



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, DC 20410-0001

NOV 06 2019

Joseph J. Simons, Chairman
Andrew Smith, Director of the Bureau of Consumer Protection
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons and Director Smith:

The U.S. Department of Housing and Urban Development (HUD) is responsible for enforcing federal fair housing and civil rights laws that prohibit housing discrimination against individuals with disabilities who use assistance animals. Housing providers, fair housing groups, and disability rights groups have brought to HUD's attention their concern that certain websites may be misleading consumers with disabilities into purchasing assistance animal documentation that is unreliable and unnecessary. According to these groups, the websites also may be selling assistance animal documentation to people who do not have disabilities substantially limiting a major life activity, enabling such people to claim that their pets are assistance animals in order to evade housing providers' pet restrictions and pet fees. HUD shares these concerns.

The Fair Housing Act (FHA) and HUD's implementing regulations prohibit discrimination on the basis of disability in the sale or rental of a dwelling and in other housing-related transactions.¹ Under the FHA, it is illegal for housing providers to refuse to grant reasonable accommodations for individuals with disabilities substantially limiting a major life activity when it may be necessary for such individuals to have equal opportunity to enjoy and use a dwelling.² One common type of reasonable accommodation is an exception to a housing provider's pet rules to permit an individual with a disability to keep an assistance animal.

Assistance animals are not pets. An assistance animal is one that works, performs tasks, or provides assistance for the benefit of a person with a disability. The most well-known type of assistance animals are service animals under the Americans with Disabilities Act (ADA), which are almost always dogs.³

¹ 42 U.S.C. §§ 3601-19; 24 C.F.R. pt. 100.

² Housing providers may be subject to additional laws that prohibit discrimination on the basis of disability, such as the Americans with Disabilities Act (ADA), and, for housing providers that are recipients of federal financial assistance, Section 504 of the Rehabilitation Act.

³ See 28 C.F.R. § 35.104; 28 C.F.R. § 35.136; 28 C.F.R. § 36.104 (Department of Justice (DOJ) regulations implementing the ADA). For more information about the FHA, the 2004 Joint Statement of the Department of Housing and Urban Development and the Department of Justice titled "Reasonable Accommodations Under the Fair Housing Act," available at <https://www.hud.gov/sites/documents/huddojstatement.pdf>, "provides technical assistance regarding

Under the FHA, assistance animals are not required to be "registered" or "certified," nor, in HUD's opinion, does certification or registration provide any benefit to the consumer with a disability who needs an assistance animal. In fact, under the FHA, there are limits on the information that a housing provider may request, and in some circumstances, a housing provider needs little or no documentation. For example, a housing provider should not request documentation if an individual is seeking to keep a dog and it is readily apparent that the dog is trained to do work or perform tasks for the benefit of an individual with a disability. Housing providers also should not request information when the disability-related need for an assistance animal is observable or the housing provider already has information that would give the provider reason to believe an individual has a disability-related need for an assistance animal. Certifications, registrations, and other documentation purchased over the internet through these websites are not necessary, may not contain reliable information, and, in HUD's FHA enforcement process, are insufficient to establish an individual's disability-related need for an assistance animal.

Reliable disability-related information includes, for example, a disability determination from a government agency, documented receipt of disability benefits, or a note from a healthcare professional (e.g. physician, optometrist, psychiatrist, psychologist, physician's assistant, nurse practitioner, or nurse) stating that the individual has a disability (a physical or mental impairment that substantially limits at least one major life activity) and a disability-related need for assistance that is or will be provided by an animal. In the case of an animal that provides therapeutic emotional support, the health care professional should explain that the animal provides or will provide the individual with support that ameliorates or assists the individual in coping with one or more identified symptoms or effects of a disability.

A healthcare professional that provides services remotely, including over the internet, may provide a reliable verification of an individual's disability-related need for an assistance animal if the provider has personal knowledge of the individual's disability-related need for the animal. Personal knowledge is knowledge of the type that health care providers ordinarily use for diagnosis and treatment.

In HUD's view, the websites in question offer documentation that is not reliable for purposes of determining whether an individual has a disability or disability-related need for an assistance animal because the website operators and health care professionals who consult with them lack the personal knowledge that is necessary to make such determinations. The websites typically obtain information from the individual purchasing documentation by requiring the individual to answer an online questionnaire or, at most, having the individual participate in a brief interview.

Many individuals with disabilities substantially limiting a major life activity have limited income. HUD is concerned that these websites may be misleading low-income individuals with potentially deceptive statements and information suggesting that their worthless products are

the rights and obligations of persons with disabilities and housing providers under the [FHA] relating to reasonable accommodations." Under the FHA, an assistance animal may be a 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 for commercial purposes.

required, will provide some benefit, and/or are endorsed by HUD or other federal agencies. These websites are also interfering with the rights of individuals with disabilities substantially limiting a major life activity under the FHA by selling documentation that people without disabilities can use to pass off their pets as assistance animals.

I respectfully request that the FTC consider this matter and investigate whether such websites violate the FTC Act or any other authority that the FTC is empowered to use in its efforts to protect consumers from deceptive and unfair business practices.

At your request, HUD can provide examples of the websites that sell the type of documentation described in this letter, including at least one website that contains the seals of HUD and other federal agencies in an effort to imply that their products are endorsed by the federal government.

Sincerely,



Benjamin S. Carson, Sr.

Cc: Lois Greisman, Associate Director, Division of Marketing Practices, FTC

REALTORS® Commend HUD for Move to Limit Abuses of Assistance Animal Policies

November 9, 2019

Stacey Moncrieff

National Association of REALTORS® President John Smaby thanked Department of Housing and Urban Development Secretary Ben Carson on Saturday for taking action to curb the practice of bogus online-generated documentation for service and companion animals. REALTORS® and other housing industry groups have long expressed concerns about how property owners and managers can honor legitimate tenant needs for such assistance animals while guarding against erroneous requests intended to sidestep building pet policies.

In a Nov. 6 letter from Carson to Joseph J. Simons, chairman of the Federal Trade Commission, and Andrew Smith, director of the Bureau of Consumer Protection, Carson said HUD shares housing groups' concerns about websites that may be selling assistance animal documentation that enables people "to evade housing providers' pet restrictions and pet fees."

The Fair Housing Act requires property owners and managers to make reasonable accommodations for persons with disabilities. Assistance animals — such as guide dogs for the blind and emotional support animals for those

suffering from PTSD or depression—are legitimate needs for some people with disabilities. However, there’s virtually no regulation of entities offering assistance animal certifications, and some provide certifications without examining the individuals requesting them.

In his letter, Carson asked the FTC to investigate such websites and to use its power, if necessary, to protect consumers from deceptive and unfair business practices.

“NAR commends HUD and Secretary Carson for taking action to protect those who rely on the assistance of animals while preventing undeserving individuals from exploiting the system,” Smaby said in response to the letter. He added that NAR looks forward to working with the White House to secure needed regulatory changes.



4 Comments

The Magazine



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Fair Housing Defense

Information on and Compliance with the FHA

HUD Secretary Carson Seeks Federal Investigation Into Websites That Sell Assistance Animal Medical Verifications

By Scott M. Badami on November 20, 2019

In a letter that is good news to those in the professional apartment ownership/management business, HUD Secretary Ben Carson wrote to the Chairman of the U.S. Federal Trade Commission (FTC) earlier this month asking that the FTC investigate websites that sell assistance animal medical verifications to individuals in an effort to permit those individuals to assert their pets are emotional support animals in order to avoid paying otherwise due pet rent and pet fees. In his letter, Secretary Carson wrote that “HUD shares these concerns” over what your humble Fair Housing Defense Blog Editor refers to as “click and pay” emotional support animal medical verification sites.

In addition to misleading Americans, HUD’s position is that the online sellers also “take advantage of persons with disabilities who need a reasonable accommodation to keep their assistance animals in housing. This request for the FTC action reflects HUD’s ongoing commitment to protecting the housing rights of persons with disabilities.” Additionally, HUD noted that some of these providers sell what appear to be certificates which look like they are affiliated with a governmental agency or are otherwise official U.S. government documents. HUD confirmed that there is no government-sponsored animal registration list nor are assistance animals certified.

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I Agree

As described by Secretary Carson in his letter, if an individual purports to provide a medical verification based on treatment given over the internet, that provider must have “personal knowledge of the individual’s disability-related need for the animal.” HUD describes “personal knowledge” as “knowledge of the type that health care providers ordinarily use for diagnosis and treatment,” as contrasted with simply self-selecting from an online questionnaire and assessment tool.

My clients and I welcome Secretary Carson’s comments and I hope the FTC acts against those who do a disservice to legitimately disabled Americans who need a service or emotional support animal. There will be more to come here.

Just A Thought.

Fair Housing Defense



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