

4/14/20-TDHCA-Service Animals

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>> The broadcast is now starting. All attendees are in listen-only mode.

>> Good morning, everybody. We will be starting our webinar here in just a moment. We want to go ahead and take a quick poll here to find out a little bit why you are tuning in today and what your background is. I will be putting up a couple of questions that will pop up on your screen. If you don't mind, go ahead and answer the best you can. I will leave each question up for about 30 seconds or so. So ... we're going to go ahead and get the webinar started in about five minutes, give everybody enough time to log in and deal with any technical difficulties that almost always end up happening. So we're putting up the first question now. And we will, like I said, get started in about five minutes.

[Poll]

>> So while we're waiting for everybody to join, and while you're answering these questions, we can go ahead and introduce ourselves and maybe tell you about the GoToWebinar platform we are using. It has features we will use throughout the webinar. My name is Nathan, I'm with the Texas Department of Housing and Community Affairs. I'm the Fair Housing research specialist. With us today, we also have Marilyn Diaz and Ellena Rodriguez with the Texas Workforce Commission along with Cate Tracz also with TDHCA. Marilyn, did you want to introduce yourself?

>> Sure. Hi everybody. My name is Marilyn Diaz. Right now, I'm kind of the assistant for outreach compliance and resolutions at Texas Workforce Commission civil rights division. I'm doing a lot of the Fair Housing training webinars and EEO training webinars. I also assist with our mediation team and our -- Ellena, our monitor that does reviews of agencies around the State of Texas. So that's a little bit about me. Ellena, do you want to say anything?

>> Thank you for that. Good morning, everyone. My name is Ellena Rodriguez, I am the civil rights division outreach compliance and resolution manager. Ms. Diaz has been filling in enormously in our division in assisting with training and conciliation or mediation agreements. I want to thank her for that. I thank you for being here today, I look forward to working with you and providing assistance as needed.

>> Great. Thank you. I will go ahead and put up our third question now. And that should be our last one. And we're going to go ahead and get started in probably the next couple of minutes here.

[Poll]

>> Okay. We will get started now. We have everybody muted. We won't be able to hear you if you speak even if your microphone is turned on. If you have questions throughout the presentation, use the questions panel in the GoToWebinar software. You can ask us there whatever your question is, and we can either answer you privately, we can share that answer with everybody else, or if it is a particularly pertinent question, we may get to it throughout the course of the webinar itself and answer it out loud. Rest assured though, that if we cannot answer your question today, we will be contacting you individually to answer your question. We may just need to get a little more information from you so we can do a little bit of research to make sure we get you the fullest answer that we can.

We may also open up things throughout for people who want to ask their questions vocally. If we do that and we have time for that, we will want to use the raise your hand button. This will let us know that you want to talk. We can unmute you and call on you. Finally, while we're taking your questions at the end of the webinar, we will put questions up for you to answer like we did at the beginning. Just answer them as best you can. It isn't a test. You won't fail anything. We just want to get a feel for where the webinar can be better, where it's working. So on that note, we will not be giving out certificates for attending this webinar. So it is unlikely you can use it for continuing education credits. Even if that is why you are here, we want to encourage you to stick around.

This information is all still very new and still very useful. You will notice that we do have closed captioning at the bottom of the screen. Even if you aren't able to listen in, you won't be missing any of the content if you follow along with the video only. The video of this webinar, all the handouts and a transcript of this webinar will also be available soon on TDHCA's Fair Housing website under the training section. There you will also be able to find other webinars we have done this month, as well as in past years. We will send you an email as soon as the webinar is available on the website.

So now that we have gotten through the administrative stuff, let's get on to HUD's guidance on assistance animals.

At least anecdotally. TDHCA, Texas Workforce Commission and HUD have noticed that there is a lot of confusion around the topic of assistance animal. Service animal and emotional support animal. If you are one that wasn't clear on it, don't feel bad. You are not alone. HUD estimates almost 60% of almost all Fair Housing complaints had to do with accessibility. There was a number of those specific to assistance animal. In the State of Texas 2019 analysis of impediments, TDHCA analyzed the complaints and found a similar pattern. Almost 1 in three mentioned denial of reasonable accommodation as an issue. HUD updated the topic of assistance animal as a reasonable accommodation. That guidance will make up the bulk of the webinar. We split it into two major areas, like the guidance did. We'll talk about assessing a person's request for assistance animal and the second we'll talk about how to document the need for an assistance animal. The first part of this is going to be especially useful for property managers, users and residents. The second part is for tenants and tenant advocates.

How should a property go about assessing a request for assistance animal? Let's start off with a different question. Which of the groups of animals are specifically allowed to be an assistance animal? I will put that poll up here for a second.

[Poll]

>> Okay. It looks like about half of us have responded. 70% of you say that any type of animal can be an assistance animal. That is the correct answer. We'll get into the details of why that's true, but ... everybody here has probably heard some story about an emotional support peacock, monkey, aardvark or gerbil. Those are taken out of news stories. A peacock was barred from being on a plane, if a peacock can't be an emotional support animal on a plane, can it be emotional support animal in your home? The answer is D, obviously, any animal can be considered an assistance animal under the Fair Housing act. Right now, at least a handful are thinking that's it, it will be the wild west on my property. We want you to know, it will be okay. You won't be overrun by the kangaroos, ocelots, elephants and peacocks.

So you might notice throughout this webinar, there are a couple of bolded terms.

We bolded assistance animal, service animal, and emotional support animal. These words are bolded because this is where a lot of the confusion occurs. People tend to use these terms interchangeably, the next few slides should help to clear this it up. What is an assistance animal?

An assistance animal is an animal that does work, performs tasks, assists or provides therapeutic emotional support and is not just a pet. There are two basic types of assistance animal. There are service animals and other animals that do what we said. Not a helpful grouping. Let's dig a little deeper.

Most importantly, an assistance animal is not a pet. They should not be treated by -- as a pet by housing providers. This means that you can't charge your pet fees, pet deposits, or pet rent for an assistance animal. This also means that your breed and size restrictions such as no pit bulls or only dogs under 45 pounds don't apply to assistance animals. This last part is also very important. Not all assistance animals are service animals. But all service animals are assistance animals. While HUD does spend time discussing service animals specifically, it is easier to use assistance animal so there is no confusion here.

This diagram is a good way to think about service animals and emotional support animals and how they relate to assistance animals. If an animal is a service animal it is an assistance animal. If an animal is a emotional support animal it is an assistance animal. If the animal is an assistance animal, it is not a pet. For purposes of Fair Housing Act, it makes sense to disregard the terms service and emotional support and focus on assistance animals.

So why the distinction? There are a couple of different laws at work here. The ADA, Americans With Disabilities Act, covers public accommodations and only requires that service animals be allowed in public accommodations or in state or local government programs or activities or services. People often assumes that means the ADA applies to privately owned apartments or properties because they have public or common areas.

However, the Fair Housing Act requires reasonable accommodation to remain to allow assistance animals in apartments and dwelling units, such as apartment units or any common area that is available to tenants of the apartment complex. This means that assistance animals, the more inclusive definition, must be allowed and not just in the apartment unit of the tenant, but the mail room, office, common rooms, so on.

While the ADA may apply to some areas of the apartment complex, the Fair Housing Act applies to nearly all parts of the apartment complex and places greater restrictions on the property as far as what they must allow.

So what is a reasonable accommodation? It is a change, alteration or adjustment to a rule, policy, procedure, service or

practice that may be necessary for a person with a disability to use and enjoy a dwelling and its public and common use spaces. It does not have to be written. There are no magic words. A person doesn't need to say reasonable accommodation. If they ask you to change a rule and mention they have a disability or describe a condition that a reasonable person would recognize as a disability, such as I have trouble seeing or I can't hear well, that is enough to constitute a request for reasonable accommodation. At this point, you should jump into the following flowcharts to help you determine what to do next. Best practice is to keep a copy of any and all requests that you receive and to keep that documentation provided along with or in response to the request. Do not share that information with others, unless the person you are sharing it with is necessary to processing the reasonable accommodation request.

We have already used the terms assistance animals and service animal so far. Let's clarify what we mean by those terms specifically. The ADA has a specific definition of a service animal. Most importantly, the service animal can only be a dog. It must be trained to do work or perform tasks. There is one exception to this definition. The Department of Justice has determined that in very specific circumstances that are unlikely to ever apply to a typical multifamily complex, miniature horses can also be considered a service animal. Additionally, and we'll consider this later, as a barnyard animal, miniature horses are not considered to be commonly kept animals. We'll cover that more later in more detail. So the only reason why for the purposes of Fair Housing Act you would need to consider whether an service animal is a assistance animal is that there are specific questions that are allows if it is a service animal. This chart will take you through the process step-by-step. The simplest way to think of this is in the form of a few easy questions.

First, is the animal a dog? Second, is the animal obviously performing work or task for an individual with a disability? If you answer yes to both of those, stop, do not pass go, do not collect \$200, do not ask any more questions. The dog is a service animal and further inquiry is not required and is inappropriate. What does readily apparent mean? Well, in the words of justice potter Stewart, you know it when you see it, but here's examples.

So if you answered yes, it's a dog, but no it is not obviously performing a task for a person with a disability, you may ask essentially two questions, is it required for the person with disability and what task or work is it required to perform. What does readily apparent mean? We'll go back to that. Some examples of readily apparent. A dog guiding an individual with low vision, is blind, or dog pulling a wheelchair or guiding an individual in a wheelchair. Or a dog providing assistance with stability or balance to an individual with an observable mobility disability.

So if the animal is required because of a disability but the disability is not readily apparent, what can you ask? If the animal is required because of a disability and the individual identifies

at least one action that the dog is trained to take, which is helpful to the disability, other than emotional support, then you can consider it a service dog. And you should grant the reasonable accommodation. But wait!

Even if you answered no to any or all of these questions, and the disability is not readily apparent and the work that the animal does is not readily apparent, it doesn't mean that the animal is not another type of assistance animal. It doesn't mean that we immediately say no to the reasonable accommodation.

Fortunately the process for determining whether or not to approve a assistance animal is basically the same as for a service animal. First, does the requestor have a readily apparent impairment or disability or did you already know of a request or disability. Second, does the requestor have a request that the animal provides work, task, provides assistance or provides therapeutic emotional support with respect to the disability. If the answer is yes to both of those, great, we'll move on to the next step. That will be on the next slide.

If the disability is not already known or readily apparent, then did the requestor provide information that reasonably supports that the requestor has a disability? If so, and they have the information supporting the need for the assistance animal as discussed already and we'll move on to the next step as well. If not, the housing provider is not required to grant the reasonable accommodation. But you can't expect that every requestor will have all of their assistance ducks in a row when they come to you. You do need to give them reasonable opportunity to provide the necessary information. A good rule of thumb is that if you haven't asked them for the information and given them a chance to bring it to you, you probably can't deny the request. So while it is not required, HUD and TDHCA both encourage you to let the requestor know about the HUD guidance document released in January. And particularly the portion about documenting need. Which is what we will cover in the second part of this webinar. That guidance document is available as a handout in the GoToWebinar software. And it will be available on the TDHCA website when we post the webinar materials.

So what kind of information would reasonably establish that an individual has a disability? When in doubt, government documents are always an acceptable source. If it is a federal, state, local government that provides disability benefits or services to the requestor, that's good enough to establish that the disability exists. But that doesn't mean that is the only source. Receiving a Social Security disability income, Medicare, supplemental security income while under 65 also establishes a disability. As do veterans disability services or benefits, if the person has a voucher for a housing program or receives housing assistance because of a disability, count it. If a healthcare professional confirms the individual has a disability, also count it. Note, this does not just mean doctors. It also does not mean only a primary care physician. Just because an individual doesn't qualify as having a disability

for a benefit or program, like the first few, does not mean they don't have a disability as defined by federal law.

So the Department of Justice has identified certain impairments or conditions that almost always will be considered a disability. Note that this list is not exclusive. And does not -- just because a condition is not listed here doesn't mean that the condition isn't considered a disability. Individuals with disabilities that are not observable may also voluntarily provide details about their disability. Sometimes these details are more than what you need to make a decision on accommodation request. This information when provided should be considered.

So just because the disability isn't obvious or readily apparent doesn't mean it doesn't exist or isn't real. Diabetes is an excellent example of this. One of the possible side effects of diabetes is called diabetic neuropathy, which is the dulling of the sensation of the extremities. It can make it difficult to walk, open jars or other daily activities. However, it is not necessarily readily apparent when an individual is diabetic or experiences diabetic neuropathy. The disability may not be clear to the housing provider, the provider is not necessarily entitled to know the individual's diagnosis, just that the individual has a disability. So this is particularly important because certain impairments, especially impairments that form the basis for a request of an emotional support animal may not be observable, probably are not observable. In those instances a housing provider can request information regarding both the existence of the disability and the related need for the animal, but that does not mean that you need to know, get to know or may ask for the individual's specific diagnosis.

So one of the biggest concerns that TDHCA has heard anecdotally is that housing providers have seen all of the sites that advertise they will make your dog, cat, weasel a certified emotional support animal for a nominal fee. Ellena and Marilyn, if you -- I don't know if you all have seen this in the same way. But we get a lot of people talking about oh, they come in with just this little certificate that says it is an emotional support animal, you have anything you want to add to that part?

>> Yes. We have gotten a variety of TWC, civil rights division complaints on requests for assistance animals. We have seen chickens. We have seen gold fish. The whole gamut. The biggest thing that we assist are housing providers with as well as tenants across the state is what can be asked and what can't be asked.

>> Okay great. So ... the biggest thing to note here is the documentation from the Internet from a company that certifies Emotional Support Animals, that documentation alone is not sufficient to establish that the requester has a disability or to establish that disability related need for the animal. So remember, if the disability is not readily observable or apparent, then it is not acceptable -- sorry.

If the disability is not observable, then it is acceptable to request documentation to reasonably indicate that the requestor has a disability and the disability related need for that animal. Having a certificate saying that an animal is an emotional support animal or an assistance animal only indicates the requestor spend money on a certificate. It isn't proof that the animal is a assistance animal. The requestor might have thought that the assistance animal needs to be certified. They don't. So the certificates don't prove anything either way. If you have a tenant that says hey, I have this certificate, that doesn't mean the animal isn't necessarily an assistance animal. It just means they got duped on the Internet, most likely.

Just like with determining whether the requestor has a disability, a healthcare professional is one of the primary sources for supporting information on a disability related need for an assistance animal. However, if the disability related need are obvious or already known, don't ask for additional information.

For example, if you have a requestor who has already asked for grab bars in the shower and you installed them and they come down in the wheelchair to the leasing office every day to say hi, when they email a request to allow an assistance dog to help them with mobility, you don't need to ask for any new information. You already have all the information you need to make that determination. Disability is obvious. It is previously known that the individual has mobility needs, and the request says that the dog will help with mobility. The disability, the need, the nexus between the assistance animal and the need is established.

What if it is not a dog? What if it is not even a cat? What about that peacock? There is one easy question you can ask yourself in this situation. Is this animal that the individual is requesting a -- commonly kept in households? If the animal is commonly kept in households, you don't need to ask for more information about the animal, task, work, or therapeutic support it provides. Dogs, easy. Cats, normal. Fish, normal. Turtles, absolutely. Rodents, personally gross, but normal. Even small birds like parakeets and finches. While not expressly mentioned in the guidance, ferrets, which are not rodents, are small domesticated animals that are commonly kept in the home for pleasure. Which means they can also be considered as commonly kept.

Once you get outside that group, you start to get into barnyard or unique animals. If the requestor is asking for a snake, monkey, Texas horned lizard, peacock, elephant, then the requestor has the substantial burden of demonstrating the disability-related need for that specific type of animal.

Not only that, they need to demonstrate that the same benefits cannot be achieved by a different, commonly kept household animal. If the requestor doesn't have that documentation up-front, don't deny the request right away. You need to give them a reasonable opportunity to obtain that information. What it all boils down to is don't worry, you will most likely never have an emotional support peacock in your



complex.

Some things to think about here in general. What about dangerous dog breeds? Well breeds of dog are not inherently dangerous, but specific dogs might have a history that poses a threat to the health and safety to others? Does that mean you can say no to all pit bulls? No, but you can say no to the one Chihuahua that has a history of biting. When a requestor submits their reasonable accommodation request for a assistance animal, HUD guidance indicates you should be able to handle the response in 10 days. Some cases it might be too long or not enough time. If the need of the disability is obvious and the animal is a service dog, it should probably not take 10 days. In unique circumstances, it might take a little longer than 10 days, though.

HOA rules are not exempt from reasonable accommodations. Same with zoning laws, land use laws or co-op rules. If your HOA restricts breeds, it does not apply to assistance animal. A city with a breed restriction, the restrictions don't apply to assistance animals either. A housing provider may not charge for processing or granting a reasonable accommodation. The requestor may be responsible for paying, however, for can any structural accommodations, but there may not be a fee, charge deposit for taking care of the accommodation. Since there is a assistance animal, there should be no fees or deposits or accommodations for assistance animals. Housing providers may charge for damages caused by assistance animals, if they usually charge for damages by tenants. This includes deductions from security deposits if they have to put down a deposit. If they provide a pet deposit but no security deposit, there is no deposit for a assistance animal in that case. Housing providers are not responsible for taking care of a assistance animal. That responsibility falls on the individual with the assistance animal. This may mean that friends, family or service provider that they contract with aid in the in taking care of the animal, but it does not mean the housing provider must care for the animal.

Even if you are denying a reasonable accommodation request, for any reason, the housing provider should try to engage in an interactive process with the requestor to try to identify alternative accommodations that could be made. Just because they ask for something that you cannot say yes to, you should still come together and try to figure out something that works for both of you.

Housing providers have specific types of evidence or forms to be used when requesting information from a requestor. And they should never, ever ask or require that a requestor disclose their diagnosis. The requestor may offer that voluntarily, that's fine. If they do, it should be considered as informative and related to the request. But it should never be shared with anybody who is not responsible in making a determination of whether to accept or deny a request.

This is probably going to be a good place to take a quick minute to look over questions, if any questions have come in. We look at what was sent in to us, we can put up a couple for questions on the

polls. Although, I don't have any more polls. Cate, did we have any questions.

>> Sure, yeah, Nathan. This is Cate. This is Cate Tracz, everyone, I'm the manager for Fair Housing at TDHCA. We have a couple of questions that have come in that I think now might be a good chance to answer. The first one is are assistance animals allowed to be considered an occupant of the rental unit? So how would you document the assistance animal in the unit?

>> So ... I don't know if you Ellena or Marilyn want to chime in. I have a response, unless you guys -- unless you all have a better answer.

>> Go ahead and kick us off.

>> Okay. Yeah. I mean, an assistance animal is not an occupant, right? Nor would a pet be an occupant. What you are saying is that you normally require -- I'm guessing, what I am hearing is that you normally require, you know, any pets to be listed on a lease. So in the case of an assistance animal, while it would not be listed as a pet, in the tenant's file, you would want to attach any documents that you have regarding to the request for the assistance animal, and that would be probably enough to determine -- enough information to say, yes, there is an assistance animal in the unit.

>> Okay. Thank you for that. We do have a couple more questions we could probably take now. I have a couple of questions about the number of assistance animals or emotional support animals that you can have per -- depending on the household composition. So if there is three folks living in the unit, is there a limit on the number of animals you could have for an assistance animal?

>> Ellena, Marilyn?

>> You are doing great so far. Keep going.

>> You got it. Okay. So the answer is yes and no. There is no hard limit, in terms of the number of assistance animals per person or per square foot. That said, an individual who has documentation of a disability and a need for say one assistance dog, that is one dog. Any animals in that unit over and above that one dog are pets. And so whatever your pet rules are would then take over. But there are cases -- where an individual may need several different types of assistance animals who perform different tasks.

So even in an individual who lives by themselves. One person in a one-bedroom apartment, they may need three different animals for doing three different things.

One -- an example probably -- I think I cover this later, but I think this is a good time for this example, you have an individual who has two different disabilities. One they have epilepsy, and two, they have a mobility disability. They may need a dog, and there are dogs that are trained to either alert an individual before they have an epileptic seizure, or to basically burrow underneath the individual that is having the seizure in order to protect them from hitting their head or damaging themselves. But that dog probably can't help them reach things out of the cabinet or open a jar of peanut butter. They may have a need for an assistance monkey. That is an

example to talk about later. Monkeys have opposable thumbs and can open jars.

They may need multiple assistance animals in that case. While there is no hard limit on it, it is limited by the number of animals that the person has a need for that is documented or obvious need for.

>> Okay. Thank you, Nathan. Let's do one more and then we can probably jump back into the presentation. There are some good questions streaming in now. This one, there is a couple of questions in here about vaccinations. Can the property require that the animals be vaccinated or can they request that vaccination papers?

>> So you can request that an animal is vaccinated if the municipality or state -- if an animal would be required to be vaccinated anyway, then yes, you can require that assistance animal to be vaccinated. Some cities require dogs be vaccinated against rabies. You can't request anything over and above that. You can't say on top of rabies vaccine, I need you to have a vaccine for -- name some other dog disease that your city doesn't require. Can you request the vaccine information? Yes, absolutely. That is a health and safety issue. You may absolutely request to see request documentation that the animal is properly vaccinated up to whatever the governing standards are for it.

>> To add to that, I want to make it very clear, that if that is your method, that you want to make sure your policies and procedures reflect that for your organization and that it applies across the board. And not -- you don't want to apply it discriminately to your tenants. Does that make sense?

>> Yeah. That's a great addition, right? If you don't require tenants that have pets to have that documentation, to have vaccinations or show they have vaccinations, don't require it of people with assistance animals. That would not -- it needs to be applied evenly, absolutely.

>> Because by creating that gap, what happens is then you put yourself in a legal situation where it becomes the legal discriminatory theory of disparate treatment. You want to avoid this litigation altogether. And perception.

>> Excuse me. Sorry. All right. And so that sounds like all the questions we're going to get to right now. So we will jump into the second part of the HUD guidance which is documenting an individual's need for assistance animal.

So at the heart of any reasonable accommodation request, there are three major things to establish in order to qualify for a reasonable accommodation. Or in order for a request to be an reasonable accommodation request. One, you need to have a disability and demonstrate it to the housing provider. Two, you need to tell the housing provider exactly what accommodation you need or rule or procedure you are seeking an exception to. In the housing, you are requesting an exception to the pet policy. Three, you need to establish you have a need for the need in change in policy because of your disability. This is called the disability related need. Just having a disability does not mean you have a disability related

need for what you are asking for. Example, a requestor may have epileptic seizures, the requestor asks for accommodation allowing for an emotional support pig. In this case, there is no connection between the disability and the request. There is no disability related need for the pig. However, there may be a disability need for a dog, that is trained to get underneath the individual during a seizure to protect against brain damage. Sometimes these things are readily apparent. For example, if a requestor uses a cane for the blind and asks for an accommodation for the blind to guide them. This individual established the existence of the disability, a need for accommodation and connected the accommodation to a disability need. So this page is probably going to feel like it is a lot. But it really isn't that much if you think about it this way. The page is telling us what HUD recommends. These are best practices. So following these steps to the letter will help you get a faster response and make it less likely the request is denied incorrectly or mistakenly. What does HUD recommend? When you are speaking to healthcare professional or provider, ask for a letter or prescription that includes your name, saying they treat you for a disability, they don't need to say what the disability is, and what kind of accommodation the animal is needed for. This covers the first two criteria from the last slide. Documenting the disability and identifying the accommodation that you need. To cover the third and final criteria -- criterion, HUD recommends that healthcare professional's assessment or letter or prescription includes the reason why the animal is needed as it relates to the requestor's impairment. What kind of work or support or assistance does the animal provide? And how does it help alleviate the impairment? You do not need to disclose your diagnosis. However, if you do, a housing provider should never share that or any other information from your request with anybody else, unless that person is needed to evaluate the request.

So what if I really do need that peacock or anteater or monkey? In this case, you need to provide little more documentation. HUD recommends the documentation includes the last time your healthcare professional consulted with you, identifying the unique circumstances that justify the need for that particular animal and if the healthcare professional has reliable information about this specific animal or whether they specifically recommend that animal or type of animal. So this probably seems like a lot. This next slide should help. Even though it looks like a lot more information.

If you take the bulleted list with you to the healthcare provider and make sure they answer each of the items, this will cover any reasonable accommodation request for any type of assistance animal. Remember, this is your healthcare provider. So let them know what you need so they can give you the answers you need so you can be in your home with your assistance animal as quickly as possible in the least amount of difficulty possible.

One, get your healthcare provider to write a statement that says your name, the date they last consulted with you, stating that

they're responsible for your care in relation to an impairment that limits at least one major life activity, what the accommodation is needed, what type of animal the accommodation is for. The disability related need for the animal, does it perform a task, work, therapeutic emotional support that alleviates a symptom or effect of the possible disability or impairment. And unique circumstances justifying the need for the particular animal. If it is unique. And any information that explains that the healthcare professional has reliable information about this unique animal and that they specifically recommend that unique type of animal to you.

Taking this slide in with you to your healthcare provider will help make sure that you get the documentation you need so you can get the assistance animal that you need quickly and smoothly. That said, a housing provider might still deny your request for a assistance animal or service animal.

So what if that happens? Don't be afraid to be your own advocate. Make sure you ask why the request was denied. Make sure you kept copies or originals of all documentation submitted to the housing provider. I always recommend you submit in email or in writing so you have copies and there is a paper trail. You do not have to submit your request in writing, it is just that I have always found it is helpful.

You also do not have to submit your request on a specific form. The housing provider may not require specific types of evidence of you. If your documentation meets the requirement set out in the HUD guidance, let the housing provider know this and point them to the HUD guidance document or this webinar. The housing provider may not require you to have your statement notarized or given under a penalty of perjury. If they do require either of those things, point them again to the HUD guidance or this webinar.

This may still not be enough and the housing provider might still deny your request. Don't panic. HUD administers a variety of housing programs in the United States and can direct you or forward your complaint to the proper agency with jurisdiction. Find out if the housing provider participates in any of TDHCA's programs, such as the low-income housing task group program, home program, emergency solutions grants, any removal bootstrap loan program, and so on. You can look interiorly into the vacancy clearinghouse to see if a property is listed there. If they participate in a TDHCA administered program you can file a complaint with us at TDHCA. And file a complaint with the Texas Workforce Commission civil rights division. The Texas Workforce Commission is responsible for enforcing the Fair Housing Act in Texas. Do you want to talk about the complaint process and maybe conciliation and mediation?

>> Um, I think our complaint process is pretty much -- I want to say it is about the same thing as you guys. I mean, we get -- when somebody files a complaint with us, it goes to -- first, it goes to intake, they get specific information regarding the case, you know, whether you have evidence or if you have witnesses. And then it goes

to if it is deemed that you have a cause case, it goes to an investigator. And from there, it just has its own process. It really depends on the specific case itself. Sometimes it can go -- there is an option to go to mediation, which is a free service that we provide. And it kind of gets both parties in front of each other so they can come to a reasonable agreement that everybody is happy with. Once that is said and done, whether you're still in investigation mode or mediation mode, if your -- once everything settles down, the end result is usually sometimes there is monetary relief for the complainant, and majority of time, there is always going to be some type of Fair Housing training for the respondent. And all parties involved. Sometimes within the housing industry that could be the homeowner, say somebody is renting out a home. It could be the homeowner. And say the homeowner is using a rental agency to manage -- a management company to manage all of their tenants they would also include them as well. Ellena, do you have anything to add?

>> Yeah. Thank you. To summarize, the burden of proof still falls on the complainant filing the allegation. During intake, as Marilyn said, it is a very heavy burden on the complainant to justify an investigation. If there is such, then there is an option where if both parties agree to voluntarily mediate, that process will occur. Which keeps it separate from investigation. The key point here is that if you find yourself in such a situation, I would encourage mediation, primarily for the fact that once it goes into investigation and investigation has begun, it is available to open records. So for property providers, housing provider, this can impact your public image and something to keep in mind. We work really hard with both parties to try to keep it out of investigation through mediation. If mediation fails it will go into investigation and the end result will be determined by the investigator. Nine times out of 10, whether mediation or investigation resolution, there will be training involved.

>> Great. And just out of my own experience in the 2019 analysis of impediments, we looked at complaint data, Fair Housing complaint data for the State of Texas, the other thing about mediation is that it is significantly faster than going all the way through investigation and into litigation.

>> Yes.

>> Much, much faster.

>> Yes. And looking at our 2019 data numbers from the civil rights division, 60% of our housing allegations, complaints were of reasonable accommodation. And of that 60%, we're seeing a continual rise with the service and emotional support animal. With the number one issue is, is that the failure to actually have the discussion, IE, the interactive process. What that technical term means is that the property provider and the tenant are communicating effectively. And that's where we see the biggest denial of reasonable accommodation as well as an agency's purchasing process that can then impact a reasonable accommodation request within a reasonable amount

of time. We have also seen that as a high trend, in 2019.

>> Great. Thank you guys.

So I'm going to put up the -- give you a chance to write down any of this information. And we're going to also take a look at any new questions that have come in that we can answer.

So Cate, do we have any new questions?

>> Yeah. We have a couple more questions here. There's a few questions that came in that have to do with timing of things. The first one is when do you have to update the documentation of an assistance animal? You know, could this be something annually that a property would update within their files?

>> May I take that on?

>> Go for it.

>> This is Ellena with the civil rights division. I would encourage you as a best practice, within policies and procedures as a property provider, as a business, to have it as an annual review for all your tenants, not just for those specific. Again, you want to apply it universally and not individually.

>> Okay. Thank you. And then the next question related to the time frame of this is what would be a reasonable amount of time to give someone to come up with their paperwork? So to prove, you know, either the need for the assistance animal or the disability?

>> Again, this is Ellena with the civil rights division. Again, I would go back to your policies and procedures and actually implement, A -- develop and implement such a policy and or B, make sure you follow your policy. Or C, make modifications that better meet your needs. I would encourage you to ...

>> Did we lose you, Ellena?

>> I'm sorry. I think I cut out by accident. Repeat the question to me again. I'm sorry.

>> Okay. So the timing, what would be a reasonable amount of time to allow a household to come up --

>> Yes, as a best practice in your policies, I would give yourself 14 days. That's a really good rule of thumb, best practice. If you are going to set time lines, reasonable time lines, I encourage to make sure that your staff follow-through with those and document, document, document. Good best practice is to have a response regarding your request to your tenant within 10 to 14 working days. Business days. And be adamant about it. Be very proactive in those regards. What you don't want to have happen is that then your tenant -- you find yourself in a situation where you're just tennis balling the question back and forth for 30, 60, 90 days. That can get you into a lot of litigation trouble.

>> Okay. Great. Thank you for that. We've got another question here about Texas State law. And how that might not be -- how it might be in conflict with the federal law. We have a questioner that asks, how does Texas State law specifically HRC121.002 impact the assistance animal definition? It says the state law says an assistance animal and service animal can only be a dog. Do you have --

>> Yeah. So the ADA and ADAAA are going to be very specific. A service animal is specifically federally identified as a dog. Whereas a emotional support animal can be just about anything, including a peacock and a monkey.

>> Right. If you think back to the slide with -- in fact, I will go back to that slide.

>> Yeah.

>> With the ... this here.

>> Going to be substantially equivalent to the federal law. So Texas Fair Housing law chapter 301 is very specific and similarly situated to federal law. Go ahead.

>> Yeah. So if you think about this here, right? The Fair Housing Act is broader than the Americans With Disabilities Act. And it is more permissive in terms of the types of animals that are allowed. Service animals are just a subset of assistance animals as defined by the Fair Housing Act. So in that case, right? It doesn't -- a service animal -- the distinction between a service animal and assistance animal in terms of what type of animal is allowed is immaterial, right, to the Fair Housing Act. If it is an assistance animal, which could include emotional support animal, service animal, other types of assistance animals, it is not in conflict with the ADA. It is just more permissive than the ADA. From the perspective of the tenant, from the perspective of the housing provider, it is more prescriptive in terms of what they cannot disallow or what they must allow.

>> Very good slide.

>> Yeah. Like Nathan said, all of the slides will be available as soon as possible after the webinar. We'll also post the transcript that is scrolling below. So just, you know, give us a little bit of time to get that packaged and ready and that will all be posted online.

I do have one more question here. Let me just pull this up. About documentation for a guest of a tenant who has an assistance animal. Basically, what type of documentation would be needed for a guest of the tenant?

>> So typically, most housing providers, I immediately think of apartment complexes typically have that Texas rental lease agreement and if your agreement states -- again, this is going back to your policies and procedures. If your agreement states that guests after so many days have to register with your office, that would be applied across the board regardless of disability or not. What I would encourage you to do is if that situation does occur, to note that the guest has a assistance animal and you may simply inquire, is this -- you may not inquire. I would encourage you to state that your property has this particular policy regarding pets, if you have a no-pet policy, then that's one thing. And then that gives the voluntary -- that guest an opportunity to divulge if it is a disability or an assistance animal whether service or emotional support animal. That then allows you as the property owner to be able to ask the follow-up question, well, can you provide me



documentation verifying that statement so that I may include it into documentation of your file for your resident. Does that make sense?

>> That makes sense to me. I would also recommend that a property -- excuse me. In their policies and procedures say, you know, guests are subject to the same policies and procedures as our tenants are. And then that way, you know, you basically would just follow the same procedures that you would for a tenant who has San assistance animal.

>> Yes.

>> And that way, your tenants also know this applies to guests and their guests can come with the proper documentation, if necessary.

>> Exactly. Good. Yeah. Perfect, thank you.

>> Okay. We've got another question here. This is about a reasonable accommodation in response to a notice to vacate. So if -- let's say a unit receives a notice to vacate, but then they subsequently submit a reasonable accommodation for an assistance animal or transfer to the first floor. So how should a property or housing provider handle that situation?

>> So if the unit has received a notice to vacate, but that time frame has not expired, so say -- many of TDHCA's programs, it requires a 30-day notice to vacate. If the tenant has not -- is not vacated yet and that time frame is not up, you have to treat it just like you would any other reasonable accommodation request. That would be -- I should say, that would be the safest response. Then, you know, if your property participates in any of TDHCA's programs, I would recommend that you get in touch with TDHCA's compliance staff to know -- to get a certain answer about what you should do. That's -- that would be my -- that would be my take.

>> I'm sorry. There are a lot of specific questions coming in that might be, you know, one specific situation. And we will reach out directly to get more details on some of these questions as well. Go ahead, Ellena. My apologies for interrupting.

>> Oh, no. Not a problem. I was going to state from the civil rights division perspective, when it comes to allegations in situation like this, our number one backbone is going to go look at what your policies and procedures state, number one. And if you have, that can work -- your policies and procedures are a great tool to protect yourself as property providers. But if it is not written well, it can also be very detrimental to you. What Nathan is saying about the compliance aspect, I would definitely encourage you to do that. And I'm leery of providing specific information regarding the specific example because there are so many variables that are just unknown. But I would like to have an opportunity to work with individuals more specific to their situation, if possible. So thank you for that.

>> Yeah. I do want to mention that I don't know for certain what you -- what the legal answer is. I'm just saying what I would consider a safe response would be to just follow your reasonable accommodation procedures.

>> Exactly.

>> Your procedures. Knowing that, yeah, it is possible that you're going to have to move somebody to a first-floor unit for that, you know, 15 days. But that's the safest response.

>> On that note, if you do need some assistance with the language in your policies, if it is the TDHCA property, certainly reach out to me, myself or someone in the compliance division. You know, we will do our best to help make sure you have got those policies worded in a way that addresses a lot of these questions.

>> That's a great resource. Thank you, TDHCA.

>> Okay. Great. I think a lot of the questions that we have got now are pretty specific. And we can follow-up directly with each of the individuals, and then, you know, post all of our information. Nathan, do you want to wrap it up?

>> Yeah. I just want to say, you know, thank you all for attending. I will pull up my notes for the last one. I don't have notes for the last slide, of course I don't. Thank you all for attending. If you do have any questions, you know, feel free to reach out to us, either us or Texas Workforce Commission. Civil rights division. We have their contact information there. The slides from this presentation, along with the handouts and the transcript are going to be available on the TDHCA website probably by this afternoon, don't hold me to that. It might be tomorrow. But I'm hoping this afternoon. So, you know, you can refer back to this at any point in time, and you'll receive a follow-up email in the next day or so that will also have that information for you. It will give you a link to where the presentation materials will be. And if we did not get to your question, like Cate said during the webinar or something that was very situation-specific, we will be reaching out to you in the next -- well, as soon as we can to try to get either more information from you or to get, you know, do the research we need in order to answer your question.

So thank you all for joining us. And we hope you have a good rest of your week.

>> Take care, everybody.

>> Thank you, Cate and thank you TDHCA all the way around. Greatly appreciate it. And we look forward to working jointly with you with those specific questions as well. Thank you, everyone. Have a great day.

>> Thank you.

[Concluded]