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# ATTORNEYS' GUIDE TO REASONABLE ACCOMMODATIONS IN HOUSING UNDER THE FAIR HOUSING ACT

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FOR INTERMOUNTAIN FAIR HOUSING COUNCIL  
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## I. REQUESTING A REASONABLE ACCOMMODATION

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1. What is a “reasonable accommodation” pursuant to the Fair Housing Act (hereinafter “FHA”)?

The FHA does not expressly define “reasonable accommodation”. Instead, the statute provides that “discrimination includes. . .a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling”.<sup>1</sup>

The courts have interpreted this prohibition to mean that individuals with a disability may submit a request “to accommodate the needs of the disabled. . .to protect the right of handicapped persons to live in the residence of their choice in the community [and] to end the unnecessary exclusion of persons with handicaps from the American mainstream.”<sup>2</sup>

Whenever a person submits a request that a rule, a policy, a practice or a service be changed or modified in some way in order to accommodate that person’s (or someone residing or associated with that person’s) disability, such a request is a reasonable accommodation request.<sup>3</sup>

The Courts have held that a reasonable accommodation is not “reasonable” if it imposes a fundamental alteration in the nature of the program or an undue financial or administrative burden on the party to whom it is submitted.<sup>4</sup> However, the courts have further held that a proposed accommodation may entail “some financial burden” on the party to whom it is submitted.<sup>5</sup>

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<sup>1</sup> Fair Housing Act, 42 U.S.C. §3604(f)(3)

<sup>2</sup> *Giebeler v. M & B Associates*, 343 F.3d 1143, 1149 (9<sup>th</sup> Cir. 2003) (internal quotations omitted)

<sup>3</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶6

<sup>4</sup> *Giebeler v. M & B Associates*, 343 F.3d 1143, 1157 (9<sup>th</sup> Cir. 2003)

<sup>5</sup> *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1417 (9<sup>th</sup> Cir. 1994); *Giebeler v. M & B Associates*, 343 F.3d 1143, 1152-53 (9<sup>th</sup> Cir. 2003); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶9

## 2. Who can request a reasonable accommodation in housing?

The FHA provides that persons who are “handicapped” (the terms “handicapped” and “disabled” have the same legal meaning<sup>6</sup>) may request a reasonable accommodation in housing.<sup>7</sup>

The FHA defines “handicap” as:

- (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities,
- (2) a record of having such an impairment, or
- (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).<sup>8</sup>

The fair housing regulations enacted by the United States Department of Housing and Urban Development (hereinafter “HUD”), which is the federal enforcement agency with regards to the FHA, provide more detailed guidance on the definition of “handicap” and should be consulted in order to make a determination whether an individual is in fact handicapped under the FHA and therefore entitled to make a request for a reasonable accommodation.<sup>9</sup> It should be noted that the term “handicapped” is no longer an appropriate term yet is used as defined in the FHA.

The FHA provides that a reasonable accommodation must be granted to the person making the request or to a person residing or associated with that person.<sup>10</sup> A non-disabled person may submit a reasonable accommodation request on behalf of a person with a disability, provided that the person with a disability resides with or is associated with the person submitting the request.<sup>11</sup> It is important to note that although the FHA prohibits discrimination on the basis

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<sup>6</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, footnote 2

<sup>7</sup> *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1416 (9<sup>th</sup> Cir. 1994) (observing that the FHA “imposes an affirmative duty upon landlords reasonably to accommodate the needs of handicapped persons.”)

<sup>8</sup> Fair Housing Act, 42 U.S.C. §3602(h)

<sup>9</sup> 24 C.F.R. §100.201

<sup>10</sup> Fair Housing Act, 42 U.S.C. §3604(f)(1) and (2); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, footnote 5

<sup>11</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶12

of race, color, religion, sex, national origin, familial status (the presence of minor children), and disability, only persons with a disability are entitled to a reasonable accommodation.

### 3. How do I request a reasonable accommodation in housing?

The FHA does not provide a specific process by which an individual may request a reasonable accommodation in housing. However, HUD has issued rules which set forth the process that individuals must follow in making such requests and the rules for considering such requests.

The HUD rules provide that the FHA does not require that a request for a reasonable accommodation in housing be made in a particular manner or at a particular time.<sup>12</sup> A reasonable accommodation in housing may be requested either orally or in writing, and the words “reasonable accommodation” do not need to be used by the individual submitting the request.<sup>13</sup> Furthermore, the individual submitting the request may not be required to use specific forms or be required to follow formal procedures in submitting the request.<sup>14</sup>

## II. CONSIDERATION OF A REASONABLE ACCOMMODATION REQUEST

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### 1. Who must grant reasonable accommodation requests?

The FHA does not specify what individuals or entities must grant reasonable accommodations in housing. However, the courts have held that the FHA is to be accorded a generous interpretation<sup>15</sup> and that a reasonable accommodation must be granted if a denial would interfere with the use and enjoyment of the individual’s property.<sup>16</sup> The HUD rules provide that any person or entity refusing to make reasonable accommodations necessary to afford a person

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<sup>12</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶12

<sup>13</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶¶12 and 14

<sup>14</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶¶12 and 13

<sup>15</sup> *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731, 115 S.Ct. 1776 (1995)

<sup>16</sup> *McGary v. City of Portland*, 386 F.3d 1259, 1262-63 (9<sup>th</sup> Cir. 2004)

with a disability an equal opportunity to use and enjoy a dwelling may be held liable.<sup>17</sup> The obligation to grant reasonable accommodations have been imposed upon landlords and public agencies.<sup>18</sup> This obligation has also been imposed upon “individuals, corporations, associations, and others involved in the provision of housing and residential lending, including property owners, and brokerage services.”<sup>19</sup> It has also been imposed upon insurance companies who provide property insurance.<sup>20</sup>

The FHA does provide several exemptions which apply in very limited circumstances.<sup>21</sup> An individual or entity must be very careful in making a determination that such an exemption applies, however, as the courts construe narrowly any exemptions to the FHA.<sup>22</sup> Such a determination should be made only with the assistance of competent legal counsel.

## 2. What process must be used in considering a reasonable accommodation?

The person to whom a reasonable accommodation request is submitted may not maintain a blanket policy with regards to such requests.<sup>23</sup> Instead, each reasonable accommodation request must be considered on a case-by-case basis to determine whether the granting of the request is necessary to afford the disabled individual who submitted the request equal opportunity to use and enjoy their dwelling.<sup>24</sup>

A reasonable accommodation request may be denied if it imposes a fundamental alteration in the nature of the program or an undue financial or administrative burden.<sup>25</sup> A

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<sup>17</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶2

<sup>18</sup> *McGary v. City of Portland*, 386 F.3d 1259, 1261 (9<sup>th</sup> Cir. 2004)

<sup>19</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶2

<sup>20</sup> *Wai v. Allstate Ins. Co.*, 75 F.Supp.2d 1 (D.D.C. 1999)

<sup>21</sup> 42 U.S.C. §3602; Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶2

<sup>22</sup> *United States v. Columbus Country Club*, 915 F.2d 877, 883 (3<sup>rd</sup> Cir. 1972)

<sup>23</sup> *Huynh v. Harasz*, 14-cv-02367-LHK (N.C. Cal. May 12, 2016)

<sup>24</sup> *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1418 (9<sup>th</sup> Cir. 1994)

<sup>25</sup> *Giebeler v. M & B Associates*, 343 F.3d 1143, 1157 (9<sup>th</sup> Cir. 2003)

request can also be denied if it was not made on behalf of a person with a disability or if there is no disability-related need for the accommodation.<sup>26</sup>

In the event that the person to whom a reasonable accommodation request has been submitted determines that the request will be denied, they must first engage in an interactive dialogue with the person who requested the accommodation in order to explore how an accommodation can be granted.<sup>27</sup> A housing provider may not “short-circuit” this interactive process.<sup>28</sup> A housing provider that engages in hostile or harassing actions while having an interactive dialogue with the tenant can be found to have not adequately engaged in the interactive process and the reasonable accommodation request can be deemed to have been denied.<sup>29</sup> Furthermore, such conduct can also be deemed to be illegal retaliation in violation of the FHA.<sup>30</sup>

### 3. What types of reasonable accommodations can be requested?

Neither the FHA, the fair housing regulations, nor the courts have provided a comprehensive list of the types of accommodations that must be granted to disabled persons. If a person submits a request that a rule, a policy, a practice or a service be changed or modified in some way in order to accommodate that person’s (or someone residing or associated with that person’s) disability, and there is an identifiable relationship between the requested accommodation and the individual’s disability, such a request must be granted.<sup>31</sup>

The fair housing regulations provide only two examples in which a reasonable accommodation would need to be granted to a disabled individual: (1) a blind tenant who requires the use of a seeing-eye dog at a property that prohibits pets; and (2) a tenant with a

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<sup>26</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶7

<sup>27</sup> *Jankowski Lee & Assocs. v. Cisneros*, 91 F.3d 891, 895 (7<sup>th</sup> Cir. 1996); *Huynh v. Harasz*, 14-cv-02367-LHK (N.C. Cal. May 12, 2016); *Bhogaita v. Altamonte Heights Condo. Ass’n, Inc.*, 765 F.3d 1277, 1286 (11<sup>th</sup> Cir. 2014); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶7

<sup>28</sup> *Overlook Mut. Homes, Inc. v. Spencer*, 415 Fed.Appx. 617, 621 (6<sup>th</sup> Cir. 2011)

<sup>29</sup> *Chavez v. Aber*, 122 F.Supp.3d 581, 598 (W.D. Tex. 2015)

<sup>30</sup> *Chavez v. Aber*, 122 F.Supp.3d 581, 599-601 (W.D. Tex. 2015)

<sup>31</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶6

mobility-impairment who requires a parking space be reserved for him near his dwelling.<sup>32</sup> The HUD rules also provides the example of a tenant with a mental disability, who is afraid to leave her residence, to be allowed to pay her rent by mail even though the housing provider requires that the rent must be paid in person at the rental office.<sup>33</sup>

Furthermore, the courts have identified numerous other situations in which a reasonable accommodation should have been granted, including: a housing provider that refused to waive a guest fee for a tenant with a disability's live-in home health aide;<sup>34</sup> a housing provider that refused to immediately assign a parking space in the property's parking garage without having to be put on the waiting list;<sup>35</sup> a municipality's refusal to waive zoning minimum setback requirements to permit the construction of a driveway in the front yard of a resident with a disability;<sup>36</sup> a housing provider's failure to repair potholes in the driveway that made it difficult for a wheelchair user to access the property;<sup>37</sup> a housing provider's refusal to allow a tenant with a disability to transfer from an upper-level apartment to a lower-level apartment;<sup>38</sup> a housing provider's refusal to allow a tenant with a disability to park a golf cart near his residence and to cover it with a tarpaulin when not in use;<sup>39</sup> a housing provider's refusal to waive a no-cosigners rule for an applicant with a disability who was unable to work and therefore could not meet the housing provider's minimum income requirement;<sup>40</sup> a housing provider's refusal to allow existing tenants' son with a disability, who cannot live independently, to reside at an age-55-and-older property;<sup>41</sup> a municipality's refusal to grant a resident with a disability additional time to abate the public nuisance at her property;<sup>42</sup> a municipality's refusal to allow a resident with a disability's caregivers to reside in an outbuilding in violation of the one-single-family-home-per-lot zoning requirement;<sup>43</sup> a municipality's refusal to grant a variance to allow placement of

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<sup>32</sup> 24 C.F.R. §100.204

<sup>33</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶6

<sup>34</sup> *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1418 (9<sup>th</sup> Cir. 1994)

<sup>35</sup> *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328 (2<sup>nd</sup> Cir. 1995)

<sup>36</sup> *Trovato v. City of Manchester, N.H.*, 992 F.Supp. 493 (D.N.H. 1997)

<sup>37</sup> *Reyes v. Fairfield Properties*, 661 F.Supp.2d 249 (E.D.N.Y. 2009)

<sup>38</sup> *Bentley v. Peace and Quiet Realty 2 LLC*, 367 F.Supp.2d 341 (E.D.N.Y. 2005)

<sup>39</sup> *HUD v. Ocean Sands, Inc.*, FH/FL ¶25,055 (HUD ALJ 1993)

<sup>40</sup> *Giebeler v. M & B Assocs.*, 343 F.3d 1143 (9<sup>th</sup> Cir 2003)

<sup>41</sup> *Olsen v. Stark Homes, Inc.*, 759 F.3d 140 (2<sup>nd</sup> Cir. 2014)

<sup>42</sup> *McGary v. City of Portland*, 386 F.3d 1259 (9<sup>th</sup> Cir. 2004)

<sup>43</sup> *Utah Labor Comm. v. Paradise Town*, 660 F.Supp.2d 1256 (D.Utah 2009)

group home to be used by a group of residents with disabilities who live as a single family in an area zoned for single family use;<sup>44</sup> a municipality's refusal to grant a variance to the zoning ordinance that requires spacing between group homes;<sup>45</sup> a municipality's refusal to grant a variance to allow the construction of a nursing home in an area zoned primarily for residential use;<sup>46</sup> and, a housing provider's refusal to waive a no-pets policy to allow tenant with a disability to have a service animal.<sup>47</sup>

Additionally, several courts have ruled that housing providers must grant a reasonable accommodation to a tenant with a disability to allow them to remain in their residence despite the fact that they have violated the lease by being disruptive or threatening to other tenants. For example, one such court ruled that a housing provider must grant an accommodation to terminate an eviction proceeding initiated due to disruptive behavior if eviction would result in the tenant with a disability no longer receiving necessary mental health services.<sup>48</sup> Other courts have ruled that a tenant with a disability who has engaged in disruptive and violent behavior may be lawfully evicted only if the housing provider demonstrates that no reasonable accommodation will eliminate or acceptably minimize any risk the tenant poses to other residents at the property.<sup>49</sup>

#### 4. How quickly must a request for a reasonable accommodation in housing be considered?

The person to whom a reasonable accommodation request has been submitted must provide a prompt response and an undue, indeterminate or unjustified delay may be deemed to be a failure to provide the reasonable accommodation.<sup>50</sup>

#### 5. What types of information may the individual requesting a reasonable accommodation in housing be required to provide?

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<sup>44</sup> *Tsombanidis v. West Haven Fire Dept.*, 352 F.3d 565 (2<sup>nd</sup> Cir. 2003)

<sup>45</sup> *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775 (7<sup>th</sup> Cir. 2002)

<sup>46</sup> *Hovsons v. Township of Brick*, 89 F.3d 1096 (3<sup>rd</sup> Cir. 1996)

<sup>47</sup> Numerous cases cited and discussed in Section III below.

<sup>48</sup> *McAlister v. Essex Property Trust*, 504 F.Supp.2d 903 (C.D. Cal. 2007)

<sup>49</sup> *Roe v. Housing Authority of the City of Boulder*, 909 F.Supp. 814 (D.Colo. 1995); *Roe v. Sugar River Mills Associates*, 820 F.Supp. 636 (D. N.H. 1993)

<sup>50</sup> *Groome Res. Ltd. v. Parish of Jefferson*, 234 F.3d 192, 199 (5<sup>th</sup> Cir. 2000); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶15

If the disability of the individual for whom a reasonable accommodation request has been submitted is obvious and if the need for the requested accommodation is obvious, the person to whom the request has been submitted may not request any additional information.<sup>51</sup>

If the disability of the individual for whom a reasonable accommodation request has been submitted is not obvious, the person to whom the request has been submitted may request information that verifies that the individual is disabled as defined by the FHA.<sup>52</sup> However, the person to whom the request has been submitted may not inquire into the nature or severity of the individual's disability.<sup>53</sup> The person to whom the request has been submitted may also request information that describes the accommodation that has been requested and that shows the relationship between the individual's disability and the need for the requested accommodation.<sup>54</sup>

6. Who can verify the disability of the individual for whom a reasonable accommodation has been requested?

The HUD rules provide that such information can usually be provided by the individual who has requested the accommodation, such as by submitting proof that the individual receives disability benefits or by submitting a credible statement by the individual.<sup>55</sup> Such information can also be verified by a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability<sup>56</sup>

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<sup>51</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶17

<sup>52</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶18

<sup>53</sup> 24 C.F.R. §100.202(c); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶¶16 and 18

<sup>54</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶18

<sup>55</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶18

<sup>56</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶18

### III. REASONABLE ACCOMMODATION REQUESTS FOR SERVICE ANIMALS

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1. May I request to have a service animal live with me as a reasonable accommodation in housing?

An individual may request a reasonable accommodation to have a service animal if the individual is disabled, as defined by the FHA, and the animal performs work, assistance, tasks, or other services for the benefit of the individual, or if it provides emotional support that alleviates one or more of the identified symptoms or effects of the individual's disability.<sup>57</sup>

2. Is there a difference between a service animal, a support animal, an assistance animal, and a therapy animal?

There is no distinction between any of these different types of animals when an individual requests that he or she be permitted to have one as a reasonable accommodation in housing.<sup>58</sup> Furthermore, the courts have repeatedly held that emotional support animals are service animals and must be considered as reasonable accommodations for disabled individuals.<sup>59</sup>

3. May a housing provider require me to pay extra rent, a deposit or a fee as a condition for having a service animal?

A housing provider may not require different rent or impose a security deposit or other lease terms because of an individual's disability.<sup>60</sup> Furthermore, a housing provider may not require an individual with a disability to pay an extra fee or deposit as a condition of receiving a reasonable accommodation.<sup>61</sup> Courts have held that a housing provider that imposes a deposit on a service animal is a violation of the FHA.<sup>62</sup>

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<sup>57</sup> Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO-2013-01, April 25, 2013 at 3

<sup>58</sup> *Pet Ownership for the Elderly and Persons With Disabilities*, 73 FR 63834 (Vol.73, No. 208)

<sup>59</sup> *Warren v. Delvista Towers Condo. Assn., Inc.*, 49 F.Supp.3d 1082, 1087 (S.D. Fla. 2014); *Overlook Mutual Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 861 (S.D. Ohio 2009)

<sup>60</sup> 24 C.F.R. §100.65(b)(1)

<sup>61</sup> Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, ¶11

<sup>62</sup> *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, 2:10-cv-00346-BLW (D. Idaho July 20, 2011); *Fair Hous. of the Dakotas v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1040 (D.N.D. 2011)

4. May a housing provider require that a service animal be trained?

There is no *per se* training requirement for service animals and the FHA protects the right to have all types of service animals.<sup>63</sup> The Courts have held that some individuals requesting to have a service animal as a reasonable accommodation in housing may have a disability that requires the service animal to have some type of training and that in other cases no training is necessary.<sup>64</sup> The determination of whether a service animal must be approved must be made on a case-by-case basis after a fact-specific inquiry.<sup>65</sup> Whether a particular animal qualifies as a service animal depends upon the disability of the individual requesting the reasonable accommodation and the accommodation necessary to ameliorate the effects of the disability.<sup>66</sup> Service animals which are for emotional support to ameliorate the effects of a mental or emotional disability need not be individually trained.<sup>67</sup>

5. May a housing provider impose breed, size or weight restrictions on service animals?

A housing provider may not impose such blanket restrictions on service animals.<sup>68</sup> A housing provider must approve a service animal as a reasonable accommodation if keeping the particular animal is “feasible” and “practical”.<sup>69</sup> A reasonable accommodation request for a service animal can be denied if the specific animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or if the specific animal would cause substantial physical damage to the property or others that cannot be reduced or eliminated by another reasonable accommodation.<sup>70</sup> A housing provider must

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<sup>63</sup> *Fair Hous. of the Dakotas v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1036 (D.N.D. 2011)

<sup>64</sup> *Assoc. of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F.Supp.2d 1268, 1287 (D.Hawai'i 2012)

<sup>65</sup> *Assoc. of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F.Supp.2d 1268, 1287 (D.Hawai'i 2012)

<sup>66</sup> *Assoc. of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F.Supp.2d 1268, 1288 (D.Hawai'i 2012)

<sup>67</sup> *Overlook Mutual Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 861 (S.D. Ohio 2009)

<sup>68</sup> Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO-2013-01, April 25, 2013 at 3

<sup>69</sup> 53 Fed. Reg. 45003 to 04 (Nov. 7, 1988) (HUD commentary quoting remarks of Rep. Owens, 134 Cong. Rec. H4923 (1988))

<sup>70</sup> *Warren v. Delvista Towers Condo. Assn., Inc.*, 49 F.Supp.3d 1082, 1087-88 (S.D. Fla. 2014)

complete a fact-specific, case-by-case determination of each specific reasonable accommodation request.<sup>71</sup>

Furthermore, a housing provider may not rely on a municipal ordinance banning certain breeds of animals.<sup>72</sup> In the event that a housing provider is aware that the particular animal requested as a service animal would violate a municipal ordinance and this is the only basis upon which the housing provider would deny the request, the housing provider should approve the reasonable accommodation and suggest to the individual requesting the reasonable accommodation that they submit a further reasonable accommodation request to the municipality. Even if the municipality denies the reasonable accommodation request, the housing provider should maintain its approval of the service animal.<sup>73</sup>

6. May a housing provider restrict where a service animal is allowed to be present?

An individual with a disability who has a service animal can take the animal 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.<sup>74</sup> A housing provider may not prohibit a person with a disability from taking a service animal out of the building and onto the common areas of the property.<sup>75</sup>

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<sup>71</sup> *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1418 (9<sup>th</sup> Cir. 1994)

<sup>72</sup> *Warren v. Delvista Towers Condo. Assn., Inc.*, 49 F.Supp.3d 1082, 1087-88 (S.D. Fla. 2014) (addressing local ordinance banning dogs who are pit bulls)

<sup>73</sup> *Warren v. Delvista Towers Condo. Assn., Inc.*, 49 F.Supp.3d 1082, 1089 (S.D. Fla. 2014)

<sup>74</sup> Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO-2013-01, April 25, 2013 at 3

<sup>75</sup> *Petty v. Portofino Council of Coowners, Inc.*, 702 F.Supp.2d 721, 731 (S.D. Tex. 2010)