

# The Capital Focus



## 2017 Legal Update

# VAMA-INITIATED LEGISLATION TO TAKE EFFECT JULY 1, 2017

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Each year, working with a coalition of business and real property associations, VAMA submits legislation to improve the business climate for owners and operators of multifamily residential properties in Virginia. This year, VAMA brought forward five bills addressing matters of importance to the commercial and multifamily real estate industries. VAMA successfully shepherded these measures through the General Assembly, achieving passage of 100% of its proactive legislative agenda.

## **S.B. 1228/H.B. 2006 - Accommodation of Assistive Animal Requests – SEE ATTACHED ESA PACKAGE**

*Senator George Barker (D-Alexandria) & Delegate Betsy Carr (D-Richmond)*

The outlines the process for responding to requests for accommodation of an assistive animal in accordance with federal law and guidance and stipulate that the person serving as the verifier of a disability must have a “therapeutic relationship” with the prospective tenant requesting accommodation.

A complete ESA package is included below which includes the law that passed, the DPOR Guidance that was adopted, the VAMA Reasonable Accommodation and Modification Forms and an NAA Guide.

## **H.B. 1811 - Legal Process Reforms**

*Delegate Manoli Loupassi (R-Richmond)*

The bill makes amendments to legal processes affecting VAMA members. Specifically, the bill requires the court to award a money judgment for any amounts contracted in a rental agreement on the date of the hearing and removes requirements for a notice of satisfaction of judgment. While this is already included in the Virginia Rental Housing Act, H.B. 1811 copies this code language into the unlawful detainer statute, eliminating any potential for misinterpretation by judges. The bill passed the House of Delegates and the Senate unanimously and now awaits executive action prior to the April 5 veto session, after which time it will go into effect July 1, 2017.

## **H.B. 2033 - Amendments to the Virginia Rental Housing Act**

*Delegate Jackson Miller (R-Manassas)*

Each year, VAMA works on legislation with a coalition of real property associations initiating industry-friendly amendments to the Virginia Rental Housing Act. Below are some of the highlights of provisions included in this year’s legislation:

- Creates further uniformity in the application of the provisions of the Virginia Residential Landlord/Tenant Act (VRLTA) to all residencies, while allowing a housing provider that owns no more than two single-family units to opt out of the VRLTA and be subject only to the Virginia Landlord/Tenant Act (VLTA)
- Conforms sections in the VRLTA and VLTA, including provisions related to security deposits, lease terms, notice and disclosure
- Clarifies that a housing provider must provide a tenant with written notice of their right to be present for a unit inspection and provides for a housing provider to furnish a tenant with a written statement of charges and payments over the previous 12 months rather than an “accounting” as presently required under current law
- Clarifies that any activity involving or constituting a criminal or willful act by a tenant or authorized occupant, guest or invitee qualifies as an immediate non-remediable violation for which the housing provider may terminate the tenancy

- Stipulates procedures in the event of the death of a tenant, including authorizing a housing provider to dispose of the property of a deceased tenant within 30 days if a personal representative has not been appointed by the Circuit Court after provision of 10 days notice
- Provides that authorized occupants, guests or invitees must vacate the unit upon the death of a sole tenant
- Allows a housing provider to request during a pending unlawful detainer action an order holding the tenant in contempt for failing to provide the housing provider with access to the dwelling unit
- Adds oil to the utilities that may be included in ratio utility billing
- Requires a landlord to provide a written security deposit deposition statement following a move-out inspection and allows a housing provider to seek recovery for additional damages discovered after the security deposit deposition has been made
- Authorizes a housing provider to retain an attorney to prepare or provide any required written notice and permits the use of electronic signature or notarization

H.B. 2033 passed the House of Delegates and Senate on unanimous votes and await Gubernatorial action prior to the April 5 veto session. The bill is slated to take effect July 1, 2017.

**REMEMBER TO GET YOUR COPY OF THE VAMA REDBOOK IN JULY!**

# Reasonable Accommodation or Modification Request Flow Chart

Has an individual requested a reasonable accommodation or modification?

*A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.*

*A reasonable modification is a structural change made to existing dwelling units, common areas, or public use areas, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.*

NO

YES

Request the individual complete the "Reasonable Accommodation/Modification Request Form."

This Form applies for any reasonable accommodation or modification request made by:

*Any applicant or resident who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment. Also, any person who meets the above criteria who is associated with the applicant or resident.*

*In general, a physical or mental impairment includes but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.*

Only if the person's disability is not obvious, or a nexus between the disability and request not apparent, should the individual complete the Reasonable Accommodation/Modification Verification Form.

Do the applicable forms indicate that the individual: 1) has a disability; and 2) that there is a nexus between the disability and the need for the requested accommodation or modification?

NO

YES

Does the accommodation/modification requested impose an undue financial and administrative burden on the housing provider or would it fundamentally alter the nature of the provider's operations?

*The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.*

*Also note that the fair housing rules contemplate an "interactive process" between the individual requesting the accommodation or modification and the landlord. So while an individual may request a specific change, the landlord may propose alternatives, which is permissible so long as the individual and landlord reach a mutual agreement on the details of the final accommodation or modification.*

YES

NO

**Grant reasonable  
accommodation or  
modification request.**

**Reasonable  
accommodation or  
modification requested  
not granted.**

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## REASONABLE ACCOMMODATION/MODIFICATION REQUEST FORM

(to be completed by person making the request or management on behalf of the person making the request)

\_\_\_\_\_ (Management Company and or Community Name) adheres strictly to all local, state and Federal Fair Housing Laws. We do not discriminate against anyone with a disability; we want to make reasonable accommodations and modifications in our rules, policies, practices, procedures, and/or services, when such accommodations or modifications may be necessary to afford anyone with a disability an equal opportunity to use and to enjoy their home or community. If you are requesting such an accommodation or modification, please complete this form and return it to your manager. If you are unable to complete this form for any reason please let us know and we will arrange a meeting with you so that we may jointly complete this form and prepare it for your signature.

1. Applicant/Resident requesting the accommodation or modification:

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

2. Name of person with disability, and relationship to Applicant/Resident: \_\_\_\_\_

3. Please provide written verification that you meet the guidelines and definitions of a disability as set forth under the applicable federal and state fair housing laws and regulations. (See Verification Form. Please note if disability and nexus between disability and requested accommodation are visible, then the Verification Form is not necessary.)

4. Please describe in detail the accommodation or modification that you are requesting? (Please be specific):

☐ A physical change or special feature in the apartment, building, and/or property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Adjustment to rules, communication methods, and or procedures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Please provide an explanation as to the relationship between your disability and the need for the requested accommodation or modification?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Release of Information: I understand that a change in rules or policies does not exempt me from meeting the terms of my rental agreement, lease, and/or contract. A completed Verification Form is attached.

**Requester Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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## REASONABLE ACCOMMODATION / MODIFICATION REQUEST VERIFICATION

### Landlord/Community Information

Community/Mgmt. Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

### Resident/Applicant Information

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Name of Person with Disability: \_\_\_\_\_

*Section to be completed by management.*

The Resident/Applicant named above has applied to, or is living in, our rental unit/community. The Resident/Applicant has requested our permission to make the following reasonable accommodation/modification:


*Section to be completed by management.*

If an individual with a disability requests an accommodation or modification, we will consider that request. To the extent it is not apparent, we are permitted to verify with a qualified verifier (pursuant to HUD/DOJ guidelines dated May 17, 2004) that the individual has a disability under federal law (and state law if applicable) and requires the accommodation or modification as requested above in order to have an equal opportunity to use and enjoy the rental unit and/or common areas of the community.

We would appreciate your cooperation in answering the questions on this form and returning it to the landlord/community at the address above.

**[   ] YES [   ] NO   Does the individual named above meet the legal definition of a disability under the Federal Fair Housing Act?**

*Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment.*

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*In general, a physical or mental impairment includes but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.*

**[ ] YES [ ] NO Does the individual's disability necessitate the accommodation / modification requested above in order for them to have the same opportunity a non-disabled person has to use and enjoy the unit/community?**

**Verifier Information**

Verifier Name: \_\_\_\_\_

Verifier Title: \_\_\_\_\_

Verifier Firm/Organization: \_\_\_\_\_

Relationship to Individual with Disability (e.g., treating physician): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**[ ] YES [ ] NO I have met in person with the individual named above to discuss this accommodation/modification request. (Checking the NO box does not necessarily mean an accommodation/modification request will be denied.)**

**[ ] YES [ ] NO I understand that the information provided herein will be used by Management to make a final determination on the Request for Reasonable Accommodation or Modification, and I agree to be available to be contacted by Management should any follow-up questions arise.**

**Verifier Signature: \_\_\_\_\_ Date: \_\_\_\_\_**

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# Approval or Denial of Reasonable Accommodation and/or Reasonable Modification Request

(to be completed by management)

TO: \_\_\_\_\_

On \_\_\_\_\_ (date) you requested a reasonable accommodation and/or modification as set forth on the Reasonable Accommodation/Modification Request Form:

☐ **We have approved your request. We will provide the requested accommodation and/or modification (check all that apply):**

- ☐ The change is effective immediately.
- ☐ We will provide the accommodation by \_\_\_\_\_ (date).
- ☐ To make the reasonable modification you requested, we must have bids and then arrange installation or we must order certain equipment, all of which will be at your expense (unless you live in HUD housing). We will bill you for any such charges, which amount shall constitute additional rent due. We anticipate that the change will be made by: \_\_\_\_\_ (date), and we will notify you if we discover that there will be a delay. If you feel this will take too long, please contact the manager immediately.

**The following additional rules apply to any requests for reasonable modifications:**

- ☐ Resident is responsible for removal of the modification or device within the interior of the dwelling unit at the end of the tenancy, and for the restoration of the dwelling unit to the original condition, and will be billed by Landlord for the costs of such removal and restoration.
- ☐ Resident agrees to make payments into an interest-bearing escrow account, to be used for restoration of the dwelling unit at the end of the lease term, in the amount of \$ \_\_\_\_\_ per month, due and payable on the first day of each month, for each of the months following the date of this letter. Landlord agrees that the interest on the escrowed payments will accrue in the escrow account until the dwelling unit has been restored or management elects to waive the restoration requirements in compliance with applicable law. Landlord agrees that any portion of the payments and interest remaining after restoration costs are paid, or restoration is waived, will be returned or credited to Resident.

☐ **We were unable to approve your request, but offer the following alternative accommodation or modification:**

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If you have questions or think this accommodation and/or modification will not meet your needs, please contact me immediately.

*Form Continued on Page 2*



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**[ ] We have denied your request because** (check all that apply):

- ☐ You are not a person with a disability or your guest or household member or person associated with you does not have a disability, as defined by federal and/or state law.
- ☐ We did not receive verification of the disability and/or the need for the requested reasonable accommodation/modification.
- ☐ The accommodation and/or modification you requested is not reasonable because:
- ☐ There is not a nexus between your disability and the requested accommodation and/or modification.
- ☐ The change you requested constitutes an undue burden on our operations.
- ☐ The requested change will fundamentally change the nature of our housing.

We used these facts to deny your request (list):

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**Management Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name (please print):** \_\_\_\_\_ **Title (please print):** \_\_\_\_\_

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## SENATE BILL NO. 1228

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee  
on February 24, 2017)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact § 36-96.1:1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 36-96.3:1 and 36-96.3:2, relating to the Virginia Fair Housing Law; rights and responsibilities with respect to the use of an assistance animal in a dwelling.

Be it enacted by the General Assembly of Virginia:

1. That § 36-96.1:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 36-96.3:1 and 36-96.3:2 as follows:

§ 36-96.1:1. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Assistance animal" means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under §§ § 36-96.3, 36-96.4, 36-96.5, or § 36-96.6.

"Dwelling" means any building, structure, or portion thereof, that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of, or addiction to a controlled substance as defined in Virginia or federal law. ~~Neither the term "individual with a handicap" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite~~ For the purposes of this chapter, the terms "handicap" and "disability" shall be interchangeable.

"Lending institution" includes any bank, savings institution, credit union, insurance company or mortgage lender.

"Major life activities" means, but shall not be limited to, any the following functions: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Person" means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations,

60 governmental entities, legal representatives, mutual companies, joint stock companies, trusts,  
61 unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

62 "Physical or mental impairment" means, but shall not be limited to, any of the following: (i) any  
63 physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of  
64 the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including  
65 speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or  
66 endocrine or (ii) any mental or psychological disorder, such as an intellectual or developmental  
67 disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical  
68 or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing  
69 impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart  
70 disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities;  
71 emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled  
72 substance; and alcoholism.

73 "Respondent" means any person or other entity alleged to have violated the provisions of this  
74 chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined  
75 pursuant to the provisions of § 36-96.9.

76 "Restrictive covenant" means any specification in any instrument affecting title to real property that  
77 purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color,  
78 religion, national origin, sex, elderliness, familial status, or handicap.

79 "To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to  
80 occupy premises not owned by the occupant.

81 **§ 36-96.3:1. Rights and responsibilities with respect to the use of an assistance animal in a**  
82 **dwelling.**

83 A. A person with a disability, or a person associated with such person, who maintains an assistance  
84 animal in a dwelling shall comply with the rental agreement or any rules and regulations of the  
85 property owner applicable to all residents that do not interfere with an equal opportunity to use and  
86 enjoy the dwelling and any common areas of the premises. Such person shall not be required to pay a  
87 pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be  
88 responsible for any physical damages to the dwelling if residents who maintain pets are responsible for  
89 such damages in accordance with such documents or state law. Nothing herein shall be construed to  
90 affect any cause of action against any resident for other damages under the laws of the Commonwealth.

91 B. If a person's disability is obvious or otherwise known to the person receiving a request, or if the  
92 need for a requested accommodation is readily apparent or known to the person receiving a request, the  
93 person receiving a request for reasonable accommodation may not request any additional verification  
94 about the requester's disability. If a person's disability is readily apparent or known to the person  
95 receiving the request but the disability-related need is not readily apparent or known, the person  
96 receiving the request may ask for additional verification to evaluate the requester's disability-related  
97 need.

98 C. A person with a disability, or a person associated with such person, may submit a request for a  
99 reasonable accommodation to maintain an assistance animal in a dwelling. Subject to subsection B, the  
100 person receiving the request may ask the requester to provide reliable documentation of the disability  
101 and the disability-related need for an assistance animal, including documentation from any person with  
102 whom the person with a disability has or has had a therapeutic relationship.

103 D. Subject to subsection B, a person receiving a request for a reasonable accommodation to  
104 maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting  
105 documentation to verify the disability and the disability-related need for the reasonable accommodation  
106 regarding an assistance animal.

107 E. For purposes of this section, "therapeutic relationship" means the provision of medical care,  
108 program care, or personal care services, in good faith, to the person with a disability by (i) a mental  
109 health service provider as defined in § 54.1-2400.1; (ii) an individual or entity with a valid, unrestricted  
110 state license, certification, or registration to serve persons with disabilities; (iii) a person from a peer  
111 support or similar group that does not charge service recipients a fee or impose any actual or implied  
112 financial requirement and who has actual knowledge about the requester's disability; or (iv) a caregiver,  
113 reliable third party, or government entity with actual knowledge of the requester's disability.

114 **§ 36-96.3:2. Reasonable accommodations, interactive process.**

115 A. When a request for a reasonable accommodation establishes that such accommodation is  
116 necessary to afford a person with a disability, and who has a disability-related need, an equal  
117 opportunity to use and enjoy a dwelling and does not impose either (i) an undue financial and  
118 administrative burden or (ii) a fundamental alteration to the nature of the operations of the person  
119 receiving the request, the request for the accommodation is reasonable and shall be granted.

120 B. When a request for a reasonable accommodation may impose either (i) an undue financial and  
121 administrative burden or (ii) a fundamental alteration to the nature of the operations of the person

receiving the request, the person receiving the request shall offer to engage in a good-faith interactive process to determine if there is an alternative accommodation that would effectively address the disability-related needs of the requester. An interactive process is not required when the requester does not have a disability and a disability-related need for the requested accommodation. As part of the interactive process, unless the reasonableness and necessity for the accommodation has been established by the requester, a request may be made for additional supporting documentation to evaluate the reasonableness of either the requested accommodation or any identified alternative accommodations. If an alternative accommodation is identified that effectively meets the requester's disability-related needs and is reasonable, the person receiving the reasonable accommodation request shall make the effective alternative accommodation. However, the requester shall not be required to accept an alternative accommodation if the requested accommodation is also reasonable. The various factors to be considered for determining whether an accommodation imposes an undue financial and administrative burden include (a) the cost of the requested accommodation, including any substantial increase in the cost of the owner's insurance policy; (b) the financial resources of the person receiving the request, (c) the benefits that the accommodation would provide to the person with a disability, and (d) the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

C. A request for a reasonable accommodation shall be determined on a case-by-case basis and may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes an undue financial and administrative burden on the person receiving the request; or (iv) the accommodation would fundamentally alter the nature of the operations of the person receiving the request. With respect to a request for reasonable accommodation to maintain an assistance animal in a dwelling, the requested assistance animal shall (a) work, provide assistance, or perform tasks or services for the benefit of the requester or (b) provide emotional support that alleviates one or more of the identified symptoms or effects of such requester's existing disability. In addition, as determined by the person receiving the request, the requested assistance animal shall not pose a clear and present threat of substantial harm to others or to the dwelling itself that is not solely based on breed, size, or type or cannot be reduced or eliminated by another reasonable accommodation.

2. That if any provision of this act is determined by the U.S. Department of Housing and Urban Development to be not substantially equivalent or otherwise inconsistent with the federal Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq., as amended, such provision shall not be enforceable.



<b>Adopted by:</b>	Real Estate Board on October 26, 2016 Fair Housing Board on March 1, 2017
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As a means of providing information or guidance of general applicability to the public, the Real Estate Board and Fair Housing Board issue this guidance document to interpret the requirements of 18 VAC 135-50 (Fair Housing Regulations).

The purpose of this guidance document is to address issues regarding the “verification” of reasonable accommodation requests for assistance animals, particularly those assistance animals that provide emotional support or other seemingly untrained assistance to persons with a disability.<sup>1</sup>

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### I. INTRODUCTION

When the Virginia Fair Housing Law (“VFHL”) and its federal counterpart, the Fair Housing Act (“FHA”), were amended in the late 1980s to include disability as a protected class, legislators created targeted protections for persons with a disability. Specifically, persons with a disability were given the right to seek reasonable accommodations (changes to rules, practices, policies, etc.) and modifications (physical alternations to the premises) to ensure the opportunity to enjoy equal access to housing.

Since that time, and perhaps with greater frequency in recent years, persons with a disability and housing providers have faced questions over making accommodations to policies that restrict pets or assistance animals. While service animals—such as dogs that guide visually impaired persons, alert hearing impaired persons to sounds and alarms, or perform tasks for mobility impaired individuals—are not a new phenomenon, increasingly there are a growing number of instances in which persons with a disability derive other types of support or assistance from animals.

Today, it is just as common for an animal to provide emotional support, comfort, or companionship to a person with a mental impairment. Some animals are naturally sensitive to a person’s blood sugar levels and can alert when an individual who has diabetes reaches a dangerous threshold; others will alert when sensing that a person with a disability is about to experience a seizure. Often, the animal in question provides such assistance without any formal training but instead through innate abilities the animal possesses. Such innate assistance, though,

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<sup>1</sup> While fair housing laws use the term “handicap,” this document uses the more preferred term “disability” and its variations, which have the same legal meaning. See, 18 VAC 135-50-200; Bragdon v. Abbott, 524 U.S. 624 (1998).

## GUIDANCE DOCUMENT | Real Estate Board and Fair Housing Board

### Reasonable Accommodation Requests for Assistance Animals

particularly when coupled with a person who has “invisible” impairments, reportedly presents challenges for housing providers with pet restriction policies.

Housing providers suggest that some individuals “game the system,” and abuse the legal protections in place for persons with disabilities, by fraudulently claiming an “invisible” impairment and declaring their pet an assistance animal. For instance, housing providers complain that there are an influx of websites and other third-party sources offering assistance animal “certifications” without any firsthand knowledge of whether the animal provides a needed service or support, or even if the individual tied to the request is a person with a disability. More recently, some housing providers point to what appear to be form letters from medical professionals vouching for persons to have such an animal without evidence of effort to verify either disability or the claimed assistance.

Fundamentally, some housing providers contend that the VFHL and FHA, in their current form, leave little room to question such verifications—especially when an individual presents an assistance animal “certification” obtained from an online source—without the risk of inviting a discrimination charge. For the reasons below, we believe this is not the case, as adequate, appropriate protections already exist in both fair housing and health professions laws.

## II. BACKGROUND

In the late 1980s, Congress and the General Assembly amended their respective fair housing laws to prohibit discrimination against persons with a disability in residential housing transactions.<sup>2</sup> To ensure full and equal access to housing, the VFHL and FHA were further amended to provide persons with a disability additional protection in the form of requiring reasonable accommodations “in rules, practices, policies, or services when such accommodations may be necessary to afford such person [an] equal opportunity to use and enjoy a dwelling.”<sup>3</sup>

A person is considered disabled under the VFHL and FHA when the person: (1) has a physical or mental impairment that substantially limits one or more of their major life activities; (2) has a record of having such an impairment; or (3) is regarded as having such an impairment.<sup>4</sup> “Mental impairments” include, but are not limited to, “emotional or mental illness . . . autism,

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<sup>2</sup> See, Va. Code § 36-96.3(A)(8)(9); 42 U.S.C. § 3604(f).

<sup>3</sup> See, Va. Code § 36-96.3(B)(ii); 42 U.S.C. § 3604(f)(3)(B).

<sup>4</sup> See, Va. Code § 36-96.1:1; 42 U.S.C. § 3601. Further, such definitions are consistent with the definition of “disability” found in the Americans with Disabilities Act (ADA).

## GUIDANCE DOCUMENT | Real Estate Board and Fair Housing Board

### Reasonable Accommodation Requests for Assistance Animals

epilepsy . . . [and] emotional illness.”<sup>5</sup> Thus, an accommodation aimed at ameliorating the effects of a mental impairment may be required where it is shown that the accommodation is reasonable and necessary to afford a person with a mental or emotional impairment an equal opportunity to use and enjoy the dwelling.

The mental impairments above are emphasized because such so-called invisible impairments are often at the center of an accommodation request for an assistance animal. Differentiation between assistance animals—a different and broader class of animals that assist people with disabilities—and “service dogs” is a fundamental legal distinction for purposes of fair housing accommodation request.

#### ***A. Service Animals and Public Accommodations***

The federal Americans with Disabilities Act, as amended (“ADA”),<sup>6</sup> and its state counterpart, the Virginians with Disabilities Act, as amended (“VDA”),<sup>7</sup> prohibit discrimination against people with disabilities (physical or mental) in employment, the provision of public services, and in public accommodations. Both laws focus, in part, on ensuring that persons with a disability have equal access to places of public accommodation (e.g., hotels, shopping centers, restaurants, etc.) in all areas otherwise open to the public.

Provisions of the ADA and VDA apply to public accommodations and do not extend to residential housing. Public entities covered by these laws must allow a person with a disability to be accompanied by a service animal, narrowly defined as an animal trained to assist persons with visual, hearing, or mobility impairments.<sup>8</sup> Under the ADA, “the provision of emotional support, well-being, comfort, or companionship” is not, by itself, sufficient to be classified as a service animal.<sup>9</sup>

When evaluating a reasonable accommodation request, a public accommodation may verify that an animal is required because of a disability (although it cannot inquire about the

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<sup>5</sup> See, 18 VAC 135-50-200; 24 CFR § 100.201.

<sup>6</sup> See, 42 U.S.C. § 12101, *et seq.*

<sup>7</sup> See, Va. Code § 51.5-1 *et seq.*

<sup>8</sup> See, Va. Code § 51.5-40.1; 28 C.F.R. § 36.104.

<sup>9</sup> See, 28 C.F.R. § 35.104. The term “service animal” is defined in part as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability[.]” The work or tasks performed by a service animal must be directly related to the individual's disability...[T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”



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nature of a person's impairment) and ask what tasks the service animal has been trained to perform.<sup>10</sup> During its 2016 legislative session, the Virginia General Assembly amended the VDA to deem it a misdemeanor criminal offense for a person to access a public accommodation by falsely representing an animal as a service dog or hearing dog.<sup>11</sup>

#### ***B. Assistance Animals, Private Homes, and Fair Housing***

In contrast, the VFHL and FHA focus exclusively on accommodations needed by a person with a disability in order to have full and equal access to their home. These laws take a broader approach and require housing providers to accommodate not only service animals as traditionally understood under the ADA, but assistance animals that offer necessary support to persons with a disability without regard to training or tasks performed.<sup>12</sup> Accommodation of untrained emotional support animals may be required under the FHA if such accommodation is reasonably necessary to allow a person with a disability an equal opportunity to enjoy and use residential housing.<sup>13</sup>

When evaluating a reasonable accommodation request under fair housing law, a housing provider may verify that the requester meets the definition of disabled (although it cannot inquire about the specific nature of a person's impairment) and ask how the claimed assistance animal will allow the person with a disability to use and enjoy the dwelling.

#### ***C. Assistance Animal and Accommodations Case Law***

The physical and philosophical distinction between public and private spaces underscore why the law requires different approaches to reasonable accommodations in each setting. In

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<sup>10</sup> See, 28 C.F.R. § 35.136(f).

<sup>11</sup> See, Va. Code § 51.5-44.1.

<sup>12</sup> The U.S. Department of Justice and the U.S. Department of Housing and Urban Development jointly administer the FHA under 42 U.S.C. §§ 3614(a) and 3612(a), and maintain that the ADA's definition of the term "service animals" should not inform the FHA's broader definition of assistance animals. See, *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 75 Fed. Reg. 56236 (Sept 15, 2010) and *Pet Ownership for the Elderly and Persons with Disabilities*, 73 Fed. Reg. 63834, (Oct. 27, 2008).

<sup>13</sup> See, *Janush v. Charities Housing Development Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) (denying a motion to dismiss a claim to permit keeping birds and cats as emotional support animals because "plaintiff has adequately plead that she is handicapped, that defendants knew of her handicap, that accommodation of the handicap may be necessary and that defendants refused to make such accommodation..."); *Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1036 (D.N.D. 2011) (holding that "the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability").

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publishing its final rule regarding assistance animals in government-funded housing, the U.S. Department of Housing and Urban Development (“HUD”), which is the agency charged with enforcing the FHA, recognized that “assistance animals” include “service dogs” but also animals that “alert[] individuals to impending seizures and providing emotional support to persons who have a disability-related need for such support.”<sup>14</sup> During its rule-making process, HUD found “a valid distinction between the functions animals provide to persons with disabilities in the public arena, i.e., performing tasks enabling individuals to use public services and public accommodations, as compared to how an assistance animal might be used in the home.”<sup>15</sup>

In particular, HUD reasoned that assistance animals, including emotional support animals, “provide very private functions for persons with mental and emotional disabilities” that alleviate the effects of such disabilities without any specialized training.<sup>16</sup> In essence, the federal rule-making process concluded that there is a notable difference in the type of accommodation one may need in order to access public venues (e.g., restaurants, shopping centers, etc.) than in the type of accommodation a person with a disability may need to have full access to and enjoyment of their home.

While this issue has not been addressed under the VFHL by Virginia courts, federal courts have found HUD’s reasoning persuasive in evaluating reasonable accommodation issues under the FHA for private residential housing as well.<sup>17</sup> For instance, in Overlook Mutual Homes, Inc. v. Spencer, an Ohio federal district court thoroughly weighed whether the FHA imposed a training requirement on an animal in order for it to be approved as a reasonable accommodation.<sup>18</sup> In ruling the FHA imposed no such requirement, the court reasoned,

“Simply stated, there is a difference between not requiring the owner of a movie theater to allow a customer to bring her emotional support dog, which is not a service animal, into the theater to watch a two-hour movie, an ADA-type issue, on one hand, and permitting the provider of housing to refuse to allow a renter to keep such an animal in her apartment in order to provide emotional support to her

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<sup>14</sup> See, 73 Fed. Reg. 63834 (Oct. 27, 2008).

<sup>15</sup> *Id.*, at 63836.

<sup>16</sup> *Id.*

<sup>17</sup> See, Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850, 858-61 (S.D. Ohio 2009); Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc., 778 F. Supp. 2d 1028, 1035-36 (D.N.D. 2011); Falin v. Condo. Ass’n of La Mer Estates, Inc., No.: 11-61903-CIV, 2012 U.S. Dist. LEXIS 73453, at \*10 (S.D. Fla., May 28, 2012); Sanzaro v. Ardiente Homeowners’ Association, LLC, 21 F. Supp. 3d 1109 (D. Nev. 2014).

<sup>18</sup> See, Overlook Mut. Homes, 666 F. Supp. 2d at 857 (rejecting prior cases that imposed an ADA-like training requirement for an animal to qualify as a reasonable accommodation).

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and to assist her to cope with her depression, an FHA-type issue, on the other hand.”<sup>19</sup>

This analysis alone was enough to sway the court, but it further discussed with approval the distinctions drawn by HUD in issuing the above-cited rule to hold that an animal can qualify as a reasonable accommodation under the FHA even if the animal is not individually trained (as required by the ADA for public accommodations) but rather is an emotional support animal.<sup>20</sup>

Other federal courts have since adopted this reasoning. In North Dakota, the district court denied summary judgment for a housing provider who refused to provide an accommodation to its policy of charging additional fees for an untrained assistance animal.<sup>21</sup> In doing so, the court held that “the FHA encompasses all types of assistance animals regardless of training” that ameliorate the effects of either physical or mental disabilities.<sup>22</sup> Before reaching its decision, the court reviewed the competing positions on this issue and reasoned that it must necessarily distinguish accommodations for places of public accommodation from those for housing given the type of access a person with a disability needs to have full and equal enjoyment of each.<sup>23</sup>

A federal district court in Florida reached the same conclusion in holding that an untrained “emotional support animal” could be a reasonable accommodation under the FHA.<sup>24</sup> Similarly, the federal district court in Nevada likewise held that the FHA imposed no training requirements for assistance animals, and in doing so, refused to apply the ADA definition of service animal when analyzing issues related to accommodations for assistance animals under the FHA.<sup>25</sup>

The clear trend in FHA case law is to permit reasonable accommodations for (untrained) assistance animals where a nexus exists between the requesting persons’ disability and the function or assistance that the animal provides. If the requester is able to show how the accommodation (here, for example, an assistance animal) ameliorates one or more effects of their disability, such a connection exists and the accommodation should be granted as “necessary

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<sup>19</sup> *Id.*, at 859.

<sup>20</sup> *Id.*, at 861.

<sup>21</sup> See, Fair Hous. of the Dakotas, 778 F. Supp. 2d 1028 (D. N.D. 2011).

<sup>22</sup> *Id.*, at 1036.

<sup>23</sup> *Id.*, at 1035-36.

<sup>24</sup> See, Falin v. Condominium Assoc. of La Mer Estates, Inc., No.: 11-61903-CIV-Cohn/Seltzer, 2012 U.S. Dist. LEXIS 73453 (S.D. Fla., May 28, 2012).

<sup>25</sup> See, Sanzaro v. Ardiente Homeowners’ Assoc., LLC, 21 F. Supp. 3d at 1117-19.

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to afford such person an equal opportunity to use and enjoy a dwelling.”<sup>26</sup> For assistance animals, this means there must be a relationship between the person’s disability and the function or assistance provided by the animal.<sup>27</sup> There is, however, no requirement under the VFHL or the FHA that an animal must be trained or “verified” to provide the claimed assistance.

### III. ANALYSIS

We agree with HUD, DOJ, and the multiple federal courts that have addressed this issue, that providing an accommodation to allow a person with a disability full access to and enjoyment of their home is necessarily different from providing accommodation to access a public place for an abbreviated period of time. Given the persuasive reasoning expressed by these authorities, we posit that the VFHL likewise distinguishes between ADA/VDA “service animals” and imposes no such training requirement for assistance animals.

Nor should there be. Increasingly, animals are proving useful to lessen the effects of mental and emotional disabilities such as anxiety, autism, post-traumatic stress disorder (“PTSD”), etc. because animals have been shown to have the innate ability to relieve depression and anxiety, reduce stress and stress-related pain, provide companionship, and detect seizures.<sup>28</sup> In particular, it is widely recognized that animals, typically dogs, are helpful in treating military service members and veterans diagnosed with PTSD.<sup>29</sup> For instance, the *Richmond Times-Dispatch* not long ago profiled a Mechanicsville veteran and Purple Heart recipient who described the assistance he received from an animal to lessen the effects of PTSD and anxiety.<sup>30</sup>

#### *A. Reliable Verification of Disability*

Housing providers seeking clarification about third-party verification should redirect their attention away from animal training or certification, which is unnecessary and legally insufficient. They also should not be daunted by the prospect of potential litigation into accepting dubious verifications limited to vague statements of how an assistance animal would

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<sup>26</sup> See, 73 Fed. Reg. 63834, 63835 (Oct. 27, 2008); see also, Commonwealth of Virginia ex rel Fair Housing Board v. Windsor Plaza Condo. Ass’n, Inc., 289 Va. 34, 54, 768 S.E. 2d 79, 88 (2014).

<sup>27</sup> See, 73 Fed. Reg. at 63835; see also, Overlook Mut. Homes, 666 F. Supp. 2d at 857.

<sup>28</sup> See, 73 Fed. Reg. at 63835.

<sup>29</sup> See, U.S. Dep’t of Veteran Affairs, PTSD: National Center for PTSD, “Dogs and PTSD,” [http://www.ptsd.va.gov/public/treatment/cope/dogs\\_and\\_ptsd.asp](http://www.ptsd.va.gov/public/treatment/cope/dogs_and_ptsd.asp) (last visited Oct. 21, 2016).

<sup>30</sup> See, RICHMOND TIMES-DISPATCH, “Dog Changes Veteran’s Life,” [http://www.richmond.com/article\\_7921daf7-6d03-583e-aad8-588c455e3cbc.html](http://www.richmond.com/article_7921daf7-6d03-583e-aad8-588c455e3cbc.html) (last visited Oct. 21, 2016).

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benefit the requester, but rather should insist on supplemental credible confirmation of underlying disability. As with any other reasonable accommodation request, housing providers are absolutely within their rights to focus first on establishing the legitimacy of the requesting party's disability status as defined by fair housing law. Then, as stated above, the only issue remaining is evaluation of information to determine whether the animal provides assistance that ameliorates the effects of the established disability.

Thus, if a person suffering from PTSD—as diagnosed by their treating physician—receives assistance from an untrained dog in the form of emotional support, lessened anxiety, or exiting a building quickly when experiencing a flashback, the housing provider must make exceptions to any pet limitation policies that may normally apply to the housing in question (with no further requirement that an assistance animal be trained, certified, or verified).<sup>31</sup> Conversely, where a prospective tenant fails to provide credible documentation of either a qualifying disability, or cannot show a relationship to the claimed assistance from an animal, the housing provider may request additional information from a reliable third party “in a position to know about the individual's disability.”<sup>32</sup>

#### ***B. Best Practice Recommendations***

Housing providers should only seek “reliable disability-related information” that: (1) establishes that the person is “disabled” as defined by the FHA and VFHL; (2) describes the needed accommodation (e.g., assistance animal); and (3) demonstrates how the requested accommodation is related to and will help ameliorate the effects of the disability.<sup>33</sup> We caution, however, that housing providers should rarely require access to an individual's medical records or details concerning the nature or severity of the person's disability. Additionally, care should be taken to keep the documentation confidential given its personal and health-related nature. Finally, we cannot warn strongly enough against rules or procedures that would unduly restrict the process a person with a disability uses when seeking a reasonable accommodation; to do so

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<sup>31</sup> See, [18 VAC 135-50-200\(D\)\(2\)](#) incorporating by reference the JOINT STATEMENT OF U.S. DEP'T OF HOUS. AND URBAN DEVEL. AND DEP'T OF JUSTICE, “Reasonable Accommodations under the Fair Housing Act,” May 17, 2004, p. 13 (Response to question 18) (link: <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>)

<sup>32</sup> *Id.*

<sup>33</sup> See, [18 VAC 135-50-200\(D\)\(2\)](#) incorporating by reference the JOINT STATEMENT OF U.S. DEP'T OF HOUS. AND URBAN DEVEL. AND DEP'T OF JUSTICE “Reasonable Accommodations Under the Fair Housing Act” at 13-14.

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could have a chilling effect on persons with disabilities, perhaps most especially those with intellectual or mental impairments.

Housing providers should not impose additional deposits or fees as a condition of granting a reasonable accommodation request for an assistance animal.<sup>34</sup> Charging such fees in the absence of significant damage, or based only on unjustified assumptions about an animal, goes against the anti-discrimination nature of the statutes in place to protect persons with a disability. The animal is essentially functioning as an assistive device in such circumstances; so just as a housing provider should not impose a wheelchair deposit for potential carpet damage, it should not demand upfront money for animal damage that may never occur. Of course, persons with a disability are nonetheless responsible for any damages actually caused by an assistance animal, and housing providers retain the right to seek recovery for damages that exceed normal wear and tear (whether caused by an assistance animal or a wheelchair).<sup>35</sup>

When a housing provider seeks additional information from a person seeking a reasonable accommodation for an assistance animal, it may be advisable to grant a temporary exception to any pet limitation policy pending its submission. Such a temporary exception may serve to avoid claims that the housing provider refused the reasonable accommodation request. Ultimately, if the person seeking a reasonable accommodation for an assistance animal cannot provide reliable evidence supporting their disability status as defined by FHA or VFHL, or fails to establish the required nexus between the disability and the assistance the animal provides, then the housing provider may deny such request.

#### *C. Therapeutic Relationships*

The evaluation of a reasonable accommodation request is “a highly fact specific inquiry”<sup>36</sup> demanding individual, case-by-case consideration by housing providers. As a result, compiling an exhaustive inventory of “acceptable” documentation (or, alternatively, a list of unacceptable authenticators) for verification purposes is inadvisable, if not practically impossible, because a requester must be allowed to submit credible information that may not otherwise appear on a list.

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<sup>34</sup> See, 18 VAC 135-50-200(D)(2) incorporating by reference the JOINT STATEMENT OF U.S. DEP’T OF HOUS. AND URBAN DEVEL. AND DEP’T OF JUSTICE “Reasonable Accommodations Under the Fair Housing Act,” Question 11 at 9-10.

<sup>35</sup> *Id.*

<sup>36</sup> See, Windsor Plaza, 289 Va. at 55 citing Scoggins v. Lee's Crossing Homeowners Ass'n, 718 F.3d 262, 272 (4th Cir. 2013).

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We caution against limiting the pool of acceptable persons or entities qualified to verify disability status—as well as the imposition of higher or different standards based on type of disability (e.g. mental health vs. physical impairment)—to avoid the risk of discrimination against a qualified person with a disability in an unusual or unforeseeable circumstance. For example, limiting verification documentation *exclusively* to physicians, psychiatrists, or similar healthcare professionals may disenfranchise otherwise eligible persons with a disability who lack the financial or logistical means to access medical care for a period of time.

However, this does not mean housing providers are prohibited from asking disability verification sources for reasonable documentation of their reliability. In light of expressed concerns from some housing providers about hesitancy to request *any* information to avoid a potential fair housing complaint or charge, this guidance document provides examples of sources considered to meet the “reliable third party” standard as expressed in the HUD/DOJ Joint Statement. In general, housing providers may ask that the verifier have a therapeutic relationship with the requester, in order to establish their reliability as a “third party who is in a position to know” about the individual’s disability.

For disability verification purposes, we consider “therapeutic relationship” to mean the provision of medical care, program services, or personal care services done in good faith, in the interests of the person with a disability, by: (1) a mental health service provider as defined in Va. Code § 54.1-2400.1; (2) an individual or facility under the rights, privileges, and responsibilities conferred by a valid, unrestricted state license, certification, or registration to serve persons with disabilities; (3) a member of a peer support or similar group that does not charge service recipients a fee, or impose any actual or implied financial requirement, and who has actual knowledge about the requester’s disability; or (4) a caregiver with actual knowledge about the requester’s disability.

Housing providers also may request verifiers authenticate all or some of the following information to help evaluate their reliability and knowledge of the requester’s disability:

- General location of the provision of care, as well as duration (for example, number of in-person sessions within the preceding 12 months);
- Whether the verifier is accountable to or subject to any regulatory body or professional entity for acts of misconduct;



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- Whether the verifier is trained in any field or specialty related to persons with disabilities in general or the particular impairment cited (again, being cautious not to venture into the nature and scope of the requester's disability); or
- Whether the verifier is recognized by consumers, peers, or the public as a credible provider of therapeutic care.

#### ***D. Examples of Presumed Reliable Third-Party Verifiers***<sup>37</sup>

- Persons licensed or certified by the Virginia Boards of Audiology and Speech-Language Pathology; Counseling; Dentistry; Medicine; Nursing; Optometry; Pharmacy; Physical Therapy; Psychology; or Social Work, when acting within their scope of practice to treat the requester's claimed disability.
- Any health care provider on active duty in the armed services or public health service of the United States at any public or private health care facility while such practitioner is so commissioned or serving, and in accordance with his official duties and scope of practice to treat the requester's claimed disability.
- Persons in compliance with the regulations governing an organization or facility qualified to treat the requester's claimed disability and licensed by the Department of Behavioral Health and Developmental Services; the Department for Aging and Rehabilitative Services; or other similar non-medical service agency.
- Unlicensed counselors or therapists rendering services similar to those falling within the standards of practice for professional counseling, as defined in Va. Code § 54.1-3500, including members of peer support groups, so long as the person with a disability benefiting from such services is not subject to a charge or fee, or any financial requirement, actual or implied.
- A licensed or certified practitioner of the healing arts in good standing with his profession's regulatory body in another state, who has a bona fide practitioner-patient relationship with the requester in compliance with all requirements of applicable Virginia law and regulations.

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<sup>37</sup> This list is not meant to be exhaustive.



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A note about online disability verifications or other documentation that appear formulaic: In situations involving verification from an out-of-state practitioner not regulated by the Virginia Board of Medicine, the practitioner should be licensed or certified by both the other state's applicable regulatory body as well as the jurisdiction where the person with a disability was located *at the time services were provided* (presumably, in most cases, Virginia).

Housing providers with reason to believe a disability verification was obtained via telemedicine in particular (e.g., online verification) may authenticate the information to ensure compliance with Virginia Board of Medicine guidance that states, in part: "Practitioners who treat or prescribe through online service sites must possess appropriate licensure in all jurisdictions where patients receive care."<sup>38</sup>

In order to assess the reliability of the verifier when evaluating a reasonable accommodation request, a housing provider—or the Virginia Fair Housing Office (VFHO) in the event of a complaint investigation—may question the basic nature of the interaction among the verifier and the requester. (In fact, as part of perfecting a fair housing complaint for filing, the VFHO asks medical or mental health professional verifiers to certify their willingness to testify under oath as to the disability-related need for the requested accommodation.) We emphasize the need to focus not on the nature or severity of the condition or diagnosis, but rather the credibility of the information provided in establishing the verifier's qualifications as being in a position to know about the person's disability.

To determine whether a disability verification that appears questionable to the housing provider—or the VFHO in the event of a complaint investigation—results from a bona fide practitioner-patient relationship, the verifier may be asked to affirm compliance with Virginia law governing the practice of health professions, as well as adherence to Board of Medicine official guidance on telemedicine<sup>39</sup> as applicable.

### IV. CONCLUSION

The U.S. Supreme Court has held that the FHA is remedial in nature and requires "generous construction" in order to combat pervasive discrimination against persons with a

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<sup>38</sup> See Department of Health Professions, Virginia Board of Medicine, Guidance Document 85-12 (<http://www.townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5712>).

<sup>39</sup> *Id.*

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disability.<sup>40</sup> Allowing housing providers to challenge disability verifications arbitrarily, or require overly burdensome documentation from individuals making reasonable accommodation requests, would jeopardize the fundamental protections in place for persons with a disability under fair housing laws. Moreover, amending the VFHA to make state-level rules governing assistance animals more stringent would only create a false sense of security or safe harbor; Virginia housing providers would remain subject to federal complaints or charges by HUD under FHA, just as they are now.

At the same time, ensuring that residential housing providers can request and obtain reliable, credible disability verification in support of accommodation requests for assistance animals preserves the integrity of the process for all parties. Virginia law governing professional licensure of health care practitioners sufficiently addresses the stated concerns of housing providers regarding requests for a therapeutic relationship between the requester and the verifier. The Board of Medicine's guidance on telemedicine in particular appears to prohibit the fraudulent "verification mills"<sup>41</sup> cited by some industry advocates.

Given that no statutory deficiency appears evident in relation to the issues raised, we offer this guidance to demonstrate that asking disability verification sources to document a therapeutic relationship with the accommodation requester is a reasonable way for housing providers to evaluate third-party reliability. Pending submission of additional supporting information, it may still be prudent for housing providers to grant a temporary exception to any pet limitation policy, in the spirit of the kind of informal interactive process preferred by HUD.<sup>42</sup> In this way, discussions remain open and the housing provider may avoid claims of undue delay in providing a response to the accommodation request, which could be considered a denial.

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<sup>40</sup> See, e.g., *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995); *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 212 (1972).

<sup>41</sup> See, "Fraudulent Requests for Accommodation of Assistive/Emotional Support Animals," Virginia Apartment Management Association for Affordable Housing, Real Estate Law and Mortgages Workgroup of the Virginia Housing Commission, July 2016 ([http://services.dlas.virginia.gov/User\\_db/frmView.aspx?ViewId=4608&s=16](http://services.dlas.virginia.gov/User_db/frmView.aspx?ViewId=4608&s=16)).

<sup>42</sup> See, 18 VAC 135-50-200(D)(2) incorporating by reference the JOINT STATEMENT OF U.S. DEP'T OF HOUS. AND URBAN DEVEL. AND DEP'T OF JUSTICE, AT P. 7-9 (ANSWER TO QUESTION 7).

## **Script for Owners to Address Assistance Animal Concerns with Residents**

Before you engage in conversation with residents about assistance animals, please review NAA's "FAQs Regarding Reasonable Accommodation Requests for Assistance Animals."

In addition to the background information contained in the FAQs, remember to consider the following. It is important that you apply the same procedure or your company's policy uniformly. Consider including information on your reasonable accommodation policy in lease documents or the community newsletter. Provide notice of the policy in place so residents have a clear understanding of the process and have an opportunity to ask questions.

Your response should not vary from person to person and regardless of whether the reasonable accommodation request is verbal or in writing. Any deviation or change in your response could be viewed as disparate treatment (i.e. discriminating against someone by treating him or her differently than another person who is similarly situated) and result in a fair housing violation. Remember to document communications in writing and maintain copies of your correspondence with the resident.

As you review the scenarios below, keep in mind that the scenarios are applicable whether the initial contact by the resident is face-to-face, over the phone or via email. Again, apply the same procedure uniformly.

Below are eight (8) scenarios where the issue of assistance animals may arise between owners and residents.

- 1. A prospective resident with his or her assistance animal comes into the leasing office and expresses interest in renting a unit. The prospective resident says, "I have an assistance animal, and [the animal] will be living with me."**

"Ok. Once we complete your application, I would be happy to assist you with that request. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms\* for you. Then, we can go over them, and I can answer any questions you may have."

\*As a follow up to the above response, it is permissible to have a process that requires formal, written documentation for *all* reasonable accommodation requests from residents. However, please keep in mind

that HUD permits an owner to request third party verification only under certain circumstances.

According to HUD's guidance<sup>1</sup>, housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal.

If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

A housing provider may not ask a resident or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog.

Again, you may not ask for third party verification if the disability or disability-related need is readily apparent or already known to the provider (e.g. persons who are blind or have low vision that require a guide dog). For example, if the resident or applicant is clearly blind and in the presence of a seeing-eye dog, there is no need for any further documentation.

**2. A prospective resident without his or her assistance animal comes into the leasing office and expresses interest in renting a unit. The prospective resident says, "I have an assistance animal, and [he or she] will be living with me."**

"Ok. Once we complete your application, I would be happy to assist you with that request. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all

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<sup>1</sup> [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf)

residents. I will prepare the forms\* for you. Then, we can go over them, and I can answer any questions you may have.”

\*When you determine the appropriate forms for the resident, remember to consider whether the disability or disability-related need for the animal is readily apparent or already known. For example, if the resident or applicant seeks an emotional support animal, the disability or disability-related need for the animal may not be apparent and you may require additional documentation, such as a third party verification form.

**3. A current resident approaches the owner and says, “My application for a service dog was approved. I was diagnosed with epilepsy, and the dog will help me get around in case I have a seizure.”**

“Ok. I would be happy to assist you with that request. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have.”

In this case, the resident has given all the relevant information for the reasonable accommodation request. The resident has verbally confirmed his or her disability and provided the connection between the disability and the disability-related need for the animal. This scenario will not always be the case. Remember to follow the same procedure and script with every resident or applicant.

**4. A current resident informs the owner saying, “I’m getting an emotional support animal. I don’t have to pay any pet fees, right?”**

“Yes, pet fees are waived for an assistance animal. In order to comply with fair housing laws, we need you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have.”

**5. A current resident approaches the owner and says, “I wanted to let you know that I got an assistance animal. Here’s his certificate as a registered therapy dog.”**

“Ok. I would be happy to assist you with that request. Regardless of the dog’s registration or certification, we need you to fill out some paperwork in order to comply with fair housing laws. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have.”

- 6. Maintenance staff performs routine maintenance in a resident's unit and finds an unregistered animal in the resident's apartment. After the resident receives notice from the owner, the resident claims that the animal is not a pet. He or she says it is an emotional support animal.**

"Ok. You should have requested a reasonable accommodation for the animal according to our company policy, but we can consider a request now. In order to comply with fair housing laws, we will need to obtain some basic information about the animal and have you to fill out some paperwork. We have an approval process for reasonable accommodation requests for assistance animals that we apply to all residents. I will prepare the forms for you. Then, we can go over them, and I can answer any questions you may have."

- 7. Resident 1 sees Resident 2 walking his or her assistance animal. Resident 1 asks the owner why Resident 2 is allowed to have an animal in a "no-pets building".**

"While we can't discuss the specifics of any other resident's tenancy with you, just as you wouldn't want us sharing your personal information with others, we can tell you that we are required to comply with the federal Fair Housing Act, and the Act provides for reasonable accommodation requests for certain assistance animals, which are not considered pets."

- 8. Resident 1 sees Resident 2 walking his or her assistance animal. Resident 1 asks the owner why Resident 2 is allowed to have a pit bull in a building that Resident 1 knows prohibits pit bulls as part of the restricted breed list.**

"While we can't discuss the specifics of any other resident's tenancy with you, just as you wouldn't want us sharing your personal information with others, we can tell you that we are required to comply with the federal Fair Housing Act. In these situations, we are required by law to make reasonable accommodations for assistance animals regardless of any breed, size or weight restrictions we may have."