

10th Annual FSA Compliance and Risk Management Conference

"Ruff" Going: FHA, ADA & Animals in Senior Living

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- The information being provided today is NOT legal advice
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Learning Objectives

- FHA
- ADA
- Reasonable Accommodations
- Service animals
- Emotional support & companion animals
- HUD standards
- Restrictions on Reasonable Accommodations
- Risk avoidance tips



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Fair Housing Act/Amendments Act: FHA

- Prohibits discrimination in multi-family housing
- FHA: 1968
- Protected Classes:
 - RACE
 - RELIGION
 - COLOR
 - NATIONAL ORIGIN
 - SEX (including gender, sexual orientation, gender identity)



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Fair Housing Act/Amendments Act: FHA

- FHAA: 1988
- Added 2 more Protected Classes:
 - FAMILIAL STATUS
 - DISABILITY
- Acts as a floor not a ceiling



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FHA Broadly Defines “Disability”

- “A physical or mental impairment which substantially limits one or more of a person’s major life activities”
 - **“SUBSTANTIALLY LIMITS:”** UNABLE TO PERFORM MAJOR LIFE ACTIVITY TO EXTENT THAT AVERAGE PERSON CAN
 - **“MAJOR LIFE ACTIVITIES:”** CARING FOR ONESELF, WALKING, LEARNING, PERFORMING MANUAL TASKS, SEEING, SPEAKING, HEARING: ALL OF THE ADL’S



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FHA Broadly Defines “Disability”

- Under this statutory definition, almost any older adult may be considered disabled! Includes:
 - MOBILITY IMPAIRMENTS
 - DEMENTIA
 - ALCOHOLISM
 - PARANOID SCHIZOPHRENIA
 - HOARDING
 - BLINDNESS/DEAFNESS
 - SAD (SEASONAL AFFECTIVE DISORDER)
 - THOSE ASSISTING DISABLED/REGARDED AS DISABLED



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Fair Housing Act/Amendments Act: FHA

- Prohibits discriminating based on Protected Class:
 - RESTRICTING HOUSING CHOICES
 - DENYING ADMISSION/ACCESS TO HOUSING
 - “STEERING” TO CERTAIN TYPES OF HOUSING/AREAS
 - DISCOURAGING APPLICANTS FROM APPLYING
 - DENYING DISABLED THEIR REASONABLE ACCOMMODATIONS
 - TREATING THOSE IN PROTECTED CLASSES WORSE THAN OTHERS
 - PROVIDING PREFERENTIAL TREATMENT TO PROTECTED CLASSES



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Covered FHA Housing

- CCRCs
- Independent/Residential Living
- Assisted Living/Personal Care Homes
- Nursing homes/LTC (not sub acute rehab)
- Adult Foster Care
- Condos/townhomes
- CO-OPs
- Sales
- Rentals
- Multi million penthouses to HUD housing



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Fair Housing Act/Amendments Act: FHA

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Civil rights statute



State/local regs. may add **MORE** protected classes (remember FHA is a floor, not a ceiling)



Understand your jurisdiction & what additional protections may exist



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Americans with Disabilities Act: ADA

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- Another piece of federal civil rights legislation
- ADA: 1990
- Most sweeping affirmation of rights for disabled in US history at that time
- Before ADA enacted, disabled faced discrimination in public spaces, businesses & employment



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Americans with Disabilities Act: ADA

- ADA: covers wide range of physical & mental disabilities
- Sets standards for employers to prevent discrimination against disabled in employment
- Sets standards for disabled to access to public buildings & public accommodations (hotels, restaurants, healthcare providers, etc.)
- Established federal laws as to service animals as to disabled



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Americans with Disabilities Act: ADA

- 3/90: disability rights activists staged Capitol Crawl
- Disabled people pulled themselves up all 100 steps of US Capitol to highlight lack of accessibility
- Bill passed House by unanimous voice vote
- Passed Senate 76-6
- 7/90: President Bush: "Let the shameful wall of exclusion finally come tumbling down"



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Americans with Disabilities Act: ADA

- ADA Title III: Public Accommodations
- No discrimination on basis of disability
- Full & equal enjoyment of goods, services, facilities in any public accommodation
- Public accommodations: most **lodging** (inns/hotels), recreation, **transportation**, education, **dining, stores, care providers**, places of public displays



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Americans with Disabilities Act: ADA

- ADA/FHA overlap:
 - CONSTRUCTION ACCESSIBILITY ISSUES
 - SERVICE ANIMALS



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Construction Accessibility Requirements

- 3/91: HUD adopts technical guidelines for specific accessibility requirements for the FHAA relating to disabilities
- Housing providers who follow these have “Safe Harbor”
- Pertains to design/construction of multi-family housing, whether privately owned or federally assisted



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Construction Accessibility Requirements

- Fair Housing Accessibility Guidelines (FHAG)
- Public & common areas must be accessible to disabled:
 - PARKING LOTS
 - LAUNDRY ROOMS
 - DINING AREAS
 - MAILBOX AREAS
 - RECREATIONAL AREAS



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Construction Accessibility Requirements

- Requires at least 5% of units, or at least 1, whichever is greater, be accessible for those with mobility impairments
- Additional 2% of units, or at least 1, whichever is greater, be accessible for those with hearing or vision disabilities



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Construction Accessibility Requirements

- ADA also has accessibility standards for public accommodations
- Original standards: 1990
- Updated standards: 2010
- Anything constructed or renovated after 2010 should apply new standards



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Construction Accessibility Requirements

- Generally, covers aspects of design, construction & alteration of public & private spaces:
 - ENTRANCES
 - RAMPS
 - DOORS
 - ELEVATORS
 - RESTROOMS
 - PARKING
 - SIGNAGE



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Construction Accessibility Requirements

- Can you see the overlap with FHA & ADA?
- CCRCs: Housing Providers
- CCRCs: Public Accommodations
- Inviting the public into your privately owned spaces:
 - MARKETING OFFICE
 - CAFES
 - GIFT SHOPS
 - GUEST ROOMS??
 - PERFORMANCES



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FHA & ADA: Reasonable Accommodations

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Apply to both FHA & ADA

Designed to alleviate effects of disability



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FHA: Reasonable Accommodations

- Exception/adjustment to usual rules, policies, services enabling disabled equal opportunity to use/enjoy home & community (common areas)
- “Reasonable” decided on case-by-case basis
- “Reasonable accommodations” → sufficiently related to disability, designed to alleviate effect on disabled
- Helps disabled to meet the Essential Requirements of Tenancy that providers can require



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ADA: Reasonable Accommodations

- Changes to application/hiring process, job itself, way job is done, or work environment
- Which allows the disabled person who is otherwise qualified for that job
- To perform essential functions of that job & enjoy equal employment opportunities



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Reasonable Accommodations

- Reasonable Accommodations → required to be made upon request to assist the disabled under both FHA & ADA
- Disabled or someone on their behalf can request an Reasonable Accommodations under FHA
- As many Reasonable Accommodations as are needed for the disability/disabilities → no limit



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Reasonable Accommodations

- FHA RAs: Allow disabled full opportunity to use/enjoy their home/common areas of community in the same manner as able bodied do
- Helps disabled to meet Essential Requirements of Tenancy that all must meet



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Reasonable Accommodations

- ADA Reasonable Accommodations: allow disabled full opportunity to do jobs they are otherwise qualified for & obtain full employment opportunities
- ADA Reasonable Accommodations: also allow disabled full opportunity to use/enjoy the public accommodations in the same manner as abled bodied do



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Reasonable Accommodations

- ADA Reasonable Accommodation request can be made by disabled person themselves or someone on their behalf
- Similar to FHA Reasonable Accommodation



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Service Animals

- DOGS only!
- If it's not a dog, it's not a service animal
- Any breed
- Any size
- Trained to perform a task directly related to the disability



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Service Animals

- But there must be a direct nexus/connection between the disability & the Reasonable Accommodation, in this case, the service animal
- Service animal will alleviate/improve the effects of the disability, to some extent

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Service Animals

- Service animals are **NOT** required to be certified
- Service animals do **NOT** need to go through professional training program
- Service animals are **NOT** required to wear a special vest/harness or other ID indicating they're a service dog (though they often do)



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Service Animals

- Service animals are **NOT** emotional support or comfort dogs, because providing emotional support or comfort is **NOT** a task related to a person's disability
- Service animals are **NOT** pets
- Both FHA & ADA allow service animals



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Service Animals: Examples

- Those who are blind using a seeing eye dog
- Wheelchair users using a dog trained to retrieve objects
- Those with depression using a dog trained to do a task reminding them to take their meds



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Service Animals: Examples

- Those with PTSD using a dog trained to lick their hand to alert them to oncoming panic attack
- Those with epilepsy using a dog trained to detect onset of seizure & help them stay safe while seizing



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Service Animals: Where Can They Go?

- Generally, service animals are allowed to be with their person, even in places that don't allow pets
- This is the case whether it's under FHA or ADA
- Service dogs can go into:
 - RESTAURANTS
 - SHOPS
 - HOSPITALS
 - SCHOOLS
 - HOTELS



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Service Animals: Where Can They Go?

- While ADA does apply to some housing:
 - HOUSING AT PUBLIC & PRIVATE UNIVERSITIES
 - PUBLIC HOUSING PROGRAMS RUN BY STATE, COUNTY, & CITY GOVERNMENTS
 - EMERGENCY SHELTERS
- FHA is what primarily applies to housing & is far broader than ADA because it also allows Emotional Support Animals (ESA) aka Support Animals

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Service Animals Must be Under Control

- Service animals must always be under the control of its handler
- Must be harnessed, leashed, or tethered, unless disability prevents use of these devices
- Or unless the device interferes with dog's safe, effective performance of its tasks
- If so, owner must then maintain control of dog through voice, signal or other effective controls



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ADA Service Animals Requirements

- When it is not obvious what service an animal provides, only limited inquiries are allowed
- Staff may ask two questions:
 1. Is the dog a service animal required because of a disability? **AND**
 2. What work or task has the dog been trained to perform?



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ADA Service Animals Requirements

- Staff cannot ask about the disability
- Staff cannot require medical documentation
- Staff cannot require a special identification card or training documentation for the dog
- Staff cannot ask that the dog demonstrate its ability to perform the work or task



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ADA Service Animals Requirements

- Allergies or fear of dogs aren't valid reasons for denying access/refusing service to those with service animals
- EX: If someone's allergic to dog dander & someone with a service animal must spend time in same room or facility (i.e., classroom or shelter) both parties should be appropriately accommodated
- If possible, assign to different locations within room or different rooms within facility

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ADA Service Animals Requirements

- Those with disabilities can't be asked to remove a service animal unless:
 1. Dog is out of control & handler doesn't take effective action to control it or
 2. Dog isn't housebroken
- If there's a legitimate reason to remove a service animal, staff must offer the opportunity to obtain goods/services without animal's presence



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ADA Service Animals Requirements

- Places selling/preparing food must generally allow service animals in public areas even if state/local health codes prohibit animals on premises
- Disabled using service animals can't be:
 - ISOLATED FROM OTHERS
 - TREATED LESS FAVORABLY THAN OTHERS OR
 - CHARGED FEES THAT AREN'T CHARGED TO OTHERS WITHOUT ANIMALS



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ADA Service Animals Requirements

- If a business requires a deposit or fee to be paid by those with pets, it must waive all charges for service animals
- If a business like a hotel (or guest suite) normally charges for damage caused by guest, the disabled can also be charged for damage caused by himself or his service animal, as this isn't normal wear & tear



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Emotional Support Animals

- **Only under FHA, not under ADA!**
- Applies to multi-family housing as discussed, not to employment or Public Accommodations
- Applies to CCRCs, IL, AL/PC, some NHs... applies to US!



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Emotional Support Animals

- Dogs, cats, hamsters, snakes, miniature ponies, rats...
- Any kind of animal
- Trained or untrained
- Doing work, tasks, providing assistance, &/or therapeutic emotional support for individuals with disabilities



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Emotional Support Animals AKA....

- Assistance animals
- Support animals
- Emotional support animals or ESAs
- Companion animals



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Emotional Support Animals

- No special training needed for such animals
- Was becoming problematic
- Many wanted to bring their pets into housing that didn't allow pets, so they would claim the animal was a service animal or support animal
- Many didn't want to pay a pet fee deposit
- HUD enacted new regs in 2020 for FHA & animals



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Updated HUD Guidance

- [HUDAsstAnimalNC1-28-2020.pdf](#)
- “Assessing Requests for Animals as Reasonable Accommodations”
- Provides Best Practice recommendations



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Updated HUD Guidance

- Clarifies/reiterates 2 types of animals permitted by FHA:
 - SERVICE ANIMALS (DOGS ONLY)
 - SUPPORT ANIMALS, INCLUDING EMOTIONAL SUPPORT ANIMALS



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Updated HUD Guidance

- Guidance helps distinguish between:
 - THOSE WITH NON-OBVIOUS DISABILITIES HAVING LEGITIMATE NEEDS FOR ASSISTANCE ANIMALS
 - THOSE WITHOUT DISABILITIES WHO WANT A PET BUT WANT TO AVOID FEES/RESTRICTIONS ON PETS
- Not intended to reassess RA's already granted



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Updated HUD Guidance

- Reiterates Service Animal:
 - DOGS TRAINED TO WORK/PERFORM TASKS BENEFITING DISABLED
 - MUST BE DIRECT NEXUS BETWEEN ANIMALS' WORK & DISABILITY
- Other animals, domestic or wild, trained or untrained, are **NOT** Service Animals (but may be Assistance Animals)



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Updated HUD Guidance

- If disability & work of dog “readily” apparent, no further questions, must grant RA
- Examples: when the dog is:
 - GUIDING PERSON WITH LOW VISION/BLIND: service dog
 - PULLING W/C: service dog
 - ASSISTING WITH STABILITY/BALANCE TO SOMEONE WITH OBSERVABLE MOBILITY IMPAIRMENT: service dog



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Updated HUD Guidance

- If work or disability is not apparent, must ask 2 questions:
 1. Is the animal required due to disability? And
 2. What work/task is animal trained to perform?



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Updated HUD Guidance

- Don't ask nature/extent of disability
- Don't ask for documentation on disability or animal
- If answer to either question is NO/none



- It's not a Service Animal, BUT may be Support Animal
- Continue inquiry, don't just say **NO!**



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Updated HUD Guidance

- Residents can make RA request before/after getting animal
- Can request RA for animal after termination of tenancy BUT that creates inference **AGAINST** good faith on tenant's part!



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Updated HUD Guidance

- For Emotional Support Animals, ask:
- Does the person have an observable disability, or do you already have info to believe resident has disability? (remember that many times, it will be an unobservable mental type issue)
- If yes, grant RA
- *Especially relevant to us as we often have info related to resident's disability

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Updated HUD Guidance

- If resident has no observable disability, & you have no information that resident has disability, determine if resident has now provided information that reasonably supports claim of disability to you
- If NO, deny RA BUT provide opportunity for resident to submit necessary documentation



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Updated HUD Guidance

- Help resident understand what's needed
- Refer them to "Guidance on Documenting an Individual's Need for Assistance Animals in Housing"



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Updated HUD Guidance

- If resident has provided info on their disability:
- Did they also provide information reasonably supporting animal's work/tasks/assistance with respect to their disability?
- Have they shown nexus with disability to animal?
- If yes, must grant RA for the animal
- If no, can deny BUT must still should give them opportunity to provide information; see prior slide



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Updated HUD Guidance

- IMPORTANT: Any internet documentation is now suspect!
- Internet documentation: is **NOT**, by itself, sufficient to reliably establish either a non-observable disability or disability related need for an assistance animal!
- You may ask for "reliable documentation" under this FHA guidance



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Updated HUD Guidance

- Request documentation from licensed healthcare provider; list can include:
 - MD
 - OPTOMETRIST
 - PSYCHIATRIST
 - PSYCHOLOGIST
 - PA
 - NP
 - NURSE



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Updated HUD Guidance

- Connection between disability & service animal must be provided, especially when disability is non-observable
- Be circumspect & request only:
 - NAME OF PROFESSIONAL
 - WHETHER HC PROFESSIONAL HAS RELATIONSHIP WITH RESIDENT INVOLVING HC/DISABILITY RELATED SERVICES
 - THE TYPE OF ANIMAL SOUGHT

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Updated HUD Guidance

- Ask HC provider whether:
 - THERE'S A PHYSICAL/MENTAL IMPAIRMENT
 - WHETHER IMPAIRMENT SUBSTANTIALLY LIMITS 1 OR MORE MAJOR ADLs OR BODILY FUNCTIONS
 - IF THEY NEED ANIMAL TO DO WORK/TASKS OR
 - IF ANIMAL PROVIDES ASSISTANCE/THERAPEUTIC EMOTIONAL SUPPORT &
 - IS ANIMAL NOT MERELY A PET?



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Updated HUD Guidance

- “Unusual animals” defined as animals other than:
 - DOGS
 - CATS
 - SMALL BIRDS
 - RABBITS
 - HAMSTERS, GERBILS, OTHER RODENTS
 - FISH
 - TURTLES
 - OTHER SMALL, DOMESTICATED ANIMALS TRADITIONALLY KEPT IN THE HOME



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Updated HUD Guidance

- Unusual animals trigger your ability to ask more questions of HC provider:
 - DATE OF THEIR LAST CONSULT WITH PATIENT
 - UNIQUE CIRCUMSTANCES JUSTIFYING NEED FOR THAT SPECIFIC ANIMAL
 - WHETHER THE PROFESSIONAL HAS RELIABLE INFORMATION ABOUT THIS ANIMAL IF THEY SPECIFICALLY RECOMMEND THIS ANIMAL



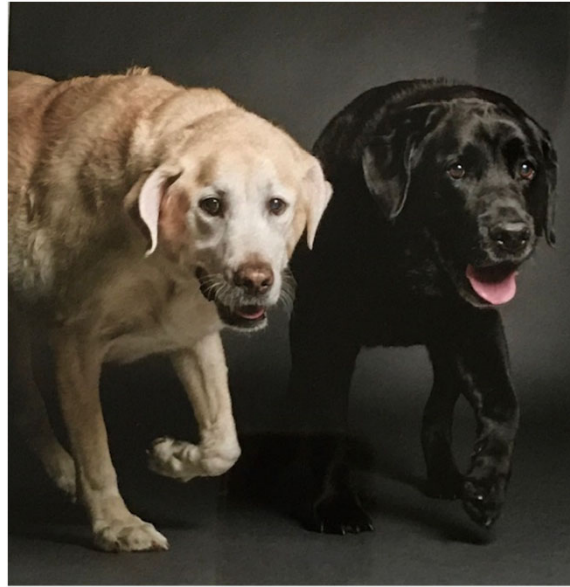
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Updated HUD Guidance

- Helpful
- Contains FAQs
- Replaces prior guidance from HUD on service/support animals



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Service Animals/ESA: Case Law

- No requirement for service animal/ESA to wear special harness or collar
- Recall: emotional support animals (AKA companion animals) permissible under FHA
- ESA not permissible under ADA
- Do not charge pet security deposit (it's not a pet!)
- Verification tricky, specialized animal training not needed
- Animals other than dogs should be considered as ESA
- Only request information on disability if not obvious
- Use least restrictive request for medical records

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Service Animals/ESA: Case Law

- Engage in interactive process with resident when they request animal
- Do not ignore RA requests: constructive denial will result
- Burden is on provider to show Reasonable Accommodation request is **NOT** reasonable
- Allergies of others will **NOT** be a reason to deny Reasonable Accommodation animal request
- Speculative fear of animals is **NOT** reason to deny Reasonable Accommodation animal request
- A No Pet Policy is **NOT** a reason to deny an animal request



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Can an RA for an Animal be Denied?

- **YES**, but only if it causes:
 - An undue financial/administrative burden on provider
- OR
- Fundamentally alters the nature of business operations



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Can an RA for an Animal be Denied?

- Haven't seen any case law on this issue where provider has successfully **DENIED** a Reasonable Accommodation for service animals or ESA specifically
- But....fundamental alteration or undue burden applies to other limitations on animals



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Are There Other Limitations on Animals?

- **YES!**
- Providers not required to care for animals:
 - No picking up after them
 - Walking them
 - Feeding them
- You do not have staff to do this → fundamental alteration & undue administrative & financial burden



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Avoiding Risk: RA Policies Should Include

- Where/how requests made & processed
- Document all requests
- Acknowledge written/verbal requests within 14 days
- Decision within 30 days & if deny, explain why
- Maintain all decisions
- Indicate all RA requests considered
- Grant those that are reasonable within FHA
- No extra fees on resident



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Rules for Service/Emotional Support Animals

- Residents responsible to clean up (indoors & outside)
- Annual vaccinations/licensing
- Resident must be always in control of animal
- Animal must be free of infestations
- Animal may not disturb peace & tranquility of others (ex: excessive barking)
- Animal must not exhibit vicious propensities
- Animal must be clean without excessive odor



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Rules for Service/Emotional Support Animals

- Don't set weight limit for service/ES animals
- Don't require liability insurance
- Don't reject unusual animal because you haven't seen it used as an ES animal before
- Don't require pet deposit, even if refundable
- Be careful about requiring special training documentation/verification regarding the animal
- Follow the new HUD guidance



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Separate Out Pets from Service/ES Animals

- Create a Pet policy with rules that mirrors what's in the service/ES animal rules
- Then add in relevant information:
 - Types of permissible animals
 - Breed restrictions, if applicable
 - Weight limits if applicable
 - Registration if applicable
 - Where can/can't go
 - Pet deposits



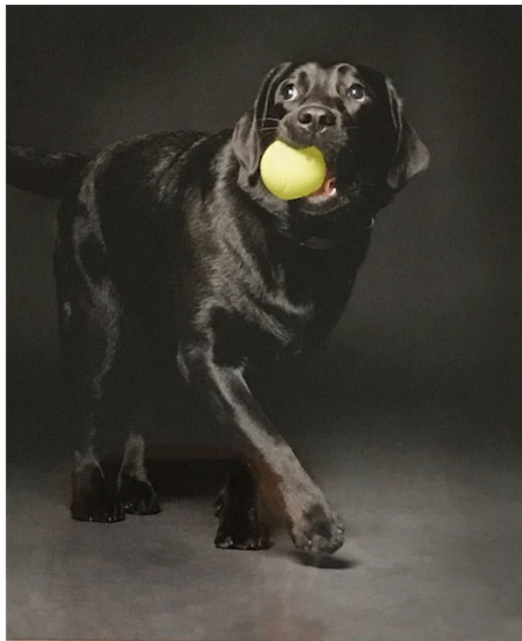
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Create a Separate Policy for Therapy Animals

- Create a Therapy Animal policy with rules that mirrors what's in the service/ES animal rules
- Then add in relevant information as to processes for such animals and who owns said processes (activities, life enrichment, therapy, etc.)



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Question Time

- Thank you!

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