

Fair Housing Month Slim Edition

Texas Workforce Commission Commissioners

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History of Fair Housing

By: Ellena Rodriguez; CRD, Outreach, Compliance and Resolutions Manager



On April 11, 1968, President and fellow Texan Lyndon Johnson signed the Civil Rights Act of 1968, which was meant as a follow-up to the Civil Rights Act of 1964. The 1968 Act expanded on previous acts and prohibited discrimination concerning the sale, rental, and financing of housing based on race, color, religion, national origin, sex, (and as amended) handicap and family status. Title VIII of the Act is also known as the Fair Housing Act (of 1968).

The enactment of the federal Fair Housing Act on April 11, 1968 came only after a long and difficult journey. From 1966-1967, Congress regularly considered the fair housing bill, but failed to garner a strong enough majority for its passage. However, when the Rev. Dr. Martin Luther King, Jr. was assassinated on April 4, 1968, President Lyndon Johnson utilized this national tragedy to urge for the bill's speedy Congressional approval. Since the 1966 open housing marches in Chicago, Dr. King's name had been closely associated with the fair housing legislation.

President Johnson viewed the Act as a fitting memorial to the man's life work and wished to have the Act passed prior to Dr. King's funeral in Atlanta.

Another significant issue during this time period was the growing casualty list from Vietnam. The deaths in Vietnam fell heaviest upon young, poor African-American and Hispanic infantrymen. However, on the home front, families could not purchase or rent homes in certain residential developments on account of their race or national origin. Specialized organizations like the NAACP, the National Association of Real Estate Brokers (NAREB), the GI Forum, and the National Committee Against Discrimination In Housing lobbied hard for the Senate to pass the Fair Housing Act and remedy this inequity. Senators Edward Brooke and Edward Kennedy of Massachusetts argued deeply for the passage of this legislation. In particular, Senator Brooke, the first African-American ever to be elected to the Senate by popular vote, spoke personally of his return from World War II and inability to provide a home of his choice for his new family because of his race.

With the cities rioting after Dr. King's assassination, and destruction mounting in every part of the United States, the words of President Johnson and Congressional leaders rang the Bell of Reason for the House of Representatives, who

Mission Statement

The mission of the Civil Rights Division is to reduce discrimination in employment and housing through education and enforcement.

Vision

The vision of the Civil Rights Division is to help create an environment in which the people of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.



subsequently passed the Fair Housing Act. Without debate, the Senate followed the House in its passage of the Act, which President Johnson then signed into law.

The power to appoint the first officials administering the Act fell upon President Johnson's successor, Richard Nixon. President Nixon tapped then Governor of Michigan, George Romney, for the post of Secretary of Housing and Urban Development. While serving as Governor, Secretary Romney had successfully campaigned for ratification of a state constitutional provision that prohibited discrimination in housing. President Nixon also appointed Samuel Simmons as the first Assistant Secretary for Equal Housing Opportunity.

When April 1969 arrived, HUD could not wait to celebrate the Act's 1st Anniversary. Within that inaugural year, HUD completed the Title VIII Field Operations Handbook, and instituted a formalized complaint process. In truly festive fashion, HUD hosted a gala event in the Grand Ballroom of New York's Plaza Hotel. From across the nation, advocates and politicians shared in this marvelous evening, including one of the organizations that started it all -- the National Committee Against Discrimination In Housing.

In subsequent years, the tradition of celebrating Fair Housing Month grew larger and larger. Governors began to issue proclamations that designated April as "Fair Housing Month," and schools across the country sponsored poster and essay contests that focused upon fair housing issues. Regional winners from these contests often enjoyed trips to Washington, DC for events with HUD and their Congressional representatives.

Texas Key Statutes

- Texas Fair Housing Act (single-family):
[Texas Property Code, Chapter 301](#)
- Texas Fair Housing Act (Subsidized Housing):
[Local Government Code, Section 392.006](#)
- Accessibility Features in Single-Family Affordable Housing:
[Texas Government Code, Section 2306.514](#)

Relevant Federal Laws

- Fair Housing Act of 1988:
[U.S. Department of Housing and Urban Development](#)



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At Last: New Service and Emotional Support Animal Guidance From HUD

By: Erin Humphreys, Civil Rights Investigator



Background

Everyone involved in the practice of Fair Housing has been eagerly awaiting guidance from the Department of Housing and

Urban Development (HUD) regarding the verification of assistance animals. Assistance animals include both service animals and emotional support animals (ESAs). As of January 28 2020, 60% of all FHA complaints concern the allegations of denial of reasonable accommodations and disability access. For that 60%, requests for reasonable accommodations for assistance animals are climbing quickly.

The last time that HUD offered any beacon on the issue was in 2013. That guidance, FHEO-2013-01, was effective until amended, superseded, or rescinded. That guidance clarified that assistance animals are not pets and are not required to be individually trained by either the Fair Housing Act (FHA) or Section 504 regulations. The 2013 guidance ordered that housing providers evaluate requests for a reasonable accommodation for an assistance animal using the same general principles as all other reasonable accommodation requests. The only direction in this document regarding what documentation should be regarded as acceptable was that a person whose disability or disability-related need for an ESA is not apparent could be asked

to provide documentation from a physician, psychiatrist, social worker, or other mental health professional. More explicitly, housing providers were ordered not to ask the requestor for documentation if their disability is apparent nor to ask for access to medical records or medical providers for detailed or extensive information.

The big question following the 2013 guidance seemed simple: what is valid documentation? With the rise of online medical professionals and certificate scams, housing providers were afraid to say no to an ESA request and afraid to question a document's authenticity. As of January 28, 2020, we have more answers!

FHEO-2020-01

The new HUD guidance document replaces FHEO-2013-01 and provides a set of best practices regarding the type of documentation that housing providers may ask for and individuals making a reasonable accommodation request for an assistance animal should be ready and willing to provide.

The 2020 guidance begins by explaining what an assistance animal is. Primarily, they are not pets. The two types of assistance animals are service animals and animals taught to work, perform tasks, provide assistance, and/or provide therapeutic emotional support for persons with a disability (a support animal). Animals that do not fit these categories are pets and are subject to any restriction or obligation (namely money) that the housing provider requires. HUD explicitly states

that they provided this new guidance "to help housing providers distinguish between a person with a non-obvious disability... and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by housing providers..."

Guidance for Making a Request for an Assistance Animal

It is not necessary to submit a written request or specifically state that a requestor is making a "reasonable accommodation request". The requestor may request a reasonable accommodation either before or after acquiring the assistance animal. Requestors are encouraged to do so to avoid miscommunication. Requestors and housing providers are encouraged to keep documentation of the request and the information provided in case of a later dispute.

Best Practices for Animal Reasonable Accommodation Requests

The following is a breakdown of the process housing providers should, but are not required, to use to help determine if an animal is an assistance animal.

Part 1: Service Animals

1. Is the animal a dog?
 - If no, the animal is not a service animal but may be another type of assistance animal and the provider should skip ahead to Part 2.

2. Is it readily apparent that the dog is trained to do work or perform tasks for the benefit of an individual with a disability?
 - If yes, further inquiries are unnecessary and inappropriate because the animal is a service animal.
 - If no, proceed to next step.
3. It is advisable for the housing provider to limit its inquiries to the following two questions:
 - a. Is the animal required because of a disability?
 - b. What work or task has the animal been trained to perform?
 - If the answer is yes and a task or work assignment is identified, grant the accommodation.
 - If no, the animal does not qualify as a service animal but it may be another type of assistance animal and you should proceed to Part 2.

But wait, what is work or a task? HUD has an answer: "If the individual identifies at least one action that the dog is trained to take which is helpful to the disability other than emotional support, the dog should be considered a service animal and permitted in housing."

Part 2: Assistance Animals other than Service Animals

Important Note: Assistance animal is not common terminology in the housing industry. The use of this term is causing some alarm in the community. Simply put, an assistance animal other than a service animal is an emotional support animal.

4. Has the individual requested a

reasonable accommodation – that is, asked to get or keep an animal in connection with a physical or mental impairment or disability?

- If yes, proceed to Part 3.
- If no, the housing provider is not required to grant a reasonable accommodation.

Part 3: Documentation and Verification

Important Note: The 2020 guidance specifically addresses documentation from the internet. Websites which sell certificates, registrations, and licensing documents for assistance animals are not sufficient to reliably establish that an individual has a disability-related need for an ESA. Legitimate, licensed health care professionals who deliver services remotely, including the internet, who provide a note confirming a disability and/or need for an animal with personal knowledge of the individual is sufficient.

5. Does the person have an observable disability or does the housing provider (or agent making the determination for the housing provider) already have information giving them reason to believe that the person has a disability?
 - If yes, skip to question #7.
6. Has the person requesting the accommodation provided information that reasonably supports that the person seeking the accommodation has a disability?
 - If yes, proceed to next step.
 - If no, the housing provider is not required to grant the accommodation unless the information is provided but they may not deny the accommodation unless the requester has been provided a reasonable opportunity to

do so.

- i. Housing providers are encouraged to refer the requestor to this guidance document to help them understand what information the provider is seeking and ensure that the provider will receive the disability-related information that is actually needed.
7. Has the requestor provided information which reasonably supports that the animal does work, performs tasks, provides assistance, and/or provides therapeutic emotional support with respect to the requestor's disability?
 - If yes, proceed to Part 4.
 - If no, the housing provider is not required to grant the accommodation unless the information is provided but they may not deny the accommodation unless the requester has been provided a reasonable opportunity to do so.

Important Note: The 2020 guidance specifies that documentation contemplated is recommended to include the following information: the patient's name, whether there is a professional relationship between the healthcare professional and the patient, and the type of animal(s) for which the reasonable accommodation is sought. Further, it should include the following information addressing the requestor's disability: whether the patient has a physical or mental impairment, whether that impairment substantially limits at least one major life activity or major bodily function, and why the patient needs the animal(s). The

professional should sign and date any documentation and provide contact information and professional licensing information.

Part 4: Type of Animal

8. Is the animal commonly kept in households?
 - If yes, the reasonable accommodation should be provided under the FHA excepting general exceptions listed in the guidance document.
 - i. Animals commonly kept in the households which should be granted: dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than commercial purposes.

- If no, the reasonable accommodation need not be provided except in very rare circumstances.
- i. Fun fact: If the request is for a unique animal, the requestor bears the burden of demonstrating a disability-related therapeutic need for that specific animal and type of animal. A monkey could be trained to do things like preparing a bottle of water!

Valid Reasons for Refusal

1. Failure to meet the threshold established in Parts 1 through 4.
2. If the individual's tenancy would constitute a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

3. The accommodation would impose a fundamental alteration to the provider's operations or impose an undue financial and administrative burden and there are no effective alternative accommodations.

Further Reading

DOJ's ADA Requirements: Service Animals
https://www.ada.gov/service_animals_2010.htm

DOJ's Frequently Asked Questions about Service Animals and the ADA
https://www.ada.gov/regs2010/service_animal_qa.html

HUD/Department of Justice (DOJ) Joint Statement on Reasonable Accommodations Under the FHA
<https://www.hud.gov/sites/documents/huddojstatement.pdf>



Photos courtesy Getty Images

Civil Rights Division Education, Training & Outreach

Marilyn Diaz; Outreach, Compliance and Resolutions Asst.



The Texas Workforce Commission Civil Rights Division (CRD) is committed to providing training and outreach to employers, employees,

housing providers, housing consumers and other stakeholders. We also believe that being proactive and educating yourself is vital to reducing Discrimination and harassment in the workplace, so our training team offers EEO and Fair Housing classroom, Webinar training and online computer-based overview course. We are able to customize our training to your needs, focusing on the issues that matter the most in your workplace.

CRD's flexibility and determination to promote awareness and help reduce employment and housing discrimination throughout the state. For more information about inviting the CRD to an upcoming event, please contact CRD at (888) 452-4778 or by email at CRDTraining@twc.state.tx.us.

FREE Fair Housing Computer-Based Training

CRD offers a free Fair Housing Overview Computer-Based Training (CBT) module for housing providers, consumers, realtors and March 2020 lenders. This CBT enables participants to learn about fair housing at their own pace and location using personal computers.

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Meet Us at Upcoming Texas Conference for Employers

TWC Commissioner Representing Employers sponsors the Texas Conferences for Employers, a series of employer seminars held each year throughout the state. Employers who attend the seminars learn about state and federal employment laws and the unemployment claim and appeal process. TWC Commissioner Aaron Demerson and his staff assemble excellent speakers to guide you through ongoing matters of concern to Texas employers and to answer any questions you have regarding your business. Each conference is geared toward small business owners, HR managers and assistants, payroll managers and anyone responsible for the hiring and managing of employees.

CRD outreach personnel regularly participate in these events by staffing an information booth to provide details about the state's Equal Employment Opportunity

(EEO) and Fair Housing programs and provide technical assistance to conference participants.

Please see the listing of upcoming TCEs and dates below:

Texas Conference for Employers dates:

Kilgore: May 29, 2020
Laredo: June 5, 2020
Beaumont: June 12, 2020
Sherman: July 17, 2020



Visit <https://twc.texas.gov/texas-conference-employers> to register for upcoming TCE's. For more information and registration, <http://www.twc.state.tx.us/texas-business-conferences>.



TDHCA Webinar series:

Fair Housing Overview: April 2, 2020

This link is for the Fair Housing Overview: <https://register.gotowebinar.com/register/3154898388257004556>

Reasonable Accommodations: April 8, 2020

This is for Reasonable Accommodations: <https://register.gotowebinar.com/register/4099999001074728460>

Assistance Animals: April 14, 2020

This is for Assistance Animals: <https://register.gotowebinar.com/register/7581657546164498956>