



# TESTING, 1, 2, 3, TESTING

*Testing agencies are on the prowl for assistance animal Fair Housing violations.*

Ring, ring, ring.

*Lisa: Hello. Thanks for calling Friendly Court Apartments. This is Lisa Unit, your Friendly leasing agent. How can I help you?*

*Anita: Hi. My name is Anita Kanine. I would like to rent an apartment in your community. But, I have a few questions first.*

*Lisa: Sure. I am happy to help you.*

*Anita: Do you have a one-bedroom unit available?*

*Lisa: Yes, why don't you come in and take a look?*

*Anita: I just have a few questions first. Do you have a swimming pool?*

*Lisa: Yes, we have a great swimming pool.*

*Anita: Do you allow pets?*

*Lisa: Yes. We love pets.*

*Anita: Great! It has been really hard for me to find a good home for Fluffy and me.*

*Lisa: What kind of pet is Fluffy?*

*Anita: Fluffy is my 75 pound pit bull.*

*Lisa: Oh, I'm afraid we have a restricted breed policy, which prohibits pit bulls, and a weight limit that does not allow pets over 50 pounds.*

*Anita: Oh my! That may be a problem, but I wonder if you can break the rules for me because I have emotional issues?*

*Lisa: We do make exceptions to our breed and weight limit restrictions for assistance animals.*

*Anita: Oh, that sounds great. Fluffy is my assistance animal. Do you charge deposits and fees?*

*Lisa: We do charge a \$200 pet deposit and a \$100 pet fee; however, we waive deposits and fees for assistance animals.*

*Anita: Okay. That sounds great. To be clear, I need to have my pit bull in the pool area because I'm afraid to swim alone.*

*Lisa: Hmm... That might be a problem, especially in the swimming pool. For health and safety reasons, we don't allow any pets in the pool area.*

*Anita: Okay, thanks. Let me think about it.*

## DOES THIS CONVERSATION

sound familiar? If it does, you are not alone. Testing agencies have been calling a number of apartment communities throughout Texas in the past year pretending to be potential residents and asking about assistance animal policies.

HUD said that testing is a critical tool in the fight against housing discrimination. Testers are allowed to make these types of calls and visit properties in an effort to catch housing providers in a Fair Housing violation. If you are not careful, you could find yourself in a rather uncomfortable conversation about the nuisances of the Fair Housing Act, including whether assistance animals can and should be allowed in the pool area or the swimming pool itself. The process may not seem fair, but it is the environment in which you do business. Be prepared.

Let's revisit the rules regarding assistance animals.

**1. What is an assistance animal?** An assistance animal is not a pet. It is 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, alerting individuals who are deaf, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures or providing emotional support. Assistance animals are sometimes referred to as service animals, assistance animals, support animals or therapy animals.

**2. What type of information can you ask for when verifying that an animal is an assistance animal?** You can evaluate a request for a reasonable accommodation to have an assistance animal by using the same general prin-

ciples applicable to all reasonable accommodation requests. After receiving a request, you can consider the following:

- a. Does the person have a disability?
- b. Does the person have a disability-related need for the assistance animal?

For example, you can ask a person seeking an accommodation for an assistance animal that provides emotional support, to provide documentation from a physician, psychiatrist, social worker or other mental health professional that states the animal does in fact provide emotional support. The 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. You may not ask an applicant or resident to provide access to medical records or medical providers or provide detailed or extensive information or documentation of the person's physical or mental impairments.

If the disability is not readily apparent or known, you can ask for reliable documentation of a disability and the 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, you can ask for documentation of the disability-related need for an assistance animal.

**3. What information will verify the need for an assistance animal?** HUD does not specify what information is required to show the disability-related need for an assistance animal. However, HUD does state that you cannot require an assistance animal to be individually trained or certified. Although you can't require specific information, you are entitled to have documentation that enables you to verify the disability-related need for the animal.

**4. Do I have to allow a pit bull assistance animal if I otherwise prohibit pit bulls?** Yes. If a pit bull qualifies as an assistance animal, the fact that it is a pit bull will not prohibit

it from being an assistance animal. Breed, size and weight limitations may not be applied to an assistance animal.

**5. What if the assistance animal poses a threat to others at the property?** A request for an accommodation can be denied if:

- a. The specific assistance animal in question poses a direct threat to others that cannot be reduced or eliminated by another reasonable accommodation; or
- b. The specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

In other words, you do not have to grant an accommodation if the accommodation would pose a direct threat to others. However, when it comes to assistance animals, the evaluation of whether there is a direct threat depends on the conduct of the specific animal, not the breed of the animal.

**6. Can I charge fees and deposits for assistance animals?** No. However, you can require a resident to pay the cost to repair any damage the animal causes to the unit or common areas, with reasonable wear and tear excepted.

**7. Am I required to allow the assistance animal in the pool area?** Yes, if the resident has a disability and a disability-related need to have the assistance animal in the pool area. However, there is nothing in the Act that requires you to violate a city ordinance or state law while granting an accommodation request.

The Texas Department of State Health Services, the state agency responsible for adopting standards for pools, adopted a rule stating that domestic animals and other pets shall not be allowed in a pool or spa enclosure area, except that service animals shall be allowed on the deck and within the pool enclosure but not in the pool. In other words, the assistance animal can be allowed in the pool area, but not in the pool itself. Even if the disabled resident shows a disability-related need to have the assistance animal in the pool, state law would prohibit having the animal in the pool.

As a practical matter, if you have an applicant or resident that requests an accommodation of having an assistance animal inside the pool (not just on the deck), it may be beneficial to advise the resident of the state rule and ask the resident to discuss the issue with the appropriate representatives of city or state government.

**8. Is it fair for a leasing agent to get involved with details about the Fair Housing Act with a potential resident (or a tester) calling about animals in the pool?** Probably not. My guess is a typical applicant would not call in and ask details about whether a pit bull can be in the water. For this reason, it is beneficial for all persons who answer the phone be fully trained on how to deal with Fair Housing questions that may be confusing, complicated and only asked to catch the leasing agent saying something wrong.

**9. How should a leasing agent handle this type of a call?** Consider this response when asked about assistance animals at the property:

Breed, size and weight limitations and fee and deposit requirements do not apply to assistance animals. We comply with all applicable fair housing laws. We will consider any requests for reasonable accommodations.

Remember, you weren't born with knowledge of Fair Housing laws, especially the nuisances relating to responding to requests for accommodation. These are things that need to be learned. There are agencies out there whose mission it is to find fair housing violations. Be careful. 🐾



## Make the Outdoors Great Again

You may think the outdoor areas on your property are already great. But as certain presidential hopefuls have brought to light lately, 'great' is a matter of very personal opinion.

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