

Assistance Animals In Housing

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What Is an Assistance Animal? Animals can provide assistance or perform tasks for the benefit of persons with disabilities in many types of spaces: at home, in the workplace, during airline transit, and in public areas such as grocery stores. Such animals are commonly referred to, often interchangeably, as “service animals,” “emotional support animals,” “therapy animals,” or “companion animals.” Different laws govern the use of such animals depending upon where the animals are used, and the laws often have different restrictions on the circumstances under which animals are allowed. For instance, the US Dept. of Justice (DOJ) enforces the Americans with Disabilities Act (ADA), which applies to places of public accommodation (leasing offices, social service centers, universities, libraries, etc.). The DOJ ADA regulations include a very narrow definition of “service animal,” permit only trained dogs and miniature horses, and prohibit emotional support animals that are not individually trained to do work or perform tasks for the benefit of an individual with a disability. Yet another federal law governs airlines.

The Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act (which applies to recipients of federal funding), and HUD’s implementing regulations for these two laws, apply to the use of animals needed for disabilities in housing, and do not include any specific definitions relating to animals. In fact, a housing provider’s breed, size, and weight limitations may not be applied to an assistance animal in housing.¹ To avoid confusion with the more narrow ADA definition of “Service Animal,” HUD uses the term “assistance animal” as an umbrella term for animals needed by people with disabilities in housing settings.² While dogs are common, species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the FHAct and Section 504.

Since there is no specific definition that an assistance animal in housing must meet, the use of animals by persons with disabilities in housing is determined by the FHAct reasonable accommodation principles³ which housing providers should be familiar with: the requester must (1) have a disability, (2) the accommodation must be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, and (3), the request must be reasonable.⁴ To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the person’s disability. In the case of assistance animals, an

¹ HUD FHEO Notice FHEO 2013-01, *Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs* (FHEO 2013-01).

² FHEO 2013-01, p. 3.

³ Id. p. 2.

⁴ See Joint Statement of HUD and DOJ, *Reasonable Accommodations Under the Fair Housing Act*, 2004.

individual with a disability must demonstrate a nexus between his or her disability and the function the service animal provides. Examples of disability-related functions, include, but are not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, 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.⁵

Assistance animals do not need to be certified or trained. Animals that are necessary as a reasonable accommodation in housing do not need to be specially trained or meet any certification requirements.⁶ While many animals are trained to perform certain tasks for persons with disabilities, others do not need training to provide needed assistance. Some animals have an innate ability, without training, to detect that a person with a seizure disorder is about to have a seizure and can alert the individual so the person can prepare. Emotional support animals do not need training to ameliorate the effects of a person's mental and emotional disabilities. Emotional support animals by their very nature and presence, and without training, may relieve depression and anxiety, and/or help reduce stress in persons with certain medical conditions.

What Verification Can a Landlord Require? Housing providers are entitled to verify the existence of a disability, and the need for an accommodation—if either is not readily apparent. Persons who are seeking a reasonable accommodation for an assistance animal, when disability or need are not obvious, may be requested to provide verification from a third party, such as a physician, psychiatrist, social worker, or other mental health professional, that the animal performs a disability-related task or assistance, or provides support that alleviates a symptom or effect of a disability. A housing provider may not ask for access to medical records or medical providers or for detailed information about a person's physical or mental impairments.⁷

When Can a Request for an Assistance Animal Be Denied? Housing providers are not required to provide an accommodation that would (1) pose a direct threat to the health or safety of others; (2) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (3) pose an undue financial and administrative burden; or (4) fundamentally alter the nature of the provider's operations. A housing provider may exclude an animal from housing when its behavior poses a direct threat and its owner takes no effective action to control the behavior so that the threat is mitigated or eliminated. The determination of whether an animal poses a direct threat must rely on an individualized assessment based on objective evidence about the specific animal in question, such as the animal's current conduct or recent history of overt acts.

May a Landlord Deny a Reasonable Accommodation Request Because an Insurance Carrier Prohibits "Dangerous Breeds"? If a housing provider's insurance carrier would cancel, substantially increase the costs of the insurance policy, or

⁵ FHEO 2013-01, p. 2.

⁶ Id.

⁷ Id. p. 4.

adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, HUD may find that this imposes an undue financial and administrative burden on the housing provider.⁸ However, a housing provider must substantiate their claim regarding potential loss of or adverse change to insurance coverage, and demonstrating the unavailability of comparable insurance, without the restriction.⁹

What are the assistance animal owner's responsibilities? A person with a disability who uses an assistance animal is responsible for the animal's care, control, behavior, and maintenance. However, conditions and restrictions that apply to pets may not be applied to assistance animals.¹⁰

What if the Animal Damages the Unit? A housing provider may not require an applicant to pay a fee or a pet deposit as a condition of allowing the applicant to keep assistance animal.¹¹ However, if a tenant's assistance animal causes damage to the 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.

Information provided by Northwest Fair Housing Alliance (NWFHA) is intended to acquaint landlords with issues implicating by fair housing laws, but is not intended as a substitute for legal advice. For more information about NWFHA visit our website at www.nwfairhouse.org.

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⁸ HUD, Greene Memo, 6/12/06, *Re: Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation*.

⁹ *Id.*

¹⁰ FHEO 2013-01, p. 3.

¹¹ *Id.*