

NAHHP Update

ADA, FHA, 504: When to Allow Assistance Animals

BY JENNIFER JONES

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When is a dog, cat or other animal not a pet? According to the Fair Housing Act and the Department of Housing and Urban Development (HUD), when the animal is an assistance animal that helps the resident fully use and enjoy their housing.

Making the decision as to whether the animal is a reasonable accommodation can be tricky, especially since three separate regulations come into play. The Americans with Disabilities Act (ADA) uses the term service animal and restricts a service animal to a dog that is trained to perform tasks to assist a person with a disability. The Fair Housing Act and Section 504 of the Rehabilitation Act more broadly define what they call assistance animals, which includes emotional support animals. The ADA mostly applies to public spaces and public entities while Section 504 and FHA apply to housing.

“From a HUD perspective, it’s pretty broad. There is no specific requirement for training,” said Sheila C. Salmon,



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partner, Coan & Lyons. “Owners and managers generally have to permit any person who is disabled and who can provide verification that they need the assistance animal to equally and fully enjoy the housing to have the animal.”

A notice issued by HUD in

April 2013 explained the obligations of housing providers under the Fair Housing Act, Section 504 and ADA in regards to service and assistance animals when a reasonable accommodation request is made.

Persons with disabilities are permitted to request a reason-



NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION (NAHMA)—Protecting the Interests of Affordable Housing Property Managers and Owners

able accommodation that according to HUD, is a change in rules, policies, practices or services so that a per-

burden. Reasonable accommodations may be necessary at all stages of the housing process including application, tenancy

mals,” said Gwen Volk, of Gwen Volk INFOCUS Inc. “You can’t charge pet rent, regulate the breed or the size of a dog. You’re not letting them have a pet. You’re letting them have an assistance animal.”

Once a resident makes a request for an assistance animal, the housing provider can, and should, ask for a written confirmation from a qualified professional verifying a disability exists and that the person needs the assistance animal due to the disability.

“Not every disability is obvious,” Salmon said. “If the need for the assistance animal is obvious, the housing provider doesn’t need the verification letter. An example would be a seeing-eye dog. But most of these animals are for disabilities that aren’t obvious.”

Salmon recommends a housing provider develop a uniform verification form for consistency that includes the definition of a disability (based on Fair Housing regulations), as well as asking if the



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son with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. According to HUD, a housing provider should do everything to assist

or to prevent eviction.

Therefore, even if a property has a strict no pets policy in place, if a reasonable accommodation request is made, the resident may be

“REGARDLESS OF WHETHER A PROPERTY ALLOWS PETS, pet rules don’t apply to assistance animals. ... You’re not letting them have a pet. You’re letting them have an assistance animal.”

the resident, but is not required to make changes that would fundamentally alter the program or create an undue financial and administrative

permitted to have an assistance animal.

“Regardless of whether a property allows pets, pet rules don’t apply to assistance ani-

person has a disability as defined in the document, asking for the professional’s qualifications and asking how the animal will benefit the resi-

PRESIDENT

Ken Pagano, CPM, SCHM, NAHP-e
jkpagano@essexplazamgmt.com

EXECUTIVE DIRECTOR

Kris Cook, CAE
kris.cook@nahma.org

COORDINATOR, TRAINING, EDUCATION & SPECIAL PROGRAMS

Natasha Patterson
npatterson@nahma.org

DIRECTOR, MEMBERSHIP

Brenda Moser
brenda.moser@nahma.org

EDITOR

Jennifer Jones
jjones@nahma.org

DESIGN

Mary Butler
butler5s@comcast.net

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dent. However, the housing provider cannot request specific information on the type of disability.

According to HUD, the housing provider also cannot put restrictions on the type, size, weight or breed of the animal. Although, Salmon said, if a jurisdiction has specific prohibitions concerning animals, the housing provider should not be forced to violate those laws.

Volk said most reasonable accommodation requests for assistance animals will, and should, be approved; however,

the housing provider can require the resident abide by all local, state and federal rules governing animals.

Additionally, the housing provider can require the resident to provide proof of proper care of the animal such as vaccinations, to obey leash laws, to curb the animal and to adhere to any licensing obligations imposed by the jurisdiction.

The housing providers can only restrict the animal if it causes physical damage, is a direct threat to others or it infringes on other residents'

ability to fully enjoy their living arrangements. Nevertheless, a housing provider cannot place limitations on where or when the animal can move about the property, as long as it is properly supervised and under the resident's control.

If the resident fails to comply with the rules, it should be treated as a lease violation, said Salmon. If the resident does not remedy the situation, the resident may have to get rid of the animal or be evicted. **NU**

Jennifer Jones is manager of communications and public relations for NAHMA.

Service Animal vs. Assistance Animal

ADA

- Service Animal
- Only dogs that are trained to do work or perform tasks for the benefit of a disabled person
- Specifically excludes emotional animals
- Not treated as a reasonable accommodation request
- Need only to meet the definition of a service animal
- Only two inquires permitted:
 - Is this a service animal that is required because of a disability?
 - What work/tasks has the animal been trained to perform?
- May require proof of training

FHA/SECTION 504

- Assistance Animal
- Any animal that works, provides assistance or performs tasks for the benefit of a disabled person, or provides emotional support that generally ameliorates the effects of a person's disability
- No requirement for training
- Treated as a reasonable accommodation request
- Use general principles applicable to all reasonable accommodation requests
- Upon a request, must consider:
 - Is the person who needs the animal disabled?
 - Does the person requesting the animal have a disability-related need for an assistance animal?
- Answers to questions will determine whether reasonable accommodation must be made

WHEN ALL THREE LAWS APPLY

STEP 1: Use ADA definition of service animal. If the animal meets the ADA test, inquiry ends.

STEP 2: If animal does not meet ADA, apply FHA and Section 504 reasonable accommodation principles.

It Is Never Too Late To Learn

A diploma should not be the end of your educational journey. Finding time to continue your education and earning professional credentials can be a struggle, but in the end, those initials behind your name can translate into a higher salary and advancement within your company.

“It does show you are professional and know what you do,” said Anita Moseman, FHC, SHCM, NAHP-H, CPO, vice president at The Monfric Group and an industry trainer. “As an employer, I see a credential on a person’s resume and I know that person does have the knowledge level that credential represents.”

Moseman said in some cases having a professional credential is more important than a college degree. She said college degrees, whether an undergraduate or a graduate degree, are centered on a discipline. Professional credentials, on the other hand, are more focused to the specific knowledge and skills needed to be proficient in that subject matter in the real world.

“Credentials aren’t on the same level as college degrees, but if I’m hiring for a specific job, I’d rather see the credential,” she said.

NAHMA offers a total of nine professional credentials covering topics exclusive to

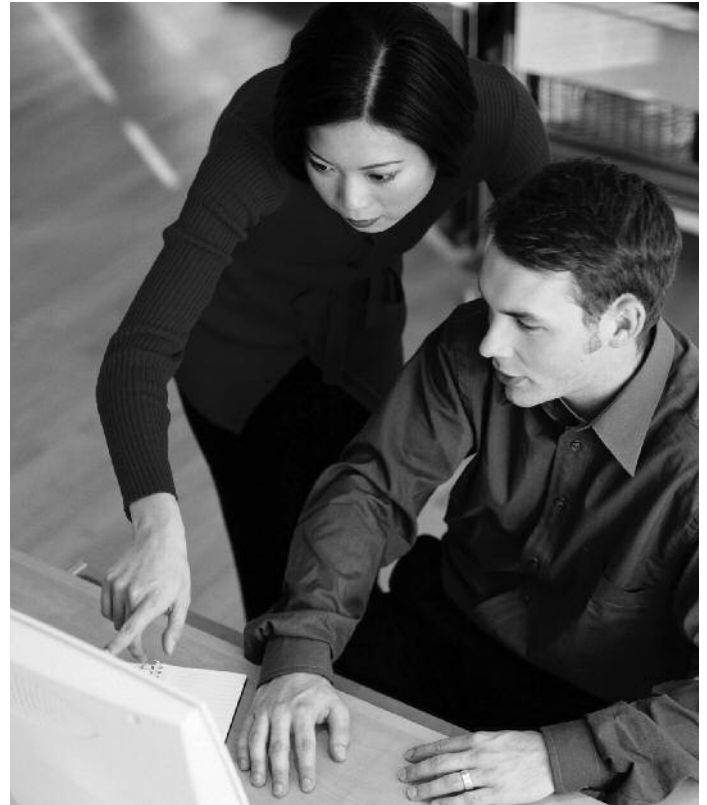
the affordable housing management field: National Affordable Housing Professional (NAHP) and an executive level, NAHP-e; Certified Professional of Occupancy (CPO); Advances Issues in HUD Occupancy (ACPO); Fair Housing Compliance (FHC); Specialist in Housing Credit Management (SHCM); National Accredited Housing Maintenance Technician (NAHMT); National Accredited Housing Maintenance Supervisor (NAHMS); and Credential for Green Property Management (CGPM).

Moseman became interested in being a trainer after earning her professional credentials and deciding she could train others a better way than she has learned. She said it can be hard to teach adults, but the result is worth the sacrifice.

“Knowledge is power. If you want to be the best where you are at, that’s fine. If you want to advance, you need to get the education,” she said.

Continuing education can seem overwhelming when you factor in work and home commitments, but technology is making it easier for someone to earn a professional credential through webinars and online instruction.

Even if you do not have the time to devote to earning the credential, Moseman said just reading the materials after dinner can give you a head start when the time is right to pursue the certification. “At some point, hopefully, you’ll be able



to get to the classes,” she said.

Companies are recognizing the importance of continuing education and are encouraging employees to earn their credentials. Moseman said companies understand that if employees do not have the knowledge, they cannot do the best job for the company.

“Take the opportunity you have to expose yourself to the information. Whether it is reading the materials or going to a class,” Moseman said. “Do everything you can to take the class, especially if your company is willing to pay for it.”

There may also be jurisdictional reasons for pursuing a professional credential. A number of states have begun requiring certifications in

order to be employed in the property management field.

Earning the credential is only the first step. Most professional credentials require some sort of continuing education in order to retain the certification.

“Keeping it is the hardest part,” Moseman said. “You take the time to earn it and learn the material, but now you have to do the continuing education.”

The continuing education component serves as a tool to ensure you are keeping up to date on the latest changes within the affordable housing industry.

“No matter what the job is that you do, it’s a needed position,” Moseman said. “Whatever your job, be the best you can at your job.” **NU**



For more information about NAHMA’s certification programs, visit the Education section at www.nahma.org.

HUD Revises Tenant Participation Rules

The Department of Housing and Urban Development (HUD), at the end of March, issued a notice, Notice H 2016-05, which restates requirements for Tenant Participation Requirements issued in 2014 and revises penalties for non-compliance. Specifically, the revisions expand the property types that may be assessed civil money penalties to include

multifamily housing project that is subject to a HUD insured or secretary-held mortgage under the National Housing Act and any project that meets the following:

- Receives Project-Based Assistance under Section 8
- Receives enhanced vouchers under the Low-Income Housing Preservation and Resident Homeownership Act of 1990, the Emergency Low-Income

Residents of a covered multifamily housing project have the right to establish and operate a tenant organization to address issues related to their living environment as well as activities related to housing and community development. Through this notice, HUD outlines current policy related to protected organizing activities of residents within property common spaces and revises

ADDITIONALLY, THE NOTICE EXPANDS ON THE DISCUSSION of accessible meeting spaces and clarifies the role of HUD-initiated reconciliation in resolving resident complaints.

noninsured projects that have a Project-Based Section 8 contract that has been renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

Additionally, the notice expands on the discussion of accessible meeting spaces and clarifies the role of HUD-initiated reconciliation in resolving resident complaints. Information on possible sanctions and the use of civil money penalties as tools to enforce the department's commitment to resident participation is included in the notice.

The revised penalties outlined in this notice apply to a mortgagor or owner of any

Housing Preservation Act of 1987, or the Multifamily Assisted Housing Reform and Affordability Act of 1997

- Receives assistance under the Section 202 Direct Loan program or the Section 202 Supportive Housing for the Elderly Program;
- Receives assistance under the Section 811 Supportive Housing for Persons with Disabilities Program;

Or which has a mortgage assisted through:

- Section 236
- The Section 221(d)(3)/(d)(5) Below Market Interest Rate (BMIR) Program
- The Rent Supplement Program
- The Section 8 Loan Management Set-Aside Program (LMSA) (after conversion from the Rent Supplement Program)

penalties for actions that obstruct residents or resident associations from attempting to exercise their rights.

The notice establishes the communication tools residents can use to gauge interest in creating the tenant organization, and what issues residents can be notified about and formulate responses to.

Enforcement sanctions and processes that owners and agents could face, according to the notice, include debarment, the exclusion of the individual or organization from conducting business with any federal agency for three years; suspension, a temporary action with the same effect as debarment; limited denial of participation, which excludes a party from participation in a certain HUD program area for one year; and civil money penalties. **NU**

Welcome New Certificants!

NAHP

- >> Sarah Clark
First Realty Management Corp.
Worcester, Mass.
- >> Robert Corrigan
WinnResidential
Providence, R.I.
- >> Linda Cribben
Trinity Management LLC
Newbury, Mass.
- >> Mirna Edwards
The Schochet Companies
Boston, Mass.
- >> Debra Kline
Community Realty
Management
Lebanon, Penn.
- >> Tina Poffenberger
St. John's Towers Inc.
Havre de Grace, Md.

NAHP-e

- >> Josie Bowman-Williams
Wesley Housing Corporation
of Memphis
Cordova, Tenn.
- >> Paul Felix
PATH Inc.
Philadelphia, Penn.
- >> Mark Fowles
Vesta Corporation
Weatogue, Conn.
- >> Margaret Harrell
First Cumberland Properties
Nashville, Tenn.

NAHMS

- >> Diane Bernath
First Realty Management Corp.
Boston, Mass.
- >> Jonathan Hughes
Aimco
Salem, Mass.
- >> Florentino Rosado
Community Realty
Management
Atlantic City, N.J.

NAHMT

- >> Jared Hallworth
Community Realty
Management
Pine Hill, N.J.
- >> James Owens
Community Realty
Management
Pine Hill, N.J.



Read the entire notice at <http://portal.hud.gov/hudportal/documents/huddoc?id=16-05hsgn.pdf>.



Watching Residents Grow

NAME: Leah Lyerly, FHC, SHCM, NAHP-e, CPM

MANAGEMENT COMPANY: Westminster Company

POSITION: Senior Vice President

Leah Lyerly's first job out of college was in the accounting department of Westminster Company, based in Greensboro, N.C. The position put her new accounting degree from North Carolina State to good use, but she decided she did not want to stay behind a desk.

She started going into the field to do on-site audits. She enjoyed getting out of the office so much, she segued into the operational side of the management company. With the same company 29 years later, Lyerly is

now senior vice president, and is in charge of Section 504, Department of Housing and Urban Development (HUD) compliance, and managing the North Carolina operations.

"I supervise regional managers and provide training for the whole company," Lyerly said of her current responsibilities. "That includes supervision of personnel at sites, the safety program, the insurance program ... I do a little bit of everything."

Westminster manages 5,000 units and owns 85 percent of what it administers. The company's portfolio includes affordable housing properties, mixed-income properties and conventional properties.

Lyerly said property management is something you either love or hate and it falls into the love category for her.

"Our company is big on resident services," she said.

"When you see a resident grow in our program and use it as a stepping stone, as it should be, it makes you feel good. You helped them to do that."

There are challenges, however. Lyerly said some of the regulations being put in place by HUD and Congress can make the job challenging. She points to the guidance issued by HUD regarding criminal background checks as an example, saying, "it is making it tougher for owner/agents to be consistent and fair, and we can longer depend on the third-party screening. Owners/agents are put in a position of liability no matter what they do."

However, there are positives, too. Lyerly said Westminster

was one of the first companies to go smoke free at its properties. While at first, some residents grumbled—especially the seniors—in the end, it has been a positive experience and overall residents are happy with the change.

"It's a rewarding industry," Lyerly said. "I like all the people I've met over the years. We are like a family. Nobody goes far."

Lyerly works out and runs as her stress relievers. In fact, she recently completed her annual half marathon of the year for a total of eight. Additionally, Lyerly's "Irish twins," daughters Janie (born January 1993) and Jessie (born December 1993) both graduated from her alma mater in May. Lyerly also looks forward to celebrating her 30th wedding anniversary with her husband, Larry, in October. **NU**

PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

www.nahma.org
 Alexandria, VA 22314
 400 North Columbus Street, Suite 203
 National Affordable Housing Management Association

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