

Could my landlord deny my request for a support animal?

A landlord is entitled to consider the administrative, financial, or programmatic repercussions of allowing an animal onto the premises, including the potential disturbance to other tenants. Typically, a landlord will have a difficult time establishing that an emotional support animal constitutes a fundamental alteration or undue burden. *See Warren v. Delvista Towers Condo. Ass'n*, 49 F. Supp. 3d 1082 (S.D. Fla. 2014) (waiving a no pet policy did not impose any undue burden on housing association nor fundamentally alter nature of its operations); *Tamara v. El Camino Hospital*, 964 F. Supp. 2d 1077 (N.D. Cal. 2013) (hospital failed to show that allowing service dogs in psychiatric ward would fundamentally alter nature of facility).

If the emotional assistance animal is particularly disruptive, or the tenant fails to take proper measures to ensure that the animal does not bother other tenants, however, the landlord may be justified in denying the accommodation or ultimately filing for an eviction. *See, e.g., Woodside Village v. Hertzmark*, FH-FL Rptr. ¶ 18, 129 (Conn. Sup. Ct. 1993), where the court found that a federally assisted housing complex did not violate the Fair Housing Act by evicting a resident with mental illness for failure to walk his dog in designated areas and properly dispose of animal waste.

Could my landlord propose an alternate accommodation?

If the requested accommodation is unreasonable, the landlord may propose a substitute accommodation. In so doing, the landlord should give primary consideration to the accommodation requested by the tenant. According to the Department of Justice ADA Technical Assistance Manual, II-7.1100:

It is important to consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.

Although the ADA no longer covers emotional support animals, this view has been endorsed by a number of courts within the context of other reasonable accommodation claims under the FHA, ADA and § 504. *See, e.g., Sabal Palms Condos. of Pine Island Ridge Ass'n v. Fischer*, 6 F. Supp. 3d 1272 (S.D. Fla. 2014). There, the court found an alternate accommodation unreasonable where a housing provider proposed that a dog under 20 pounds would be equally effective in meeting tenant's disability-related needs as a dog over 20 pounds. Because the tenant required a dog of comparable height to her wheelchair and relied on the dog for significant assistance, the landlord's proposed alternate accommodation was not reasonable.

Similarly, in the event that a landlord suggests an alternative accommodation, a tenant can reject it if he or she feels it is inadequate. In *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253 (D. Or. 1998), the federal district court of Oregon rejected a defendant housing authority's proposed substitute accommodation of a flashing smoke alarm and doorbell for a hearing assistance dog. There, the court found that the dog could alert the tenant to phone calls, cars in the driveway, visitors, and smoke alarms, no matter where he was in the house, and that the strobe lights were less effective in ameliorating the effects of the tenant's hearing impairment. Thus, the tenant was not obligated to accept the proposed accommodation.

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).³ 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. *See, e.g., 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)⁴ ("a 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"); *but see* U.S. v. Barber, 2014 WL 4988200 (W.D. Wash. Oct. 7, 2014) (the court noted that while numerous cases resulted in settlement decrees requiring waiving of a pet deposit for service animals, settlement decrees do not establish rules of law and thus declined 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. 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, eg., Fialka-Feldman v. Oakland Univ. Bd. of Trustees*, 678 F.Supp.2d 576 (E.D. Mich. 2009).

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

⁴ <https://www.justice.gov/crt/us-department-housing-and-urban-development>.

Sample Letter from a Service Provider

[date]

Name of Professional (therapist, physician, psychiatrist, rehabilitation counselor)
XXX Road
City, State Zip

Dear [Housing Authority/Landlord]:

[Full Name of Tenant] is my patient, and has been under my care since [date]. I am intimately familiar with his/her history and with the functional limitations imposed by his/her disability. He/She meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to mental illness, [first name] has certain limitations regarding [social interaction/coping with stress/anxiety, etc.]. In order to help alleviate these difficulties, and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist [first name] in coping with his/her disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [first name]. Upon request, I will share citations to relevant studies, and would be happy to answer other questions you may have concerning my recommendation that [Full Name of Tenant] have an emotional support animal. Should you have additional questions, please do not hesitate to contact me.

Sincerely,

Name of Professional

Resources

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