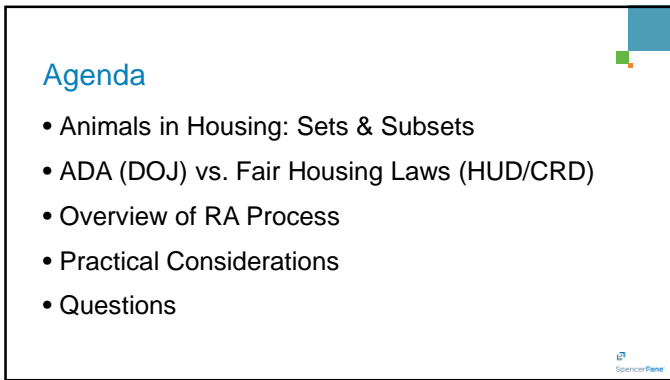
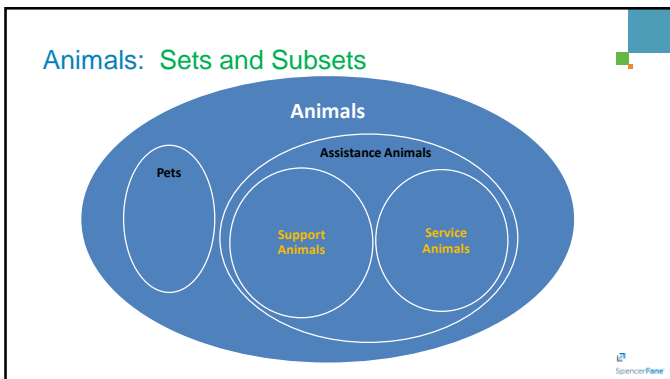




1



2



3

Assistance Animals


- Sometimes called “accommodation” animals
- “Assist” with a disability
- Can be **service** animals
- Can be **support** animals
- Are not pets



4

Service Animals


- Dog or miniature horse individually trained to perform tasks directly related to a person’s disability
- Are **not**:
 - Required to be certified or professionally trained
 - Required to wear a vest/other ID indicating it is a service dog
 - Emotional support, therapy, comfort or companion animals



5

Service Animals


- Under the Americans with Disabilities Act (“ADA”) service animals are permitted in:
 - Places of public accommodation such as restaurants, shops, hospitals, schools, hotels
 - Housing at public and private universities
 - Public housing run by state or local governments
 - Emergency shelters
- ADA has limited applicability to apartment communities



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Miniature Horses


- ADA regulations recognize miniature horses may be a service animal which must be allowed in places of public accommodation if reasonable.
- Must be trained to do work/perform tasks for the disabled.
- Typically range in height from two to three feet and weigh between 70 and 100 lbs.



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Miniature Horses


- Assessment Factors for Reasonableness
 - Is the horse housebroken?
 - Is the horse under the owner's control?
 - Can the facility accommodate the horse's type, size, and weight?
 - Will horse's presence compromise legitimate safety requirements necessary for safe operation of the facility?



8

Identifying Service Animals


- Many are obvious:
 - Dogs that guide people who are blind
 - Dogs that alert people who are deaf
 - Dogs that pull a wheelchair
- Some are not obvious:
 - Dogs that alert and protect a person having a seizure
 - Dogs that alert and calm a person during an anxiety attack



9

Identifying Service Animals


- If not obvious can ask:
 - Is the dog a service animal required because of a disability?
 - What work or task has the animal been trained to perform?
- Cannot:
 - Ask about the person's disability;
 - Require the animal demonstrate ability to perform work/task;
 - Require medical documentation; or
 - Require special identification or training documentation.



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Support Animals


- Do work, perform tasks, provide assistance, or provide therapeutic emotional support for persons with disabilities
- May be trained or untrained
- Must be allowed in housing, despite no pet policies, if there is a disability-related need for the animal



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Fair Housing Requirements

- Must take affirmative steps to provide equal access to housing including:
 - Reasonable physical modifications to premises
 - Reasonable accommodations in rules, practices or services
- Reasonable accommodations and modifications ensure the disabled an equal opportunity to use and enjoy housing the same as those who do not have disabilities



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What is Unreasonable?

- Undue financial **and** administrative burden
- Fundamental change in the nature of the property or program
- What is “unreasonable” is **highly fact-specific**
- Must be considered on a case-by-case basis



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The Process

- Identify request
- Verify disability (if not obvious)
- Verify nexus (if not obvious)
- Determine whether request is reasonable
 - Not a fundamental change
 - Not an undue burden (administrative and financial)
- Identify who pays
- Communicate! Communicate! Communicate!



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Let's DANCE

- **D** – Is there a **Disability**?
- **A** – Did the individual **Ask**?
- **N** – Is there a **Nexus**?
- **C** – Does it create a **Change** to the nature of the program?
- **E** – Does it create an **Excessive** or undue financial and administrative burden?



15

When Is a Person Disabled?



- Has a physical or mental impairment that limits* a major life activity
- Has a record of impairment
- Is regarded as having an impairment
- Is associated with someone with an impairment


*"Limits" is the standard in California; "Substantially Limits" is the federal standard.




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Major Life Activities

- Seeing
- Hearing
- Walking
- Breathing
- Performing manual tasks
- Caring for one's self
- Learning
- Speaking
- Working




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Verifying Disabilities

- If disability is **not obvious**, may request verification of the disability
- Do **not** ever inquire as to nature of disability
- **Cannot** require verifications to be on your forms, but can ask them to use your form
 - Must still process request to the extent you can if forms are not completed
 - Should offer assistance in completing form



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Verifying Disabilities

- Reliable third party who is in a position to know about the disability and/or the disability related need for the requested accommodation may verify.
- Federal guidance permits inquiry as to whether health care professional has a professional relationship with the individual involving the provision of health care or disability-related services.



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Typical Reliable Third Parties

- Medical professionals
- Health care providers, including the office of a medical practice or a nursing registry
- Peer support groups
- Non-medical service agencies or persons including In-Home Supportive Services or Supported Living Service Providers



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Online Verifications

- Some websites sell certificates, registrations and licensing documents for assistance animals to anyone who answers certain questions or participates in a short interview and pays a fee.
- “In HUD’s experience, such documentation from the internet is not, by itself, sufficient to reliably establish that an individual has a non-observable disability or disability related need for an assistance animal.”*

*HUD FHEO Notice: FHEO-2020-01 issued January 28, 2020 effective until amended, superseded, or rescinded.



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Online Verifications

- California Regulations provide that "a support animal certification from an online service that does not include an individual assessment from a medical professional is presumptively considered not to be information from a reliable third party."²*
- If deemed unreliable, must give requesting individual opportunity to provide alternative documentation verifying disability or need.

² Cal. Code of Reg. § 12185(c)(2)



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CA Health & Safety Code § 122318

A health care practitioner shall **not** provide documentation relating to an individual's need for an emotional support dog **unless** the health care practitioner complies with all of the following criteria:

- Possesses a valid, active license and includes the effective date, license number, jurisdiction, and type of professional license in the documentation.
- Is licensed to provide professional services within the scope of the license in the jurisdiction in which the documentation is provided.
- Establishes a client-provider relationship with the individual for at least 30 days prior to providing the documentation requested regarding the individual's need for an emotional support dog.



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CA Health & Safety Code § 122318

- Completes a clinical evaluation of the individual regarding the need for an emotional support dog.
- Provides a verbal or written notice to the individual that knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor violation of Section 365.7 of the Penal Code.

"Health Care Practitioner" means a person who is licensed and regulated pursuant to the Business and Professions Code, who is acting within the scope of practice of the person's license or certificate.



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Challenging Disabled Status

- If a reliable third party certifies the disability, currently very difficult to challenge the classification as disabled.
- Unless you have indication that the disability is temporary, verifications generally do not expire.
- In certain circumstances, verifications could be stale, but proceed carefully.



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Did They Ask?

- Cannot presume someone is disabled or requires an accommodation or modification
- No magic words required to start the process
- **Can be directed to anyone on staff**
- Request is not required to be in writing to start the process
- Cannot require the individual to use your forms, but you can use them to track/process the request



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Nexus Between Disability and Request

- Can challenge the relationship or nexus between what is being requested and the disability
- Standard is whether the accommodation “**may be necessary**” to have equal access to your property or programs
- If no relationship between disability and what is being requested, can deny request



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Nexus Between Disability and Request

- Does the animal do work, provide assistance, or perform at least one task that benefits the individual because of the person's disability?
- Does the animal provide therapeutic emotional support to alleviate a system or effect of the disability?
- Without the animal, will the symptoms or effects of the person's disability be significantly increased?



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Fundamental Change to the Program

- Is what is being requested contrary to "what you do"?
- Examples of fundamental changes:
 - Walk an accommodation animal for a resident
 - Feed an accommodation animal
 - Clean up after an accommodation animal

A person with a disability is responsible for feeding, maintaining, providing veterinary care and controlling the animal on their own or with the assistance of individuals other than the housing provider.



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Excessive – Undue Burden

- Financial **and** Administrative Burden
- Cannot consider what happens if "everyone wants one"
- No set dollar amount
- Sometimes, do not understand burden until after the request has been granted
 - For example, yapping dog, aggressive animal, waste issues
 - Must reinitiate the interactive process



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Direct Threats

- Do NOT need to accommodate a person who is a direct threat to others
- In practice, this is a very difficult standard to meet



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Direct Threats

- Does the **specific** animal pose a direct threat?
 - Must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct.
 - Evidence cannot be so old it is not credible or reliable.
 - No presumptions based on breed or size or what other animals have done.
- Can the threat be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal?

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Denying Requests

- The disabled person is **presumed to be in the best situation to identify what he or she requires** and, if it is reasonable, should grant it.
- If you don't think it is reasonable, need to be able to justify grounds – **cannot be based on personal opinion.**

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Scenarios to Think About

- Sally, a resident at a no-pet property, approaches you and indicates that her counselor, Lucy, has suggested she needs a companion animal. She provides you a prescription written by Lucy recommending Sally obtain this animal for purposes of mental stability and a sense of calming. Sally has taken the initiative of selecting Snoopy, a Pitbull, from a local breeder.
- Meanwhile, another resident, Chuck, comes to you and says his bird Woodstock is his service animal, which he needs to have with him at all times so the bird can alert Chuck if Chuck is going to have a seizure. Chuck won't keep Woodstock in a cage, the bird makes a lot of noise, and several residents are afraid of the animal and worried it is spreading disease.
- What do you do?



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Let's DANCE

- **D** – Is there a **Disability**?
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- **E** – Does it create an **Excessive** or undue financial and administrative burden?



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Common Issues

- Types of Animals
 - Usually common household animals (possible exceptions)
 - No breed, size, weight limitations
- Number of Animals
 - Case-by-case inquiry
- Behavior Issues
 - Engage in interactive process



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Any Questions?


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Resources

- HUD FHEO Notice: FHEO-2020-01, Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act issued January 28, 2020
- DOJ Guidance ADA Requirements: Service Animals last updated and FAQ about Service Animals and the ADA both updated on February 28, 2020
- Joint Statement of HUD and DOJ Reasonable Accommodations Under the Fair Housing Act issued May 17, 2004
- California Health & Safety Code Section 122318
- 2 California Code of Regulations § 12185



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About the Presenter
Karen K. McCay

Karen McCay is the Office Managing Partner of the California offices of Spencer Fane, LLP. Her former firm, Pahl & McCay, combined with Spencer Fane in October 2023 giving her housing practice a nationwide platform (Spencer Fane currently has a presence in twenty-six cities across the country). Ms. McCay's practice involves all aspects of real estate and contract law, with particular emphasis on operational issues in the multi-family housing industry. Her residential rental housing experience encompasses two spheres: market-rate housing and affordable housing. Ms. McCay's clients include large REITs, individual property owners, management companies, developers, large and small non-profits and local housing authorities. With over twenty-five years of experience, much of Ms. McCay's law practice is dedicated to preventative advice and compliance counseling for non-profit and for-profit businesses, although she remains strategically involved in her clients' litigation as well. In addition, she conducts trainings in fair housing, preventing sexual harassment, disability accommodation and similar subjects for clients and industry organizations such as the National Apartment Association, the California Apartment Association, AHMA-NCH, and AHMA-PSW.

Her personal and professional accomplishments were acknowledged in 2011 when she was recognized as a "Woman of Influence" by the San Jose Silicon Valley Business Journal. In 2014, she was published by The Rutter Group as a contributor to the California Fair Housing and Public Accommodations Practice Guide. Karen McCay also has worked frequently with staff at the U.S. Department of Housing and Urban Development and the California Tax Credit Allocation Committee regarding issues relevant to the affordable housing industry and was instrumental in drafting the California Addendum to HUD Leases, which has been approved for use throughout the State of California (and, yes, she is working on an update).

Karen graduated with honors from the University of Florida in 1991 majoring in finance. In 1996, she received her Juris Doctor, magna cum laude, from The American University Washington College of Law, where she served as Articles Editor for The American University Law Review. She is admitted to practice in the States of California and Florida. Ms. McCay has supported the community through her service on various Boards of Directors over the past several years, including the Housing Industry Foundation, the San Jose Silicon Valley Chamber of Commerce, AHMA-NCH, Church of the Valley Retirement Homes, Inc. and the Junior League of San Jose, Inc., which, in 2016, honored Karen with its Sustainer of the Year Award recognizing her sustained commitment to volunteering.



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