2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1191

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1191
1/19/2015
Job Number 22167

☐ Subcommittee
☐ Conference Committee

Kenneth M. Torkelson

Explanation or reason for introduction of bill/resolution:

Service or assistance animals in rental dwelling units.

Minutes: Attachments: 1, 2, 3

Chairman Keiser: Opens the hearing on HB 1191.

Representative Louser~District 5: Introduces HB 1191 by reading the bill. The ambiguity is to further define service animal.

Representative Becker: The peer support group; could you just have Dog Lovers of Bismarck that support each other and then write each other notes for being able to have dogs in apartments?

Representative Louser: It could go that far if the landlord looks at that as reliable.

Chairman Keiser: What is the difference between service and assistance animal?

Representative Louser: The only real definition of a service animal is covered under ADA, that's a certified animal to treat a specific disability covered under ADA. A therapeutic animal is recognized as an animal that is used for assistance that may be for a disability not covered under ADA. And that's the gray area. One could argue that a therapeutic animal could be any domesticated pet.

Representative Amerman: Do you know; if a landlord allows the support animal, and to rent it. Are they allowed, say, to have a higher threshold of down payment or whatever you want to say, vs. somebody who doesn't have an animal?

Representative Louser: No. If it is a service animal covered under ADA, not only are they not allowed to raise the rent, they're not allowed to charge a deposit. What they are allowed to do, is if that animal damages the property, they can go back for damages; and if that animal causes a disruption in the property beyond normal, if there is complaints by the neighbors, that could be a cause for eviction. But, under ADA, you're not allowed to charge

any excessive rents other than what is advertised, nor can you charge a security deposit for the pet.

8:15

Kent Olson~Landlord: This is a good bill because the two issues are pets and parking. I support the bill. The problem I have is with the abuses of the therapeutical, or I have a cat that sleeps with me, therefore we're going to violate your no-pet policy. Here's my cat and here's an excuse. We're even seeing it in condos now. The property owner is going and getting an excuse to violate the condo bylaws on no-pet policies. I would like to have the excuse written from the Doctor. I see these frivolous excuse sheets.

Representative Kasper: For those who have legitimate pets, and they cause damage, is there an average cost that you see when people move out with pets that you have to pay to refinish the apartment?

Olson: It can be bad of up to $6,000. My property in Beach, ND, a $200,000 house is sitting empty because it's not tenable because it was a dog haven for dogs for 2-3 years. So the underlayment has to be tore out, and they're looking at maybe disposing of the entire building. It can be that bad, or it can be a matter of shampooing the carpet.

Connie Bey: We own an apartment building, and have for over 40 years. It's a relatively small unit, with 23 units in there. It's our livelihood. We have in-house management. We recently had tenants in there. It was a young single lady, no cats, just moved in. Then, after a period of time, she decided she needed a cat. She got a statement from her, some doctor, so we were required to accept that. And then a boyfriend moved in, and then she moved into a different apartment, and took the cat and the boyfriend with her, and then she got married and moved out. When we inspected the apartment, we ended up paying over $4,000 in damages because of one little dog. It totally destroyed the carpet in all rooms, the baseboard, the subfloor, the doors. It absorbed moisture. They cleaned the carpet. Every month, they said. But the moisture that stayed in there goes down into the floor; it doesn't just disappear. We took them to small claims court. We only claimed about $2400. We can't find them. We're not allowed to get their new address. So we're left stuck with all this expense to us, and destruction of that apartment. They need a medical statement, not just a friend saying this person needs this because she's having trouble. We need a medical statement from them, not just somebody else coming in and saying that. We really rely on having that apartment building.

(14:55)

Chairman Keiser Oppositiion

Jeremy Petron~Representing ND Apartment Association: (Attachment 1). We believe this bill, as written, takes away some clarity and builds in some ambiguity as it relates to the peer support group and non-medical service agency. We feel this creates a loophole for persons seeking to have a pet in a no-pets building. We urge a Do Not Pass on HB 1191 as it's written, or to amend lines 11 and 12.

Representative Kasper: How would you amend the bill to give you comfort and satisfaction?

Petron: I would strike out specifically the language of saying an individual authorized to act on behalf of a peer support group or a non-medical service agency. Strike that part out and we would be fine with it.

Representative Devlin: Can you tell me about your association?

Petron: Explains the association. I don't have specific data on the number of members, but for the Bismarck Apartment Association, we have about 212 members locally.

21:15

Representative Lefor: This doesn't preclude the landlord for declining someone in this situation based on other facts in a background check that would be detrimental?

Petron: No, that is a separate issue.

Representative Amerman: These requests go to a legal someone? How are these handled for somebody that might get caught up, that's just managing?

Petron: As a property owner, according to fair housing laws, it is the property owner's and/or the property management company's or management entity's responsibility to know those laws. If they're in violation or non-compliance with those laws, then it would only be found out if a potential renter goes to HUD or the Labor Department and files suit against that person. It ultimately falls upon whoever's managing or the owner of that property to understand the laws in place as it pertains to fair housing.

Representative Lefor: If a property owner currently has a no pet policy, under current statute are they required to provide rental to an individual in this situation currently? Are they required to do that?

Petron: If they pass the criteria required to rent, and also are requesting an assistance animal, as long as their verification is in place citing that they have a disability and then the need to have an animal living there, they can't be denied for that.

Chairman Keiser: I might point out that it might be argued that you support the bill with amendments vs. oppose the bill.

Petron: That would be a better way to put it, but yes.

24:50

Rocky Gordon-Lobbyist for the ND Apartment Association~(Refer to Attachment #2) Unclariity is the problem. It's hard to follow a law that's unclear. We've been a little frustrated with this law. It's line 11 & 12 that bother us. This would be a major change in basic fair housing law as it relates to this issue. These animals, whatever they're called,

are only to accommodate a disability. And it's not because I want a cat or because it's going to make me sad not to have my dog. That's not what this is about. It's to accommodate a disability. We believe very strongly that it takes trained medical personnel to properly recognize and verify a true disability. And that's really our underlying issue here. If we take it out of that medical realm, Katie bar the door.

Representative M Nelson: I thought a service or an assistance animal had gone through special training and was quite a controlled animal. This sounds like people just come with a note from their doctor saying they need a cat, and here you go.

Gordon: That's part of that growth and change that I was talking about. It has changed to supportive animals. It used to be the seeing-eye dogs or the animals that were specially trained. That's not how it's interpreted anymore. Being able to say, is this an accommodation to a disability, and then being able to verify it is very important. That's what we want to keep here, and that's what bothers us about lines 11 and 12.

Representative Lefor: If this bill was amended as Jeremy described, would you support it?

Gordon: We would because it's in Federal fair housing law already, and so, I mean, we could oppose it, but we've already got it and we're living with it. We're managing.

Representative Lefor: If this were passed as amended, as you've recommended, does that give you more strength than you have now, in terms of limiting it to a medical professional, or is that not a big deal?

Gordon: It doesn't give us more strength but I think it at least doesn't give us less.

Representative Hanson: If we do change this bill to eliminate those lines that you find troublesome, 11 and 12, will it change how you handle pets in your apartment association?

Gordon: It will not change for us because we are already governed by fair housing statute.

Representative Hanson: Is this bill, without lines 11 & 12 , already in national law?

Gordon: Yes.

Representative Becker: In the earlier testimony, it was starting specifically after "medical professional." Does the national language include medical professional? Does it limit it to doctor? If it were physician, and that's it, does that also comply with Federal, or does it include specifically the medical professional?

Gordon: It already does include medical professional. And even that has been stretched a little bit, in my opinion.

Chairman Keiser: Line 10, the word "may." On subsequent lines, it says what must be contained in there. The way it's worded right now, it won't work unless we say "shall do it." Do you see the problem with that?

Gordon: I do, except that Federal law does say that. It already says you can request an accommodation, but you have to have the documentation. We already look at it as law that we can require documentation from a medical professional.

Chairman Keiser: The way it's worded, it doesn't talk about you. It says the physician may do it, or a health care provider may or may not do it. The second thing, there is such a legitimate need for these animals for certain people. That it's abused today, there is no question. We put the physician in a difficult position. This is my patient. They are my financial revenue stream. They come to me, and if I say no, they'll go to a different physician and they'll never come back to me. I know some physicians are signing it just so they can keep their customer. It has nothing to do with the medical justification or anything else. The dilemma is, with all this documentation, there is no penalty for misrepresenting facts for somebody who provides that opinion.

Gordon: I understand what you are saying, but what we say is if a medical professional does say there is a need, and it is verified, it stops there for us.

Chairman Keiser: The state could say, that's great because the people who need these animals should be the ones fighting hardest to keep the integrity of the program. They should be jumping up and down or saying please make it tight so the people who really need this can get it, and not the people who move from their home into an apartment, that had a dog and can't stand the thought of losing the dog, which I understand. We have to get some teeth. If we can't do it because the Feds preempt us, then we can't do it.

Gordon: We would love to see that done, but I don't have an answer as to how. The medical verification is disabled. I don't know what we can do about that, if a medical professional is willing to put in writing that this person is disabled, we have to accept that.

Connie Bey: I just wanted to explain that this last problem was with a dog; it's not all cats.

Madonna Logosz~ I was wondering what is going on. Representative M Nelson made the comment that service dogs were trained, and that's true. They have very strict standards and guidelines. There is a big distinction between a service dog and a companion dog. And I believe Rep. Louser referred to that. But I think that needs to be looked at and clarified. I agree that there have been a large number of people, even that I know personally, who abuse the intent of the service dog because they've got their beloved animal that they don't want to give up when they have to move into an apartment. Somebody made the comment that people who really do need service dogs should be up in arms about this. I agree with that. At the same time, I understand that the apartment owners need to get a handle on the distinction between service dog and companion. I think fair housing and the ADA pretty much clarifies the distinction between the two. Personally, I can't see where this particular bill is needed because I do believe the fair housing standards address that. Maybe not the companion part. So, this is almost duplicating the ADA definition of service dog or maybe the intent behind service dogs. And so I'm not sure the bill is needed. Maybe additional training is what the ND Apartment Association needs to do to better manage for people who are coming in with companion dogs and trying to pass them off as service dogs. As a person with a disability, I kind of resent being required

to go to my doctor to qualify me for a service dog and the rental thing. Because my doctor isn't part of that process if I was qualified through a service animal training center. If the bill were to go forward, I would recommend against a peer support group. I don't think a peer support group is the way to go, either, because it could be dog lovers anonymous of Bismarck that would support me in doing it.

44:00

Gordon: I want to point out two things. It's how Madonna would feel about going to a physician to get an animal. The law does say, "if the disability is not readily apparent." The copy of the federal notice (Refers to Attachment #3) (reads) In other words, I totally agree with what Madonna is saying about a trained service animal, but in the eyes of the Federal government, there isn't a difference. I'm not saying there shouldn't be; I'm just saying there isn't.

Representative Ruby: Is it only in the case of a disability? But the other question, for an emotional or therapeutic assistance, with a disability, and I think you cleared that up. But my other question, is it only for a service animal, or is it for a therapeutic or companion-type animal. And I think that's where I think we're muddy right now.

Gordon: The best answer I can give, in the interpretations that I have seen, there is not a difference. They're treated the same. I can disagree with that, but that is what they tell us.

Representative Ruby: Can state laws supercede that?

Gordon: I would like very much for you to do that, but I don't think you can.

Corine Hoffman-Attorney with the N.D. Protection and Advocacy Project: This is a very confusing area of the law, and I thought it might be helpful if I could clarify a few things. There is the ADA and the Fair Housing Act; they are two very separate pieces of legislation. There is some crossover and the oversight is from two different agencies at the Federal level. There are only a limited number of animals that are considered and that can be service animals. It includes and, I believe, miniature horses. A service animal has to be trained and must be certified as a service animal. The Fair Housing Act is much more liberal in what it allows in terms of assistance animals, and specifically recognizes emotional support animals. The Department of Justice does not recognize that under the ADA. Emotional support animals is really a disability-related accommodation. There's two parts to that. First of all, that there's a disability. And, secondly, that that animal is needed to mitigate the effects of that disability. In those instances, the professionals that are outlined in the Fair Housing Act were put there because those people were felt to be those individuals who would have that expertise that could provide that. They are two very different pieces of legislation. There is different standards for emotional support vs. service animals.

51:00

Representative Hanson: Let's say I am a landlord. Someone comes to me and wants to rent a unit. I have said it is a no-pets apartment. They say they want to pay the amount,

they have the deposit, they have proof of employment, they have good credit. They say they want to bring a cat. I say no. They say you have to let me. My understand is that legally, I can simply say no, it says no pets. You can't have it. They could try to bring a lawsuit against me, but they would almost inevitably fail. So, I would be legally forced to rent to them if they met all the requirements if they had a service animal. Is that correct?

Hoffman: Yes. Unless there are other circumstances as previously indicated that would allow you to refuse to rent to them for legitimate reasons.

Representative Hanson: If they had a note from a medical professional saying they had an emotional disability under the fair housing act, I would also have to legally rent to them?

Hoffman: If they come to you and they meet all your other rental requirements, and they present you with a medical certificate that verifies they have a disability-related need for the animal that they have, then yes, if would be discrimination not to rent to them under the fair housing act.

Representative Hanson: That note would have to come from a medical professional?

Hoffman: It would have to come from one of the individuals that is listed in the Fair Housing Act. So it could be a psychologist, or other treating professional. Say, for example, if it was to mitigate the effects of clinical depression.

Representative Hanson: But not simply a peer support group. Would that qualify under the Federal act?

Hoffman: No

Representative Hanson: So in your legal opinion, if they came to me with the aforementioned anonymous dog lovers association, I could refuse to rent to them simply because they have pets and my apartment is a no-pets apartment?

Hoffman: Yes.

Representative Hanson: Do you feel that state law can in any way specify further these pet scenarios beyond what has already been laid out by the Federal government between these two agencies?

Hoffman: Any state law that would conflict with Federal law would be subject to challenge.

Representative Hanson: Do you think there is a state law that could specify anything further? Do you think there is any room to specify further, as I think this law is attempting to do?

Hoffman: My experience is that you can be more permissive, but you can't be more restrictive.

Representative M Nelson: Under Fair Housing, where we have the emotional support animal, those animals would be qualified in someone's apartment when they're renting, but those animals aren't really qualified to be in a restaurant or something. That would be an ADA deal. So they wouldn't be allowed there. Is that correct?

Hoffman: That is correct.

Chairman Keiser: I know of one individual who moved from their home to an apartment, no animals. And they had to call the physician about nine times. They just badgered them, saying we don't want to lose the dog. It's essential; we'll be depressed. The physician finally said, sure, here you go. Here's the note. What do we do with a situation like that? This is obviously a clear violation of the intent. What recourse do we have the minute the physician signs the note? You cannot discount the importance of the revenue stream to a professional.

Hoffman: Those are the fact scenarios where lawsuits are made. The recourse of the landlord is to refuse to rent. If the tenant challenges that, we can either go to the Department of Labor, Human Rights, and file a complaint. We get a lot of calls on this kind of thing, and we refer to Legal Assistance of North Dakota, and Great Plains Fair Housing. These are typically factual-based.

Chairman Keiser: Then the Dept. of Labor absorbs all expenses for the claimant, and the person owning the apartment gets all the expenses for attorney fees to which they're going to say, bring the dog. In violation of everything I believe in.

Chairman Keiser: Closed the hearing on HB 1191.

Representative Louser: I would like clarification from Legislative Counsel on lines 11 & 12. I talked to a number of attorneys before requesting this legislation. The people that I talked to said, outside of ADA or Fair Housing, we don't know what to tell you. And ultimately, what the landlord ends up saying is bring the dog. So, the intent here was to try to curb some of the abuses. There was a social media page that said how to get around this. Clearly, we know it's being violated, and that was the intent.

Chairman Keiser: We are going to hold this bill. Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1191
1/21/2015
Job #22344

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature Kenneth M. Torkelson

Explanation or reason for introduction of bill/resolution:

Service of assistance animals in rental dwelling units.

Minutes: Attachments: 1

Chairman Keiser: Opens the hearing on HB 1191.

Representative Louser-District 5: Proposed amendments to HB 1191. Explains changes made under proposed amendments. (Refers to Attachment #1)

Rep. Louser: Moved to adopt the amendment.

Rep. Kasper: Seconded the motion.

Rep. Louser: If you look at the three-page memorandum I handed out, that was provided to me by Legislative Council. If you look at the second paragraph under the N.D. Supreme Court, on the first page, where they're talking about a court case that was heard in N.D. only a few years ago. There is information that the Legislative Council based to use that individual tact on behalf of a peer support group, but also said it was up to our discretion to remove that. When I asked if that was going to impact this bill, they didn't feel it would.

Chairman Keiser: Any questions?

Rep. Becker: I know that one notation was made on line 10, changing doctor to physician. Is it your intent to not change that?

Rep. Louser: It was my intent to change that, as well, from doctor to physician.

Chairman Keiser: We'll add to the amendment, on page 1, line 10, "to be provided by a - strike doctor" and replace it with "physician."

Chairman Keiser: Any further questions?

Chairman Keiser: This is a document that was handed out. And I did take the time to read through it, so I have some question as to whether this can work or not because, on the second page of that document, in the first paragraph, it's going through and defining the Fair Housing Rehabilitation Act, and what it is. On this first paragraph on that second page, it states, "This information can be provided by a doctor or other medical professional, a peer support group, a non-medical service agency or a reliable third-party who is in a position." So, is that part of the Fair Housing Act that it actually defines that? And, if so, can we do this?

Rep. Louser: It's my understanding that we would be able to do this, and I think that if somebody wanted to take it to that extent, and make a reference to the Fair Housing, as a condition of rental, reasonable accommodation, they probably could take it to that level. The reason, and I guess I'm speaking here to the bill, as opposed to the amendment, and we just saw this with the Family and Medical Leave Act, we have in our statute references, almost word-for-word how things are reflected to the Family and Medical Leave Act. In this case, we heard testimony from landlords in the business for 30 years, saying I think it's OK, or we might not need this. Even somebody who has a history of doing this can't pinpoint exactly what the rights of the property owner are. There are no licensing requirements in our state to be a landlord or a property manager. There's no formal continuing education. There's no testing. So to say that somebody should know this is valid, except there's no standard to know. And when an unlicensed landlord has a question about this, they'll typically call an attorney who is probably not an ADA or an FHA attorney, and they'll look at the statute and say yes or no. You can do this. Or provide this reasonable accommodation with some sort of documentation. I realize we can't stop everybody from cheating the system, but I think that there's a real opportunity here to provide some clarity and some basis for our landlords to say, we need documentation if you are claiming reasonable accommodation.

Chairman Keiser: Further questions, further discussion?

Rep. Becker: It may require a more thorough reading of this three-page handout, but the way I'm understanding it now is that the three-page handout, which goes through the greater list of what's acceptable to provide supporting documentation is specific to service animal. And this bill refers to service animal or assistance animal. So assistance animal starts to get into this gray area of "I need my parrot, or what have you." And so I could see that this expands to assistance animal, I think it's OK to say, "Well, this is a weird gray area. We are going to have a higher threshold of what's acceptable documentation, and who provides it."

Chairman Keiser: And I don't disagree, but the testimony from Rocky Gordon was, the two are the same thing basically. I'm happy to do this if it fixes it, great. If we're in violation, I guess they'll arrest you, not me.

Rep. Louser: I think that this provides there is a difference between the ADA that defines a service animal and Fair Housing that really references a companion or therapeutic animal. And that comes out in this memorandum as well. What we're suggesting is that a landlord may require some sort of documentation, based on ND Century Code, that may require

some sort of documentation that says why they would make an exception on a no-pet policy property.

Chairman Keiser: I'm all for it. Any other questions?

Chairman Keiser: We have a motion to place the amendment on the bill, and a second.

Voice Vote: Passed.

Chairman Keiser: We have HB 1191 as amended before us, what are the wishes of the committee?

Rep. Ruby: Move Do Pass As Amended.

Rep. Frantsvog: Second.

Chairman Keiser: Further discussion? Any questions?

Chairman Keiser: Seeing none, we will ask the clerk to take the roll for a Do Pass As Amended on HB 1191.

Motion carries, 15-0. Absent: 0

Rep Hanson is the carrier

Hearing Closed.

15.0433.01002
Title.02000

Prepared by the Legislative Council staff for
House Industry, Business and Labor Committee
1-21-15

January 21, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1191

Page 1, line 10, replace "doctor" with "physician"

Page 1, line 11, remove "or an individual authorized to act on behalf of a peer support group or a"

Page 1, line 12, remove "nonmedical service agency"

Renumber accordingly

Date: 1/21/2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1191

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0433.01002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Louser Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Represenative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent Voice vote passed

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Page

Date: Jan, 21, 2015

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1191

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0433.01002

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Ruby Seconded By Rep Frantsvog

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Represenative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	X		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Hanson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1191: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1191 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "doctor" with "physician"

Page 1, line 11, remove "or an individual authorized to act on behalf of a peer support group or a"

Page 1, line 12, remove "nonmedical service agency"

Renumber accordingly

2015 SENATE POLITICAL SUBDIVISIONS

HB 1191

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1191
3/26/2015
Job Number 25471

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to service or assistance animals in rental dwelling units

Minutes:

Written testimony # 1 Rep. Scott Louser -Amendment
Written testimony # 2 Corinne Hofmann

Chairman Burckhard opened the hearing for HB 1191.

Rep. Scott Louser introduced the bill. (1:00-9:10) He handed out a handout prepared from Legislative Council provided as part of the research they did in preparation for this bill back in December. This is research we had in our committee about questions a lot of people had and maybe it will help answer some from this committee. What this bill does is provide in my mind some protections for the property owner with regards to requests for pets. I am not trying to be funny about this, but this truly is a housekeeping bill. The original intent of this legislation was to further define the difference between an Americans with Disabilities Act (ADA) certified and trained service animal versus a therapeutic animal or simply a domesticated house pet. My original intent was to be able to define what a therapeutic animal was, but in taking something like that on, with regards to some federal laws that really wasn't going to be possible. I also want to provide the intent here that clearly for those that are in need of a service animal we want to be respectful of those federal or state laws. So, in talking about this as a private property issue (Ex. Cited 2:07-3:36) I am talking about renters who are taking advantage of the system regarding having pets. So, the landlord would say we need some evidence that you need a pet. Within an hour, they would come back and say here's a note. The testimony I gave in the House committee I equated this somewhat to, when we see the people that are abusing the handicapped parking spots in front of a public and private building. It is one thing to have access to those it's another to use them and not have any reason to be there other than their convenient. So, when there is a legitimate disability or physical need, that needs to be recognized and some examples were cited (4:26-4:41). If, I could shift gears a little bit, and talk about renting inside a multi-tenant facility, so let's talk about a 4-plex that has a no pet policy. Somebody may come to the property owner and land lord and say I have an allergy to cats, so I want to verify that the property I am renting won't allow pets. One thing in this industry there are no licensing requirements in North Dakota law. To be an on-site manager or landlord so it's very difficult in most cases to expect a landlord to understand federal ADA law, Fair Housing Act, or for that matter just North Dakota law. The expectation is to have

everybody understand everything that they need to abide by this is unreasonable. As we presented the bill there were some requested amendments that came from the Dept. Labor and there concerns were how this would affect their relationship with HUD. (Amendments 15. 0433.02001) I will tell you exactly what they do. They changed the word on page 1, line 11 replaces "describe" with " confirm"; then adds the language on page 1, line 13, after the underscored period insert, " A landlord may not require supporting documentation from a tenant when the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord." If the landlord is already aware of a disability they would not be under the assumption or requirement to say give me documentation.

Senator Bekkedahl Rep. Louser there must be a 2000 version out there we don't have. This is a 2001. **Rep. Louser** Your correct, there is a 2000 version and we do not have that.

Rep. Louser the amendment that was originally discussed was taking out some language that was originally suggested that had to do with any medical service provider or support group. The support group could provide the written evidence and we removed that in the House, so I apologize that is not in the current version of the bill.

Rep. Louser So what that would be referencing is on line 10, where it says " realiable supporting documentation maybe provided by a physician or a medical professional we had, or support group". We removed that. What we're really doing is saying that the documentation that person is providing for the legitimate need and the reasonable request for a pet has to come from a physician or a medical professional. That is as far as we can take this from my understanding. We're not going to fix everything but this is probably the best that we can do.

Chairman Burckhard This will help the landlord? **Rep. Louser** This will help the landlord and the property owner and it will provide a little bit of clarity to the property manager/landlord to say I know that I can ask for a reliable documentation before I grant your reasonable requests for a reasonable accommodation.

Chairman Burckhard So, can a person can say why they need 3 dogs, is that legitimate? Rep. Louser If they are medical, professional suggests they need 3 dogs then you couldn't dispute that.

Senator Grabinger Has this been a big problem, we didn't hear that in the testimony?

Rep. Louser From my perspective it has been to the point that I was told by more than one property manager that there was even a Face Book page alerting consumers how to get around getting pets into your property. So, I would say it is very prevalent and it goes beyond just making the request. It also includes for renters that are currently in their rental property that have signed a lease that says no pets and then have a pet later. The property manager finds out about it and subsequently they turn up with a note saying well see I can have it. It's not only for people that are looking to rent, it's for violation of current leases in place.

Senator Grabinger Isn't it already in the law that the landlords can ask for more money for a deposit on these and then they are going to allow a pet.

Rep. Louser Actually we try to address that in our other bill in 1192. In the current law, you can ask for two months' rent or up to $2500 but that is not for a service animal or an reasonable accommodation. So you cannot ask for a deposit for a service animal. That wasn't specifically spelled out until we passed that other bill. You can ask for damages that pet may cause after the fact, without out of the deposit for damages after the property is vacated, but under ADA laws you cannot request an additional pet deposit for a service animal.

Chairman Burckhard So if you're in a 4-flex, and 3 people observe the rule of no pets, and the other person had 3 pets that would be just fine and dandy as long as they have some kind of a written permission.

Rep. Louser Well, I don't know who it would be fine and dandy with, probably not the other 3 renters, but if that fourth renter provides reliable documentation to the property manager who has a no pet policy, that manager would then be required to make a reasonable accommodation and allow for if the physician says so for 3 pets. More often it's one. There are local ordinances that restrict the number of adult pets that can be in a given property. That is not restricted to just rental property, that is single family as well.

Rocky Gordon In support of this bill. (12:39-14:51) Lobbyist with the North Dakota Apartment Association. We appreciate Rep. Louser' efforts to kind of clarify things in North Dakota law. The whole issue of companion animals is amass. The problem is it's in federal statute and we can't address it on the local level. Just to address one of the questions that came up about how prevalent is this issue, there are actually websites that we had our association attorney go where they send you a questionnaire, and if you pay $95 they'll have a medical professional say your disabled. We don't like it but its federal statute and I don't think there is much we can do on the state level. We do appreciate what's taking place here because we hope it does help clarify things, but it's a real problem. It is not only a problem from our point of view it's a problem for physicians. Their patients come and say I want you to say I am disabled so that I can have my pet. The problem is not with service animals, the problem is with companion animals. We are in favor of this bill and it fairly closely mirrors federal statute and we like to see it in state statute as well. We don't like the problem it creates but I just don't think we can do anything about it.

Senator Anderson It seems like it is almost as difficult to get authority to have your pet in your apartment than, it is to get a medical marijuana prescription in Montana.

Chairman Burckhard asked for any others in favor of this bill; any opposition to HB 1191.

Corinne Hofmann, Director of Policy and Operations for the Protection and Advocacy Project. Written testimony # 2. (16:22-20:03) The Fair Housing Act governs in a rental dwelling, it is not the ADA. The ADA covers public areas, common areas, parking lots but it does not cover what is in the rental unit itself. As written we do not support the bill.

Senator Grabinger Have you seen the amendment that was put forth? If that were to be adopted, would you then think this would be sufficient?

Corinne Hofmann I have not had a chance to review the amendment. They seem to when they were explained to address part of the issues that I am raising. I think they would improve the bill certainly, I still so have some concerns about the language in the bill regarding who can provide reliable documentation. So I would really have to take a look at them.

Senator Bekkedahl Not with- standing the fact that I think, that amendment does take care of that one issue that you had. My question to you is in the issue of whose definition or who substantiates or confirms the disability issue? I think from my perspective I am looking at this, is the disability issue specifically relating to having the pet for a disability need or a therapeutic need? As I am reading on page 13, the information is helpful, some of these issues of disability definition provided by Social Security supplemental income or disability insurance benefits may not specifically address or tie the need for the therapeutic pet to the disability issue. So how do you get around that issue when we're dealing with a bill that deals that specifically with pets' necessity for the disability. Because it also says near you're not allowed to inquire in the severity of the disability issue. So I want to be incompliance with this, but at the same time, there is specificity in this bill that I don't think is addressed in this language. So can you answer that?

Corinne Hofmann In the issue of this is the disability- related and create a need for a service animal, assistance animal. That is a second. The first part is do they have a disability, is it apparent, can I see it, okay. Yes I can or no I can't. If I can't then I can request reliable documentation demonstrating that yes this person has a disability. The second part of that, is do they need to have a service animal assistance animal to mitigate that disability related issue and need that they have and that again is you can request reliable supporting documentation to show that. It can be from a doctor but it may be from a non- medical therapist so there are other entities who might have the knowledge about that person's disability and how it effects them that they would be able to speak to that knowledgeably.

It is really is a question of educating landlords and property managers about what they have a right to ask for, what's legitimate, what's not, as well as educating tenants about what their rights are and what their obligations are as tenants. I know there is an issue on this as we encounter it to in our work. We get referrals from tenants who are having difficulty with landlord for and some of those are for educating the tenant on what they need to be doing and what their responsibilities are, but the law does provide and allow for people to have those assistance animals when they truly need it to mitigate the effects of their disability.

Senator Bekkedahl So I guess the point of my question and you did a good job of trying to answer it but, my question still remains, if it's an obvious impairment, disability that is being addressed with the amendment; then the second question if it's not obvious then supporting documentation is built in to a medical provider or a doctor, federal statute says there are other methods to determine that disability, which can be provided. So they go through that phase and they provide that. My point still remains, that outside information may not specifically relate to the need for a therapeutic animal and you're saying that allows them

once they get through those stages, the landlord now says now prove to my why you need the therapeutic animal. Where does that that proof come from just because we're receiving supplemental social security income or social security disability benefits doesn't necessarily mean you need a therapeutic animal. That is my point and so you get through those two steps and I get that and then the third step then is well do you need the animal. Who then can we put in statute that confirms that? I think that is the correct one I am getting too.

Corinne Hofmann I believe that there is a listing provided in the Fair Housing Act of individuals and who can do that. Again, it is someone who has knowledge and reliable information about what the needs of that person are and whether having this service animal will mitigate the effects of that disability and help them.

Chairman Burckhard So, the oneness is on the landlord, all the work that has to be done.
Corinne Hofmann I think it is a mutual obligation. I think it's up to the tenant to provide that supporting documentation but it's also up to the landlord to maybe ask the right questions and then assess that to determine whether or not it's reliable and supports the need.

Senator Dotzenrod In reading through the language in the bill and the proposed amendment, I don't see anything in this law that would prevent someone other than an MD, and maybe I missed it in here. It said it may be provided by a physician. It doesn't say must be provided by a physician. If you had some documentation provided by a therapist of some kind, or a marriage counselor or other person that seems to me to be allowed under the provisions of the proposed language in this bill, so I am a little confused because I don't see anything in here that is going to obstruct and say sorry we can't accept that. It doesn't conform to the language in our new recently passed House bill 1191. I am missing something here because it looks like all of those things you mentioned would be allowed. Am I getting this wrong?

Corinne Hofmann You're not wrong. However, I think Mr. Gordon raised a good point. We have property managers and landlords that their not experts on the law. They don't know what the law says they can and cannot do. If this is brought to their attention as you may get this from a physician or a medical professional they may think that is all the option they have. They may say you have to have this, this is our concern. You may do this, may demand a medical opinion on this. It is not saying that they can get it from somebody else or that they may not do that. In other words, they can't demand that, and in especially the amendment. The amendment will help in circumstances where the disability is apparent to demand a letter from a medical professional or a physician would be way outside the balance of the Fair Housing Act.

Senator Dotzenrod I think I hear you say the law might be okay and it might be appropriate but that someone could read it and not interpret it correctly and misunderstand what the law says, therefore we should make sure the law is correct but we're worried about that someone is going to misread a correct law, I don't know how we fix that. It does seem to me that if we get the language right in the law that is our obligation. If there is someone in the public that reads what's technically correct and decides that they are confused or don't understand it, I don't know how we can fix that.

Corinne Hofmann That is the dilemma, because you are only listing part of the law that's on the federal level. That is what I think is going to potentially lead landlords astray and get

them into trouble, and have them run afoul, with the Fair Housing Act. Well the state law says, I can get a letter and information from a medical professional, so I complied with state law, how can you say I have violated the Fair Housing Act and yet they have. Again the supporting documentation that is still a concern.

Senator Anderson I think if everybody looks at example 2 on page 13, it talks about a rental applicant who used the wheel chair and advises a housing provider that he wishes to keep an assistance dog, in his unit even though the provider has a no pet policy. The applicants' disability is readily apparent but the need for an assistant dog is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability -related need for the dog. Now, if you look down right at the bottom of the page, not the #10 little footnote, but it says in the last sentence it starts" a doctor or other medical professional includes a peer support group, a non-medical service agency, or a reliable 3rd party who is in a position to know. I think that is what Ms. Hofmann would like to us for us to use this more expansive language in the bill and then people wouldn't be confused about what they should be accepting. Then the only question is whether the person is reliable or not because it said a reliable. It certainly lists all those people. Now I realize it is probably much easier to get a note or a phone call from one of these individuals than one in the medical profession. But none-the -less what you're saying is the Fair Housing Act requires. If we need to be consistent with it we need to change that language.

Corinne Hofmann Yes that is what I am saying. I think and I agree that yes it may be easier to get a note, but again you have to assess the reliability of that information. That burden is on the landlord to do that.

Senator Bekkedahl I see a lot of ones; on the landlord with this language. I really do and I am not saying that is a bad thing because I don't want to go and eschew the Federal law either. But, a peer support group here's the issue I see with that today. Could that be interpreted as only being an on-line support group or is it a physical attendance support group? I am confused about that because with technology today it could be where I am on a Face Book page where other people have to deal with this issue and that is my peer support group. Is there any statutory definition of peer support group?

Corinne Hofmann I am not aware of any overriding definition of a peer support group. I believe that again, if someone were to utilize that as their source of documentation I think again, the reliability of that whether it truly addresses whether there is a disability related need that is being met would need to be evaluated. Any documentation that is provided can be looked at critically itself on that issue. Is this reliable, does it explain why this person needs a service animal.

Senator Judy Lee Have you talked about the differentiation between the highly trained highly expensive therapeutic service animals and assistance animals. We've have a huge difference.

Chairman Burckhard We have not. **Senator Judy Lee** Whether or not I have a parakeet that I really want to have as college student and I talked somebody in to saying that I needed it or is it somebody who has got one of those very expensive highly trained who would never bark and never disrupt a tenant, so I would like you to talk a little bit about that. The other thing is and there is nothing we can about this because of federal intrusion, but

what about the rights of the other tenants who really wanted to live in a no-pet building and has allergies to cat dander may have allergies to dogs and now all of a sudden there is no restriction that the animal is going to be transported. It is a frustration for me from being a landlord and I am very glad I am not one anymore with all of this because it is just a got-you for the landlord. But there is a differentiation between the two types of service animals and where are the rights of the other tenants and the landlord involved?

Corrine Hofmann The tenant is still bound by the rules of their contract. They cannot interfere with a quiet enjoyment of the residence by the other residence that may be present. So, if you have a dog that is barking incessantly at night, that can be an issue that is addressed by the landlord in terms of interfering with other residence to the point of where that person could be evicted. So, just because a service animal is allowed, it doesn't allow it to be without restraint or restrictions or they cannot violate other terms of their lease and agreement with the landlord. There is a difference between the kind of companion animal you may be referencing and a service animal that maybe trained and qualified under the ADA for example of seeing eye dog. Again, within rental dwellings the ADA doesn't apply, the Fair Housing Act applies and the Fair Housing Act has created a broader interpretation of assistance animal/service animal than what the ADA recognizes. Part of that is because the ADA primarily applies to areas of public access, retail sites, and so there is much broader group of people that would be affected. It is basically public versus home which is what I believe is what led to the broader interpretation.

Senator Judy Lee The other people consider their apartments their home too and if somebody wants a noisy dog, maybe they better figure out a way to live in a place that doesn't have attached housing. But the differential between the two types of animals is important one because those trained animals never bark and disrupt, unless there is a fire or something terrible happening. But this has been abused particularly in college dorms but not only, by people; who want to bring their kitty, or whatever and I doubt that the lease can talk about cat dander. That maybe is quiet but it would interfere with my enjoyment. The point is that there is always going to be a small number of people that will abuse something and this has been abused and has made it very difficult for landlords who are trying to provide the kind of housing that their other tenants would like to have but now their being pressed to do and if they can find a way to get it done. So the point is, I think we need to know then exactly what the definitions are and maybe in your documentation you have what the definitions are of these. Are there only one definition of animal under Fair Housing or all the animals whether they were really good seeing eye dog, or somebody's ferret, are both the same under Fair Housing or is there a differentiation between the two and the other thing is I got a little trouble with the peer support group thing. I have a little struggle with the lack of objective view, there has to be some kind of professional opinion in order to have this kind of accommodation because that is what it is.

Corinne Hofmann I understand that this has the capacity to be abused by people and we've heard testimony that it is being abused. You're indicating that from your experience as a landlord. I don't dispute any of that, but the law is what is and the Federal law indicates that these are individuals that can be looked to as a reliable source of documentation. Again it goes back to the landlord to evaluate that and decide whether that is sufficient and whether that is reliable documentation to support the need. The abuses that you talked about and terms of animals that bark at night. By having a service animal in your dwelling does not permit you to violate other aspects of your lease which include the right of other

tenants to quiet enjoyment of their property and their rental unit. You can still take action when people violate the terms of their lease.

Chairman Burckhard closed the hearing on HB 1191.

Senator Anderson Mr. Gordon you know doubt familiar with what it says in the federal law, do you have a problem with us putting that language in this bill and would that be helpful to make everybody clear about what's going on or are you intending to try and restrict it beyond it further?

Rocky Gordon Well we have trouble as was expressed in this committee with the peer support group thing. I mean we really do because what does that mean. Dog lovers of Bismarck could be a peer support group. Do we like it no. It is in federal law? Yes we recognize that.

Senator Anderson So my question is if we make this law more restrictive, and somebody rents space or doesn't rent space based on the more restrictive law, and ends up in court over whether they've should've granted that or not, are you comfortable with that?

Rocky Gordon If what you put into state law mirrors federal law, I guess we have to be comfortable with it because there is nothing we can do about it. I am not trying to not answer your question, but I guess that is the best answer I can give. Are we comfortable with it, no! As long as it mirrors federal law, I guess comfortable or not, we have to live with it.

Senator Anderson Another rhetorical statement, I have a lot of respect for anybody Mr. Gordon who is willing to take the complaints from a couple of thousand apartment renters so I appreciate that.

Senator Bekkedahl I would ask whether you agree with this or not, but I go back to Senator Dotzenrod's comment about the language. In the bill where it says 'reliable supporting documentation may be provided by a physician or medical professional'. I don't think that language is restrictive, nor do I think that language keeps out any other issues that could be provided. Senator Dotzenrod hit it right on the head. The use of the word 'may' here I think avows for what their seeking on the side of the opposition as well as what you're seeking in this bill. Maybe I need to delve into deeper, but would you agree that that is a very key application to the word "may" here?

Rocky Gordon Thank you, yes. I think that sums up and that was our original position when the bill came out it had the peer support group language in there and we asked that it be taken out. So thank you, yes, I think that sums up our position very well.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

HB 1191
3/26/2015
Job Number 25481

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to service or assistance animals in rental dwelling units

Minutes: "Click to enter attachment information."

Chairman Burckhard opened the committee up for discussion on HB 1191. Senator Judy Lee was not in committee for this discussion. She will vote later.

Senator Anderson You know,I talked about putting the language in here that is in the federal law. However, it didn't seem like that was what they wanted so the risk of course is if we make it as narrow as it is now, somebody reading the North Dakota law, might make some incorrect assumptions about what their rights are as far as the tenant is concerned. It bothers me a little bit but it didn't seem to bother Rocky Gordon and I don't know if it bothered Senator Bekkedahl. At this point at least before some more discussion I am not going to recommend putting that language back in.

Senator Dotzenrod If a person was really knowledgeable, a renter and knew exactly what this federal law said, and knew what our state law said, I think that person could say I am going to use the federal law and I am going to get a peer group recommendation. They could take that peer group recommendation to the landlord and I don't think you want to be in conflict with our state law. I think he would still be in compliance. I still think the landlord has some rights. You know one of the things that bothered me when I paged through this attachment the thing that she handed out, if you read through this over and over it covers to what the rights are of the person who needs to have that animal as a therapy dog or service dog. But if you look in here and you try to find out what rights does the landlord have, the provider, if he feels he is being taken advantage. It is very hard to see in here what rights their giving to. The case where someone got documentation that isn't very good what rights does that provider have to say I think I am being scammed here. I think you've got something that is made up and not real.

Chairman Burckhard or the tenant has already been there a month and a half by the time he's figured this out. How hard is it to ask them to leave the premises? Those things are hard to accomplish.

Senator Dotzenrod I do also think that this peer group thing is really a pretty big loop-hole. Yes, when you can go to the internet and get $95 and pay and get some kind, that actually was a medical doctor one.

Senator Bekkedahl I look at this and I honestly believe upon Senator Dotzenrod good catch that the word 'may' is critical I that line 10 and I appreciate it being there. I also think that the worse thing we can do with this legislation is not amend it and not pass it because I think the landlords are at this risk already, with the federal legislation with the Fair Housing Act out there. I think they are already at this risk so I think this is an attempt to give a little better definition at least in state statute and again the worse thing we can do is not amend it and not pass the bill out, so, there may be further discussion.

Senator Bekkedahl I would move the amendments as presented
Chairman Burckhard Is that the 15. 0433.02001, that was presented by Rep. Louser?
Senator Bekkedahl Correct
2nd **Senator Grabinger**

Committee Discussion on the amendments
Senator Grabinger not so much on the amendment for my take on the whole thing is we don't think we're going to jeopardize any true assisted people anyway. They will have clear documentation. The only ones I was thinking of was the PTSD veterans and stuff like that. I think they can get it from the VA and everything they have as sources too. So in that respect I don't think we're going to hurt any of them and I have to agree it does allow the landlord the opportunity to pick the good ones.

Roll call vote on the amendment
5-0-1

Chairman Burckhard asked for a motion on the bill

Senator Bekkedahl I would move a do pass on HB 1191 as amended.
Chairman Burckhard Again that is 15. 043.02000, as proposed by Rep. Louser
2nd Senator Dotzenrod
Senator Dotzenrod I would like to make sure that and I think this bill does, I can see the circumstances where someone, in this country love their pets, and they do. So, what do you do when you get someone who gets one of these internet okays that they pay $95 and this person takes that to the landlord and it seems to me that if they do that with this law in place, the landlord would have a right to really scrutinize that and try to determine where it came from and ask more questions about where they got the documentation and have the right under this law to say no I think. I think it is probably a good thing.

Minutes roll call vote 5-0-1

Carrier: **Senator Bekkedahl**
Senator Judy Lee later votes 1191 "yea" on the amendment (6-0-0)
Senator Judy Lee votes 1191 "yea" on "do pass as amended" changing the roll call vote to 6-0-0
This vote was on Job Number 25542 on March 27, 2015.

15.0433.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Louser
March 10, 2015

3/27/15 JAE

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1191

Page 1, line 7, remove "to"

Page 1, line 8, replace ", which" with "that"

Page 1, line 8, replace "who" with "if the tenant"

Page 1, line 9, remove "to"

Page 1, line 11, replace "describe" with "confirm"

Page 1, line 13, after the underscored period insert "A landlord may not require supporting documentation from a tenant if the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord."

Renumber accordingly

Date: 3.26.15
Roll Call Vote: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1191

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 15.0433.02001

Recommendation: ☑ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Bekkedahl Seconded By Senator Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3.26.15
Roll Call Vote: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1191

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☑ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☑ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Bekkedahl Seconded By Senator Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Bekkedahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1191, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1191 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "to"

Page 1, line 8, replace ", which" with "that"

Page 1, line 8, replace "who" with "if the tenant"

Page 1, line 9, remove "to"

Page 1, line 11, replace "describe" with "confirm"

Page 1, line 13, after the underscored period insert "A landlord may not require supporting documentation from a tenant if the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord."

Renumber accordingly

2015 TESTIMONY

HB 1191

Attachment #1
HB 1191
1/19/2015

January 19, 2015

Jeremy Petron
Lobbyist # 172
North Dakota Apartment Association

Re: House Bill 1191

We (North Dakota Apartment Association), are in opposition to HB 1191, as written.

Our opposition is to the ambiguity this bill creates, specifically regarding lines 11 and 12 of '... an individual authorized to act on behalf of a peer support group or a nonmedical service agency'.

In accordance with Fair Housing laws, a resident is allowed to have an assistance or service animal if they are requesting a reasonable accommodation to a landlord's "no pets" policy (if such a policy is in place), and they are providing reliable documentation of their disability-related need for an assistance animal, if the disability is not readily apparent. For example, a 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.

After receiving such a request, the housing provider must consider the following:

1.) Does the person seeking to use and live with the animal have a disability (ie. a physical or mental impairment that substantially limits one or more major life activities)?

2.) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms.

If the supporting documentation relating to the need for an assistance animal comes from a licensed professional or medical provider whom can properly diagnose a person's disability and prescribe the need for an assistance as a means to alleviate the identified

symptoms, then the housing provider can and is much more confident in the clarity of the request and verifying the need for an assistance animal.

This bill, as written, takes away that clarity and builds in ambiguity as it relates to the peer support group or nonmedical service agency. We feel this creates a loop-hole for persons seeking to have a pet in a "no pets" building, as a way to get around needing to be properly diagnosed for a legitimate need to have that animal.

We have no issue with a licensed professional whom is properly trained to diagnose the need for a service or assistance animal to be allowed in a rental dwelling. The contention for landlords with a "no pets" policy, and the reason many landlords have a "no pets" policy, is due to situations of irresponsible animal owners that allow excessive noise that disturbs the quiet enjoyment rights of surrounding neighbors, or creates surmountable apartment and property damage.

We urge a 'do not pass' on HB 1191, as written, or amend lines 11 and 12.

Attachment # 2
HB 1191
1/19/2015

Testimony on House Bill 1191

By Rocky Gordon Lobbyist North Dakota Apartment Association #173

Chairman Kaiser and Member of the Committee I stand before you today in opposition to House Bill 1191 as it is currently written I'll be brief but the opposition comes from two areas.

1. Most of the language in the bill follows Federal Fair Housing Law so we don't oppose it. Since the issue of service, assistance or companion animals has come up we've sought clarity. We don't want to be in violation of the law, but it's hard to follow what is unclear. It there a Difference between the types of animals? Can we restrict size, breed type snake, horse, rat? Who is authorized to verify the accommodation, I've had Federal Investigators tell me "It's not our job to tell you how to follow the law it's our job to tell you when you do it wrong. This bill on line 11 &12 makes it even more unclear when it adds "an individual authorized to act on behalf of a peer support group or a non medical service agency. What does that really mean? It makes it even more unclear for us.

2. Secondly and perhaps more importantly that language we believe changes basic Fair Housing law. These animals whatever they are called are to accommodate a disability. It's not because want a cat or I would be sad if I don't keep my dog in an apartment. We believe very strongly that it does take a trained medical personal to properly recognize and verify a true disability.

This would be a major change in Fair Housing Law.

Please either amend lines 11 & 12 or defeat the bill.

Thank you for your attention and I would be happy to try and answer questions.

#3
HB1191
1/19/2015

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

SPECIAL ATTENTION OF:
HUD Regional and Field Office Directors of Public and Indian Housing (PIH); Housing; Community Planning and Development (CPD), Fair Housing and Equal Opportunity; and Regional Counsel; CPD, PIH and Housing Program Providers

FHEO Notice: FHEO-2013-01
Issued: April 25, 2013
Expires: Effective until Amended, Superseded, or Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

1. **Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations[1] for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (e.g., a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.

2. **Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA[2].

[1] Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

[2] Title II of the ADA applies to public entities, including public entities that provide housing, e.g., public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

3. **Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities[3] with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals[4] in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

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 but not limited to, 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. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.[5] While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

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[3] Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

[4] Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

[5] For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

(1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?

(2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

If the answer to question (1) or (2) is "no," then the FHAct and Section 504 do not require a modification to a provider's "no pets" policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are "yes," the FHAct and Section 504 require the housing provider to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) 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. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.[6]

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. 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

[6] A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant's dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider's practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

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.

However, a housing provider may not ask a tenant 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. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.[7]

Section II: The ADA Definition of "Service Animal"

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly 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 revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."[8] Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses[9]), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

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[7] Ibid.
[8] 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.
[9] 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.[10] A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.[11]

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."[12]

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[10] 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

[11] For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

[12] 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, "an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a 'reasonable accommodation' that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat."[13] In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct."[14] While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been been trained to perform. If the animal meets the test for "service animal," the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.[15]

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider's responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

The definition of "service animal" contained in ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

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[13] 75 Fed. Reg. at 56194, 56268.
[14] 75 Fed. Reg. at 56166, 56240,
[15] 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.

John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity

#1

15.0433.01001
Title.

Prepared by the Legislative Council staff for
Representative Louser
January 21, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1191

Page 1, line 11, remove "or an individual authorized to act on behalf of a peer support group or a"

Page 1, line 12, remove "nonmedical service agency"

Renumber accordingly

H.B. 1191
3.26.15
#1

15.0433.02001
Title.

Prepared by the Legislative Council staff for
Representative Louser
March 10, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1191

Page 1, line 11, replace "describe" with "confirm"

Page 1, line 13, after the underscored period insert "A landlord may not require supporting documentation from a tenant when the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord."

Renumber accordingly

H.B. 1191
3.26.15
#16

SERVICE ANIMALS, ASSISTANCE ANIMALS, AND HOUSING

This memorandum was requested to review federal and state law on housing discrimination when a landlord is requested to permit an animal in rented premises as an accommodation for a disability of a tenant.

The North Dakota Supreme Court in *Lucas v. Riverside Park Condominiums*, 776 N.W.2d 801 (2009), determined that for an individual with a disability to be granted a reasonable accommodation by a landlord under the Fair Housing Act (FHA), the individual must request and also provide documentation substantiating a request for a reasonable accommodation and the landlord may request additional information reasonably necessary to make a meaningful review and informed decision as to whether an animal is necessary to allow the individual an equal opportunity to use and enjoy the dwelling.

Enacted in 1999, North Dakota's Housing Discrimination Act, North Dakota Century Code Chapter 14-02.5, is modeled to be substantially equivalent to the federal FHA. Section 14-02.5-06 provides that it is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a person's disability. Section 14-02.5-06 provides that "discrimination" is defined to include "a refusal to make reasonable accommodations in rules, policies, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." Section 14-02.5-01 further provides a "disability" is "a physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such impairment, or being regarded as having such an impairment."

AMERICANS WITH DISABILITIES ACT

In 1990 Congress enacted the Americans with Disabilities Act (ADA). Title III of the ADA prohibits disability discrimination in public accommodations, including housing. This section goes beyond the Fair Housing Amendments Act in applying to properties including restaurants, theaters, hotels, retail stores, and recreational facilities. In Title 42, Chapter 126, an individual with a disability is defined as one with a physical or mental impairment that substantially limits one or more major life activities of such individual, and that the individual either has a record of such impairment or has been perceived to have such an impairment, whether the impairment limits or is perceived to limit a major life activity. A major life activity is one of those that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

The ADA defines "service animal" as any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. The ADA further provides that a service animal is a reasonable accommodation, a reasonable accommodation being something that can be done or changed in order to allow the individual with a disability an equal opportunity to enjoy the property or facility. Under the ADA, the animal need only meet the definition of "service animal" to be covered by the law. If an animal qualifies as a service animal, ADA-covered entities may not restrict access to a person with a disability on the basis of his or her use of that service animal unless the animal is out of control and its handler does not take effective action to control it or if the animal is not housebroken. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go.

FAIR HOUSING AND REHABILITATION ACTS

The FHA was passed as Title VIII of the Civil Rights Act of 1968. With the passage of the Fair Housing Amendments Act of 1988, Congress created a right for disabled persons to live in the housing of their choice. The definition for an individual with a disability is the same under the FHA and Section 504 of the Rehabilitation Act as the definition under the ADA, an individual with a disability is one with a physical or mental impairment that substantially limits one or more major life activities, is regarded as having such an impairment, and has a record of such an impairment. In the years since, many disabled individuals have fully asserted this right and when denied housing or reasonable accommodations, sought recourse through both private suits and the Department of Housing and Urban Development's (HUD) administrative enforcement mechanism. The Rehabilitation Act of 1973 extends civil rights protection to the disabled and requires entities receiving public money to make reasonable accommodations for qualified individuals.

For purposes of the FHA, 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. The FHA makes it unlawful to refuse to make

reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. A request for a reasonable accommodation may also be denied if providing the reasonable accommodation is not reasonable, such as if it would impose a financial and administrative burden on the housing provider or fundamentally alter the nature of the provider's operations. Under the FHA, a housing provider may not require individuals with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation. If a disability is not obvious, a housing provider may request reliable disability-related information that is necessary to verify that the person meets the FHA's definition of disability, describes the needed accommodation, and shows the relationship between the person's disability and the need for the requested accommodation. This information can be provided by a doctor or other medical professional, a peer support group, a nonmedical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.

Under the FHA and Section 504 of the Rehabilitation Act, individuals with a disability may be entitled to keep an assistance animal as a reasonable accommodation in housing facilities that otherwise restricts or prohibits animals. In order to qualify for such an accommodation, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. Although the new ADA rules state that emotional support animals do not qualify as service animals, they qualify as permitted reasonable accommodations for persons with disabilities under the FHA. If these requirements are met, a housing facility, program or service must permit the assistance animal as an accommodation, unless it can demonstrate that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing program or services.

DEFINITION OF SERVICE ANIMAL

In a 2011 memorandum, HUD explained that although the ADA definition of "service animals" includes dogs and excludes emotional support animals, disabled individuals may request a reasonable accommodation for assistance animals in addition to dogs, including emotional support animals, under the FHA or Section 504 of the Rehabilitation Act. The memorandum went on to explain that in situations where both laws apply, housing providers must meet the broader FHA and Section 504 standard in deciding whether to grant reasonable accommodation requests.

The ADA rules define "service animal" 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 rules specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." Thus, trained dogs are the only species of animals that may qualify as service animals under the ADA (there is a separate provision regarding miniature horses) and emotional support animals are expressly precluded from qualifying as service animals.

Neither the FHA, Section 504, or HUD's implementing regulations contain a specific definition of the term "service animal." However, species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the FHA and Section 504. The ADA regulation does not change this FHA and Section 504 analysis, and specifically notes, "under the FHA, an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a 'reasonable accommodation' that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the animal does not pose a direct threat." In addition, the preambles to the new rules state that emotional support animals do not qualify as service animals under the ADA but may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHA."

APPLICATION TO STATES

The ADA definition of "service animal" applies to state and local government services, public accommodations, and commercial facilities; the FHA covers all housing services and facilities; and HUD's Section 504 regulations apply to all recipients of HUD funds. The FHA applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of voucher assistance. The FHA's protection against disability discrimination covers home seekers with disabilities, but also buyers and renters without disabilities who live or are associated with individuals with disabilities. Any person or entity engaging in prohibited conduct, such as refusing to make reasonable accommodations in rules, may be held liable under the FHA. Courts have applied the FHA to individuals, corporations, associations, and others involved in the provision of

housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services.

Some types of entities, such as rental offices and housing authorities, are subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHA or Section 504. Entities must ensure compliance under all relevant civil rights laws. Compliance with the ADA's regulations does not ensure compliance with the FHA or Section 504. An entity that is subject to both the ADA and the FHA or Section 504 must permit access to ADA-covered "service animals" and, additionally, apply the more expansive assistance animal standard.

CONCLUSION

It appears that the assertion by a tenant of a disability requiring that an animal must be allowed on rental housing premises, by itself, does not require the landlord to grant an accommodation for that animal's presence. A landlord is entitled to require documentation substantiating a physical or mental impairment substantially limiting a major life activity, how the requested animal assists the disabled individual with regard to that disability, and that allowing the animal on the premises is a reasonable accommodation.

#2

Senate Political Subdivisions
House Bill 1191
March 26, 2015

Good morning, Chairman Burckhard and Members of the Committee. I am Corinne Hofmann, Director of Policy and Operations for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency which advocates for the disability-related rights of people with disabilities. I am here to offer information and express concern regarding HB 1191.

The current language of the bill allows a landlord with a "no pets" policy to request reliable supporting documentation from a tenant requesting they be permitted to have a service or assistance animal as an accommodation.

The Fair Housing Act, 42 U.S.C §§ 3601-3619, prohibits discrimination in housing based on disability and requires reasonable accommodation be made for disability-related needs. Guidance on what kind of information can be requested from a tenant requesting a reasonable accommodation has been provided by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice, Civil Rights Division (DOJ). I have attached the joint statement of these entities entitled, "Reasonable Accommodations under the Fair Housing Act". This was promulgated in 2004, but is still current and cited as a reference.

I would encourage you to read pages 12 – 14 of the document, in particular, the answers to questions 17 and 18. This information states that if a person's disability is obvious, or otherwise known to the provider, and if the need for the accommodation is readily apparent or known, no additional information may be requested. If the disability is known or obvious and it is only the need for the accommodation that is not apparent or known, the landlord may only request information needed to answer that question.

The language in HB 1191 over reaches and without qualification permits actions that are only allowable under the Fair Housing Act when neither the disability nor the disability-related need is apparent or known. The bill gives permission to landlords to engage in practices that violate the Fair Housing Act.

In addition, the bill indicates reliable supporting documentation may be provided by a physician or medical professional. That is true, but the Fair Housing Act allows other sources to provide reliable supporting documentation of a person's disability and disability-related need. Landlords would find themselves at odds with federal law if they refuse to accept documentation from other sources.

It is our belief that the language of the bill invites landlords to engage in practices that violate the Fair Housing Act. As written, we do not support this bill. Thank you.

26
H.B 1191
3.26.15

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act[1] (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.[2] One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.[3] HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

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1 The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

2 The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See* Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

3 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.[4]

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them[5] and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."[6] The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

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[4] Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. *See* U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and "Section 504: Frequently Asked Questions," (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

[5] The Fair Housing Act's protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). *See also* H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) ("The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities."). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

[6] 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.[7] With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "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.

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[7] This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.[8] This list of major life activities is not exhaustive. *See e.g.*, Bragdon v. Abbott, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.[9] Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

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[8] The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. See Toyota Motor Mfg, Kentucky, Inc. v. Williams, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See* Sutton v. United Airlines, Inc., 527 U.S. 470, 492 (1999).

[9] *See, e.g.*, United States v. Southern Management Corp., 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

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. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would 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.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

> **Example:** A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

> **Example 1:** An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

> **Example 2:** A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

> **Example 3:** An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits[10] or a credible statement by the individual). A doctor or other

[10] Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;

- By completing the "on-line" complaint form available on the HUD internet site: http://www.hud.gov; or

- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at http://www.usdoj.gov/crt/housing/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.