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May 10, 2019

The Honorable Anna Maria Farías  
Assistant Secretary  
Office of Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
451 7th Street, S.W.  
Washington, DC 20410

Dear Secretary Farías:

Community Associations Institute (CAI) members support the right of all individuals to be free from illegal housing discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability. CAI members also support the right and obligation of homeowners' associations, condominium associations, and housing cooperatives (collectively, community associations) to enforce community covenants, bylaws, and rules consistent with Federal, state, and local law.

Community associations have experienced an increasing number of requests for reasonable accommodation of assistance animals pursuant to the Federal Fair Housing Act (FHA). In the course of considering such requests, community association boards report current Federal policy may enable individuals to falsely assert a disability as a ruse to evade community covenants.

Assistance animals are not pets. Assistance animals serve functions directly related to a person's disability and reasonable accommodation is required by law. CAI members believe fraudulent requests for reasonable accommodation of pets frustrate implementation of fair housing policy and unreasonably burden housing provider compliance with fair housing requirements.

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CAI is the only national organization dedicated to fostering competent, well-governed community associations that are home to approximately one in every five American households. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's more than 40,000 members include community association volunteer leaders, professional managers, community management firms and other professionals and companies that provide products and services to associations.

Courts have interpreted the FHA to apply to community associations as housing providers.<sup>1</sup> Due to requirements of law, community association animal policies must be crafted and enforced in a manner that promotes fair housing rights of residents. Community associations work each day to ensure compliance with the FHA and protect fair housing rights.

In considering a reasonable accommodation request for an assistance animal, the FHA has been interpreted to allow housing providers to request reliable information documenting “the disability-related need for an assistance animal” when a disability is not readily apparent or known.<sup>2</sup> Information from a physician, psychiatrist, social worker, mental health professional, or other third-party is deemed to satisfy the documentation requirement 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.”<sup>3</sup>

A community association may not request access to a resident’s medical records or health care provider to otherwise document the resident’s disability.<sup>4</sup> When a disability becomes evident, the association is required to provide a reasonable accommodation allowing the assistance animal access to all areas of the community open to residents, subject to limited human safety and property protection exemptions evaluated on a case-by-case basis specific to the assistance animal for which an accommodation has been made. The association may not request the resident pay a deposit or fee assessed residents owning an animal that is a pet.<sup>5</sup>

CAI members note current guidance concerning documentation of disabilities that are not readily apparent is vague—particularly when a resident’s disability necessitates an emotional support animal. This invites certain deceptive acts of concern to community associations. These vagaries have led to a cottage industry that provides purchasers and tenants letters of diagnosis and therapeutic attestations of the purchaser’s or tenant’s emotional condition where no doctor/practitioner-patient relationship exists.<sup>6</sup> The lack of a doctor/practitioner-patient

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<sup>1</sup> 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*: p. 3, “Courts have applied the Act to...homeowners and condominium associations...”. Hereafter referred to as “the 2004 Joint Statement”.

<sup>2</sup> FHEO-2013-01: *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*: p. 3. Hereafter referred to as the “2013 Memorandum”.

<sup>3</sup> *Ibid.*, pp. 3-4.

<sup>4</sup> *Ibid.*, p. 4.

<sup>5</sup> *Ibid.*, p. 3.

<sup>6</sup> See Report of the Virginia Apartment and Management Association Prepared for the Affordable Housing, Real Estate Law, and Mortgages Work Group of the Virginia Housing Commission, “*Fraudulent Request for Accommodation of Assistive/Emotional Support Animals*”, available at [http://services.dlas.virginia.gov/User\\_db/frmView.aspx?ViewId=4608&amp;s=16](http://services.dlas.virginia.gov/User_db/frmView.aspx?ViewId=4608&amp;s=16). See also Herzog, Hal, Ph.D., *Psychology Today*, “Service Animal Scams: A Growing Problem—A Cottage Industry Has Developed Around Fake Emotional Support Animals” (June 11, 2014). See also, Ollove, Michael, *USA*

relationship increases opportunities for deceptive acts designed to frustrate housing provider compliance with fair housing requirements.

CAI members further note the increase of requests for accommodation of an ever-expanding variety of species as emotional support animals.<sup>7</sup> In this regard, the housing space differs little from that governed by the Americans with Disabilities Act (ADA) and the Air Carrier Access Act (ACCA). There is, however, one glaring difference—the U.S. Department of Justice and the U.S. Department of Transportation have each acted to restore the credibility of important protections for persons with a disability.

In 2010, the U.S. Department of Justice finalized rules governing accommodation of service animals in facilities open to the general public covered by the ADA.<sup>8</sup> The final rule retains the Department's long-standing view that emotional support animals are by law different from the definition of a "service animal". The Department explained that the mere provision of "emotional support, well-being, comfort, or companionship do[es] not constitute work or tasks for the purposes..." of the definition of a service animal.<sup>9</sup>

Rules promulgated by the U.S. Department of Transportation pursuant to the ACAA provide air carriers and air passengers confidence in the use of emotional support animals for persons with a mental disability. Regulations permit air carriers to request a verifiable, written letter from a licensed mental health professional stating a passenger's need for an emotional support animal while traveling by air. The letter must be on the licensed mental health professional's letterhead; state the passenger has been diagnosed with a condition falling within well-known and universally accepted mental health diagnosis guidelines; that the passenger requires the animal to travel; and, that the letter be issued within one-year of the date the passenger is

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Today, "Several States Crack Down "Fake" Service Animals" (October 29, 2017), available at <https://www.usatoday.com/story/news/2017/10/29/several-states-crack-down-fake-service-animals/807676001/>. See also, Swisher, Skyler, *South Florida Sun Sentinel*, "Tired of "Bogus" Emotional Support Animals? So Are Some Lawmakers" (March 11, 2019), available at <https://www.sun-sentinel.com/news/florida/fl-ne-support-animal-crackdown-20190311-story.html>

<sup>7</sup> See, Argento, Mike, *York Daily Record*, "Emotional Support Alligator offers comfort-paired with razor-sharp teeth" (January 14, 2019), available at <https://www.ydr.com/story/opinion/columnists/mike-argento/2019/01/14/emotional-support-alligator-offers-comfort-razor-sharp-teeth/2569655002/>; See also, Cohen, Howard, *Miami Herald*, "His emotional support squirrel could get him evicted, but he won't live without her", (November 11, 2017), available at <https://www.miamiherald.com/news/state/florida/article184097341.html>; see also, Whitley, David, *Orlando Sentinel*, "Maybeline the pig might become bacon if Orlando HOA has its way" (September 5, 2018), available at <https://www.orlandosentinel.com/opinion/os-ae-pig-hoa-david-whitley-0905-story.html>

<sup>8</sup> 75 FR 56236

<sup>9</sup> 75 FR 56250

seeking to travel.<sup>10</sup> Several air carriers have recently used these regulations to effectively protect the integrity of the ACAA and accommodations required by passengers with a diagnosed mental health condition.<sup>11</sup>

The Department of Transportation has taken further action by issuing an Advanced Notice of Proposed Rulemaking (ANPR) to address air carrier and passenger concerns that pet owners have sought to leverage the threat of lawsuits to unlawfully bring pets on passenger aircraft.<sup>12</sup> The Department's ANPR notes—

*The use of unusual species as service animals has also led to confusion. Passengers have attempted to fly with peacocks, ducks, turkeys, pigs, iguanas, and various other types of animals as emotional support or service animals. Disability rights advocates have voiced alarm that these animals may erode the public's trust, which could result in reduced access for many individuals who use traditional service animals.*<sup>13</sup>

It is unreasonable to assume that ruses intended to avoid pet restrictions in public places such as restaurants or while on an aircraft—which are intimate, close quarters settings—are not also employed to intimidate housing providers. Overlooked is the physical and/or emotional effect which an accommodation based on a deceptive diagnosis has on the existing residents in buildings with covenants that prohibit dogs and cats. These individuals are forced to live with animals regardless of the health consequences. Having purchased their home in a building that accommodates their physical and/or emotional needs, the existing owners and residents only alternative is to vacate their home and attempt to sell it. CAI members report significant examples where a dog or a cat is brought to live in an animal free building based on a fraudulent disability diagnosis.

CAI members have raised questions concerning qualifications of individuals or entities diagnosing patients and prescribing emotional support animals. The 2004 Joint Statement does not require that individuals or entities be in good standing with relevant state boards when diagnosing a mental disability and prescribing an emotional support animal for which a reasonable accommodation under the FHA will be sought. The 2004 Joint Statement refers to medical professionals, but also to peer-support groups or parties “in a position to know about

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<sup>10</sup> 14 CFR § 382.117(e)

<sup>11</sup> See [American Airlines Makes Additional Changes to Service and Emotional Support Animal Policy \(March 8, 2019\)](#); see also, [United Airlines: We update our service and emotional support animal policy \(January 3, 2019\)](#); see also, [Southwest Airlines: Southwest Airlines Updates Service Animals Policy \(August 14, 2018\)](#)

<sup>12</sup> U.S. Department of Transportation Docket No. DOT-OST-2018-0068

<sup>13</sup> *Ibid.*

the individual's disability..."<sup>14</sup> This does not include any requirement that "reliable third-parties" have training, certification, or experience necessary to evaluate and reach a medical determination.

Similarly, the Department's 2013 Memorandum does not establish minimum credentials for individuals or entities that may be deemed a reliable third-party. The Department's use of the generic term "other mental health professional"<sup>15</sup> has been exploited to perpetuate intentional fraudulent or deceptive acts.

The lack of reliable standards concerning diagnosis of a disability and prescription of an emotional support animal has prompted some states to act independent of the Department. Numerous states have enacted statutes authorizing civil and criminal penalties for individuals misrepresenting a disability requiring the use of a service or assistance animal. CAI members have supported state actions to combat schemes that perpetuate fraudulent or deceptive claims of disability and through subterfuge coerce community associations to take actions not required by Federal, state, or local fair housing statutes.

Some state fair housing agencies have taken appropriate steps to clarify qualifications for individuals or entities that may be deemed reliable sources of information concerning a disability for the purpose of state law. For example, the Virginia Fair Housing Office provided examples of "reliable third-party verifiers" that include licensed and/or certified medical, therapeutic, and social services professionals acting officially within the scope of their practices; health care providers acting in accordance with official duties and scope of practice; state-licensed non-medical service agencies; unlicensed counselors or therapists providing services defined in Virginia statute provided there is no fee charged or thing of value exchanged; and, licensed or certified practitioners of healing arts in good standing with a professional body governed by a state having a bona-fide practitioner-patient relationship with the individual consistent with applicable state law and regulation.<sup>16</sup>

More than 20 states have statutes related to misrepresentation of service animals.<sup>17</sup> These statutes make it a crime to fraudulently represent that a person has the right to be accompanied

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<sup>14</sup> 2004 Joint Statement, p. 13.

<sup>15</sup> FHEO-2013-01, p. 4.

<sup>16</sup> Virginia Department of Professional and Occupational Regulation, Virginia Fair Housing Office: Guidance Document—Reasonable Accommodation Requests for Assistance Animals (2017), p. 11.

<sup>17</sup> At least 23 state legislatures have statutes imposing civil and/or criminal penalties for persons impersonating a person with a disability or seeking a reasonable accommodation on a fraudulent basis. Such states include Alabama, California, Colorado, Florida, Iowa, Idaho, Kansas, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Texas, Utah, Virginia, Washington, and Wyoming.

by a service animal or if there is misrepresentation in the proof of need for a service or emotional support animal. This may simply involve the use of a harness, vest, or orange leash that typically identifies a service animal. Violations are usually a misdemeanor

CAI members strongly support fair housing rights of all individuals and work to educate community associations on obligations under fair housing statutes. CAI members believe an adjustment to current policy guidance will further fair housing policy and housing provider compliance by limiting fraudulent and deceptive acts.

As the Department contemplates additional guidance to housing providers concerning fair housing obligations related to assistance animals, CAI members urge consideration of the following recommendations.

**CAI recommends:**

1. Improvements to policy guidance that minimize the production and circulation of fraudulent or deceptive disability diagnoses and assistance animal prescriptions. CAI members urge the Department to provide additional guidance concerning individuals and entities deemed “reliable third-parties” stipulating that such parties act within the official capacity of their medical or professional license and/or state certification to practice medicine or healing arts, be in good standing under the law of the state in which the provider is licensed or certified, and have a bona fide practitioner-patient relationship with the individual requesting an accommodation under the Fair Housing Act.
2. Improvements to policy guidance that support state actions to minimize the production and circulation of fraudulent or deceptive assistance animal prescriptions. CAI members urge the Department to stipulate that state laws imposing civil or criminal penalties for fraudulently or falsely diagnosing or asserting a disability to coerce a housing provider to make a reasonable accommodation not required by Federal, state, or local fair housing law are consistent with the Federal Housing Administration.

Sincerely,



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Community Associations Institute

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