

Right to Emotional Support Animals in "No Pet" Housing

Advocates and professionals have long recognized the benefits of assistive animals for people with physical disabilities, including seeing eye dogs or hearing dogs that are trained to perform simple tasks such as carrying notes and alerting their owners to oncoming traffic or other environmental hazards. Recent research suggests that people with psychiatric disabilities can also benefit significantly from assistive animals. Emotional support animals provide therapeutic nurturing and support and have proven extremely effective at ameliorating the symptoms of psychiatric disabilities, including depression, anxiety, and post-traumatic stress disorder.

I have a psychiatric disability and may benefit from an emotional support animal. What laws protect my right to keep an animal as an assistive aid?

The Fair Housing Amendments Act of 1988 (FHA) and Section 504 of the Rehabilitation Act of 1973 (§ 504) protect the right of people with disabilities to keep emotional support animals, even when a landlord's policy explicitly prohibits pets.¹ Because emotional support and service animals are not considered "pets," but rather assistive aids, the law will generally require the landlord to make an exception to its "no pet" policy so that a tenant with a disability can fully use and enjoy his or her dwelling. In most housing complexes, so long as the tenant meets the definition of a person with a disability and has a letter or prescription from an appropriate professional, such as a therapist or physician, he or she is entitled to a reasonable accommodation to a building's "no pet" policy allowing an emotional support animal in the home.

What makes an accommodation "reasonable"?

Discrimination under the FHA includes "a refusal 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." 42 U.S.C. § 3604(f)(3)(B). So long as the requested accommodation does not constitute an undue financial or administrative burden for the landlord, or fundamentally alter the nature of the housing, the landlord must provide the accommodation. The Department of Housing and Urban Development (HUD) and several courts have explicitly stated that an exception to a "no pets" policy for a support animal generally qualifies as a reasonable accommodation.

See, e.g., *Castellano v. Access Premier Realty, Inc.*, 181 F. Supp. 3d 798 (E.D. Cal. 2016) (waiving a "no pet" policy to allow a resident's emotional support cat was a reasonable accommodation under FHA); *Auburn Woods I Homeowners Ass'n v. Fair Emp't and Hous. Comm'n*, 121 Cal. App. 4th 1578 (2004) (landlord's repeated denials of tenant's requests for a waiver allowing an emotional service dog constituted unlawful discrimination); *Occupancy Requirements of Subsidized Multifamily Housing Programs*, HUD, No. 4350.3, exhibit 2-2 (2013)² (making an exception to a no pet rule to allow a tenant with an emotional disability to keep an assistance animal is a reasonable accommodation).

¹ Although Titles II and III of the Americans with Disabilities Act (ADA) apply to public entities that provide housing, and public accommodations involved in the provision of housing, respectively, 2010 Department of Justice (DOJ) regulations exclude emotional support animals from the definition of service animals for the purposes of the ADA. Only trained dogs who do work or perform tasks other than emotional support, companionship, etc., are covered. See 28 C.F.R. §§ 35.104, 36.104.

² https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35662.pdf

Do I qualify for a reasonable accommodation?

To qualify for a reasonable accommodation under the FHA or § 504, the tenant must meet the statutory definition of having a disability. The statutes recognize three broad categories of disabilities: (1) a physical or mental impairment that substantially limits one or more major life activities (such as walking, seeing, working, learning, washing, dressing, etc.); (2) a record of having such an impairment; or (3) being regarded as having such an impairment. 28 C.F.R. § 35.108.

My landlord has a "no pet" rule. How do I request an exception to the policy for my support animal?

If you need an emotional support animal to ease the symptoms of a disability (as defined above), you should request an accommodation, in writing, from the landlord, manager or other appropriate authority. The request should state that you have a disability and explain how the requested accommodation will help enhance your ability to enjoy your home and lessen the effects of the disability. In addition, the request should include a note from a service provider, doctor, or therapist verifying the need for the support animal (see sample letter from service provider on p. 6). Note that you are not obligated to disclose the details of your disability, nor provide a detailed medical history.

What if my landlord asks for proof of my disability?

HUD and DOJ indicated in a Joint Statement on Reasonable Accommodations under the FHA that the housing provider is entitled to obtain only that information necessary to determine whether the requested accommodation is necessary because of a disability.³ Being able to substantiate your disability and establish that the support animal is necessary to use and enjoy the residence is still critical.

As a result, courts have consistently held that a tenant requesting an emotional support animal as a reasonable accommodation must demonstrate a relationship between his or her disability and the companionship of the animal. In most cases, a letter from your doctor or therapist explaining the need for your support animal is sufficient. *See, e.g., Castellano v. Project Sentinel, Inc.*, 181 F. Supp. 3d 798 (E.D. Cal. 2016) (sufficient support existed for waiving a no pet policy where a tenant's treating physician provided managers with documentation indicating that tenant suffered from anxiety disorder and depression that would be eased by an emotional support animal).

Does the animal need to have special training?

Although the landlord is entitled to the supporting materials that document the need for an emotional support animal, neither FHA nor § 504 require the tenant to provide proof of training or certification of the animal. Courts, however, remain divided on the issue. *See, e.g., Fair Hous. of the Dakotas, Inc. v. Goldmark Prop. Mgmt.*, 778 F. Supp. 2d 1028 (D. N.D. 2011) (the FHA encompasses all types of animals regardless of training); *Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245 (D. Haw. 2003) (a dog not specially trained is not a "service animal" within the meaning of the FHA).

In addition, while dogs are the most common service animal, other animals may also be assistance animals under FHA and § 504. *See Janush v. Charities Hous. Dev't Corp.*, 169 F. Supp. 2d 1133 (N.D. Cal. 2000) (disabled tenant's need for two birds and two cats to act as service animals, providing tenant with companionship necessary to her mental health, supported her claim that landlord's eviction of tenant for violation of no pets policy violated FHA).

³ <https://portal.hud.gov/hudportal/documents/huddoc?id=43503HSGH.pdf>.

My landlord will allow an emotional support animal, but wants to charge an excessive deposit. Do I have to pay?

Generally, a landlord is entitled to charge a deposit for a pet to cover any resulting damage to the property. But, if a pet is more properly characterized as a service animal, the tenant should be exempt from the deposit. According to HUD's handbook for subsidized multifamily programs:

A housing provider may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal.

Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(E) (2013).⁵ If the assistance animal causes damage to the housing unit or the common areas of the dwelling, however, the housing provider may charge the cost of repairing the damage.

Additionally, while HUD and DOJ have stated that requiring pet deposits for assistance animals is discriminatory, courts have been hesitant to find that imposing such fees is per se unreasonable. Compare Joint Statement of the Dept. of Housing and Urban Dev. and the Dept. of Justice, "Reasonable Accommodations under the Fair Housing Act," at 9 (May 17, 2004)⁶ ("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"); with *U.S. v. Barber*, 2014 WL 4988200 (W.D. Wash. Oct. 7, 2014) (noting that, while numerous cases resulted in settlement decrees requiring waiving a pet deposit for service animals, settlement decrees do not establish rules of law, and thus declining to decide the matter).

I live in campus residential housing. Do these laws apply to me?

HUD has interpreted the FHA to cover residence halls and dormitory rooms, and district courts have typically sided with this position. For example, in *U.S. v. Nebraska at Kearney*, 940 F. Supp. 2d 974 (D. Nebr. 2013), the court found that a university's student housing is a "dwelling" within the meaning of the FHA and thus is subject to the same legal requirements as other covered housing. In that case, the court held that the university violated the FHA by denying a student tenant's requests to live with her emotional support dog in a student housing facility based on university's no pets policy.

HUD's guidance states that housing providers should use general reasonable accommodation principles in evaluating requests to bring assistance animals into covered housing. Thus, colleges and universities may request information regarding a student's disability and disability-related need for the animal, including supporting documentation. The educational institution must conduct an individualized inquiry when deciding whether an accommodation is reasonable and may not rely on long-standing policies to deny a student's request for accommodation. See, e.g., *Fialka-Feldman v. Oakland Univ. Bd. of Trustees*, 678 F. Supp. 2d 576 (E.D. Mich. 2009).

⁵ <https://portal.hud.gov/hudportal/documents/huddoc?id=43503HSGH.pdf>.

⁶ <https://www.justice.gov/crt/us-department-housing-and-urban-development>.

Resources

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