeals court invalidated the hearing officer's decision and sent the case back for further review.

**Reasoning:** The appeals court found that while the PHA correctly asserted that the son's remaining family member status was jeopardized by the fact that he never received written permission to be added to his mother's lease while she was alive, the record was plain that the mother took every step to have her son added to her lease. It was undisputed that the PHA violated a number of its own internal rules by determining that the son's 1996 conviction precluded him from joining his mother's tenancy until May 2008, without notifying the mother or son, and without giving them the opportunity to present evidence of his rehabilitation.

The court stated that it couldn't determine whether this almost 60-year-old, psychologically disabled man, who presented evidence of continuing psychiatric and substance abuse counseling, presently poses a threat to the other tenants. Accordingly, they sent the case back to the PHA for reconsideration of this narrow issue. ♦

- Gutierrez v. Rhea, April 2013

## THE TRAINER

*We'll review the compliance issues raised in this month's articles. Then we'll give you a quiz to test your understanding of the issues discussed.*

### HANDLING REQUESTS FOR ASSISTANCE ANIMALS; COMPLYING WITH DESIGN & ACCESSIBILITY STANDARDS

In our feature on responding to residents' and applicants' requests for assistance animals, we explained the federal fair housing requirements and suggested five rules to follow to comply with them. Under the Fair Housing Act (FHA) and Section 504, a disabled person must be allowed to use an assistance animal even in housing that otherwise prohibits pets.

In our article on the new joint statement issued by HUD and the U.S. Department of Justice (DOJ), we

discussed how those agencies clarified the FHA's requirement that multifamily housing be designed and constructed so it's accessible to persons with disabilities. To help you comply with federal accessibility laws, we explained the time limits formalized in the joint statement and reviewed the various laws that protect the rights of persons with disabilities.

#### TRAINER'S QUIZ

**INSTRUCTIONS:** Each of the questions below has only one correct answer. On a separate sheet of paper, write down the number of each question, followed by the answer you have chosen—for example, (1) b, (2) a, and so on. The correct answers (with explanations) follow the quiz. Good luck!

##### QUESTION #1

When prospects call and say they have a pet, it's okay if we tell them about our no-pet policy and suggest they call the local humane society for a list of pet-friendly communities. True or false?

- a. True.
- b. False.

##### QUESTION #2

Our site has a no-pet policy. Recently, we discovered that a resident has a cat in her unit. She said that she's disabled and it's an emotional support animal. It seems like she's just trying to keep her pet cat, so we can enforce the lease to require her to remove the animal. True or false?

- a. True.
- b. False.

##### QUESTION #3

Our site allows pets, but they can't be more than 20 pounds. If a disabled resident says she needs a larger dog as an assistance animal, then we should consider making an exception to the weight restriction as a reasonable accommodation. True or false?

- a. True.
- b. False.

##### QUESTION #4

We can require all applicants who have animals to pay an extra fee or additional security deposit to cover any potential property damage the animal may cause. True or false?

- a. True.
- b. False.

## TRAINER'S QUIZ

### QUESTION #5

When a person believes he has suffered an injury because a site hasn't been constructed in compliance with the accessibility requirements of the FHA, how long does he have to file a complaint with HUD?

- One year.
- Two years.
- 10 years.
- There's no statute of limitations in these cases.

### QUESTION #6

Your site includes a newly constructed building without an elevator. The ground-floor units feature one bathroom with two bathroom doors, one leading to the hallway and the other leading to a bedroom. When a new resident in a wheelchair moves in, she notices that the door leading to the bedroom is too narrow to allow her to pass through. She wants the door widened. What should you do?

- Ignore her request. She has access to the bathroom through one doorway, so there's no violation.
- Allow her to have the doorway widened at her own expense.
- Pay to widen the doorway in her unit.
- Pay to widen the doorways in all the ground-floor units.

### QUESTION #3

**Correct answer: a**

Under fair housing law, sites must consider a request for an exception to pet policies, including size or weight restrictions, as a reasonable accommodation when necessary to allow an individual with a disability an equal opportunity to use and enjoy the property.

### QUESTION #4

**Correct answer: b**

A site may not require an applicant with a disability to pay a fee or a security deposit as a condition of allowing him to keep an assistance animal.

### QUESTION #5

**Correct answer: a**

Under the FHA, "[a]n aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint" with HUD [42 U.S.C. §3610(a)]. However, the person "may commence a civil action [in Court]... not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice" [42 U.S.C. §3613(a)(1)(A)].

In addition, HUD has warned that the discriminatory housing practice—failure to design and construct the building in compliance—doesn't terminate until the building is brought into compliance with the FHA.

## ANSWERS & EXPLANATIONS

### QUESTION #1

**Correct answer: a**

Sites may generally adopt policies to prohibit or otherwise restrict pets, as long as you consider requests for exceptions to the policies as a reasonable accommodation when necessary to allow an individual with a disability to keep an assistance animal.

### QUESTION #2

**Correct answer: b**

Despite your instincts, don't dismiss the possibility that she may be entitled to keep the cat under fair housing law. It's true that cats can't be service animals, but fair housing law is broad enough to permit an individual with a disability to have an assistance animal other than a dog, including an emotional support animal, if she has a disability-related need for the animal.

### QUESTION #6

**Correct answer: d**

All doors that allow passage into and within all premises must be wide enough to allow passage by people in wheelchairs, including both doors to a bathroom.

The specific design and construction standards can be found in the appropriate requirements of the American National Standards Institute (ANSI), Fair Housing Accessibility Guidelines (FHAG), and in HUD's Fair Housing Act Design Manual. To help you with your site's initial assessment, you can use our Site Accessibility Checklist.

# DID YOU KNOW that the number of housing discrimination cases filed each year keeps rising?

... and that housing providers like you are paying higher penalties and settlements — sometimes over \$1 million?

## Take FAIR HOUSING COACH'S Pop Quiz:

**Q** Can someone who *isn't* disabled sue for disability discrimination under the Fair Housing Act?

**A** Yes, according to a federal court in Florida, in *Falin v. Condo Assn. of La Mer Estates, Inc.* (Nov. 2011).

Avoid the costly mistakes that could trigger a discrimination complaint.

## Let FAIR HOUSING COACH train your staff how to comply with fair housing law.

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◆ Avoiding Fair Housing Problems in New Media

- ◆ What Is a Family? Complying with the Law in Light of Changing Family Structures
- ◆ Documenting Disability-Related Accommodation and Modification Requests
- ◆ Complying with Fair Housing Law When Dealing with a Hoarding Problem
- ◆ Trend Watch: Dealing with the Rise in Multigenerational Households
- ◆ State Law Roundup: Checklist of State Fair Housing Protections

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