

Judge David L.

## BAZELON CENTER

for Mental Health Law

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### Fair Housing Information Sheet # 6

#### 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 benefit significantly from assistive animals, too. Emotional support animals have been proven extremely effective at ameliorating the symptoms of these disabilities, such as depression and post-traumatic stress disorder, by providing therapeutic nurture and support.

See [Psychiatric Service Animals](#) page for information about other issues and the [2010 definitions of service and companion animals under the ADA, the Fair Housing Act, and Section 504](#). See also [comments filed with the Department of Justice](#) (in 2008) and the [Department of Transportation](#) (December 2009) addressing proposed regulations governing the use of psychiatric service animals, described in our [December 8, 2009 Action Alert](#).

The Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act protect the right of people with disabilities to keep emotional support animals, even when a landlord's policy explicitly prohibits pets. Because emotional support and service animals are not "pets," but rather are considered to be more like assistive aids such as wheelchairs, 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 has a letter or prescription from an appropriate professional, such as a therapist or physician, and meets the definition of a person with a disability, he or she is entitled to a reasonable accommodation that would allow an emotional support animal in the apartment.

#### What exactly is a reasonable accommodation?

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 would qualify as a reasonable accommodation. *See, e.g., Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (balanced against landlord's economic or aesthetic concerns as expressed in a no-pets policy, deaf tenant's need for accommodation of hearing dog is per se reasonable); *Fulciniti v. Village of Shadyside Condominium Association*, No. 96-1825 (W.D. Pa. Nov. 20, 1998) (defendant

condominium association had not presented any evidence suggesting that the tenant's assistive animal created a threat or disturbance, and therefore violated the FHA by failing to provide a reasonable accommodation); Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, exhibit 2-2 (1998) (it would not constitute a fundamental alteration in the nature of the program or activity to require the Owner to make an exception to the no pets rule so that tenant could keep assistive animal, where "assistive animal" includes emotional support animals for people with chronic mental illness).

Depending upon the type of housing in which the tenant resides, his or her right to a reasonable accommodation will be grounded in one, or any combination, of the following statutes:

Statute	Covered Housing	Elements of Reasonable Accommodation Claim
<b>Fair Housing Act</b>	Applies to virtually all forms of housing, whether for sale or rent. The exceptions include (a) buildings with four or fewer units where the landlord lives in one of the units, and (b) private owners who do not own more than three single family houses, do not use real estate brokers or agents, and do not use discriminatory advertisements.	(1) Tenant has a disability; (2) Landlord/Housing Authority knows about disability; (3) Reasonable accommodation may be necessary to afford tenant an equal opportunity to use and enjoy his or her dwelling; and (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.
<b>Rehabilitation Act of 1973, § 504</b>	Applies to any program that receives federal assistance, such as public or subsidized housing (although a landlord who only accepts Section 8 rental assistance is not subject to § 504).	(1) Tenant has a disability; (2) Tenant was excluded from and denied participation in services, programs, and activities; (3) Exclusion was because of disability; and (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.
ADA, Title II	Applies to any state or local government, or its instrumentalities, regardless of federal financial assistance. This would include local housing agencies, such as your public	(1) Tenant has a disability; (2) Tenant was excluded from and denied participation in services,

housing authority.

programs, and activities;  
 (3) Exclusion was  
 because of disability; and  
 (4) Reasonable  
 accommodation would  
 not constitute an undue  
 burden or fundamental  
 alteration.

### **Is the tenant a "person with a disability"?**

In order to qualify for a reasonable accommodation under the FHA, § 504, or the ADA, 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.

Being able to substantiate one's disability is critical in requesting a reasonable accommodation. In the event that a landlord does not allow the emotional support animal, and the tenant pursues legal action, the court will require evidence of the tenant's disability. For an example of a case in which the court rejected an emotional support animal claim for lack of evidence of a disability, *see Housing Authority of New London v. Tarrant*, 1997 Conn. Super. LEXIS 120 (Conn. Super. Ct. Jan. 14, 1997) ("[G]iven an appropriate factual predicate, mental handicap may warrant reasonable accommodations, including the keeping of an animal in a public housing complex. However, in the instant case, that factual predicate is missing and the defendant has failed in her burden of proving that reasonable accommodations must be made.").

### **Request an exception to the landlord's no pet rule**

If one needs an emotional support animal to ease the symptoms of a disability (as defined above), he or she should request a reasonable accommodation, in writing, from the landlord, manager or other appropriate authority. The request should state that the tenant has a disability and explain how the requested accommodation will be helpful. In addition, the tenant should include a note from his or her service provider, such as a doctor or therapist, verifying the need for the support animal (see sample letter, below, as an example). Note that the tenant need not disclose the details of the disability, nor provide a detailed medical history.

Establishing that the support animal is necessary in order to use and enjoy the residence is critical. Courts have consistently held that a tenant requesting an emotional support animal as a reasonable accommodation must demonstrate a relationship between his or her ability to function and the companionship of the animal. *See, e.g., Majors v. Housing Authority of the County of Dekalb*, 652 F.2d 454 (5th Cir. 1981); *Housing Authority of the City of New London v. Tarrant*, 1997 Conn. Super. LEXIS 120 (Conn. Super. Ct. Jan. 14, 1997); *Whittier Terrace v. Hampshire*, 532 N.E.2d 712 (Mass. App. Ct. 1989); *Durkee v. Staszak*, 636 N.Y.S.2d 880 (N.Y.App.Div. 1996); *Crossroads Apartments v. LeBoo*, 578 N.Y.S.2d 1004 (City Court of Rochester, N.Y. 1991).

Although the landlord is entitled to ask for supporting materials which document the need for an emotional support animal, federal law does not require the tenant to provide proof of training or

certification of the animal. The two courts that have addressed this issue directly - the Court of Appeals for the Seventh Circuit and the U.S. District Court of Oregon - have held that the only requirements to be classified as a service animal under federal regulations are that the animal be (1) individually trained, and (2) work for the benefit of an individual with a disability. For a more detailed discussion, see *Bronk v. Ineichen*, 54 F.3d 425 (7th Cir. 1995) and *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253 (Or. 1998).

**If it is not an undue burden or a fundamental alteration, the landlord must grant the requested accommodation**

In assessing a tenant's request for emotional support animal as a reasonable accommodation, the 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. As noted earlier, in its internal regulations governing federally assisted housing, HUD specifically states that allowing an assistive animal does not constitute an undue burden. See *Occupancy Requirements of Subsidized Multifamily Housing Programs*, HUD, No. 4350.3, exhibit 2-2 (1998) (explaining that allowing an assistive animal is not a fundamental alteration).

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), in which 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 to use a pooper-scooper.

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.

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., *Sullivan v. Vallejo City Unified School District*, 731 F.Supp. 947, 958 (D.C. Cal. 1990).

In the event that a landlord suggests an alternative accommodation, the tenant can reject it if he or she feels it is inadequate. In *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253, 1256, the federal district court of Oregon rejected defendant housing authority's proposed substitute accommodation of flashing smoke alarm and doorbell for a hearing assistance dog. In granting the tenant's motion for summary judgment, 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 only installed in the bedroom and hallway, and were therefore less effective in ameliorating the effects of the tenant's hearing impairment.

**The landlord will allow an emotional support animal, but wants to charge an excessive deposit....**

The Housing & Urban-Rural Recovery Act of 1983 protects the right of tenants in federally assisted housing for the elderly or persons with disabilities to have a pet, and further provides that the landlord is entitled to charge a deposit for that pet to cover any resulting damage to the property. However, if a pet is more properly characterized as a "service animal," the tenant should be exempt from the deposit. According to HUD's internal regulations:

Service animals that assist persons with disabilities are considered to be auxiliary aids and are exempt from the pet policy and from the refundable pet deposit. Examples include guide dogs for persons with vision impairments, hearing dogs for people with hearing impairments, and emotional assistance animals for persons with chronic mental illness.

Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 4-13(b) (1998).

Few courts have addressed the imposition of pet deposits on the vast majority of tenants who are not protected by the Housing and Urban-Rural Recovery Act. The only case to specifically consider the legality of charging a pet deposit for an assistive animal involved a service dog belonging to a tenant with a physical disability. See *HUD v. Purkett*, FH-FL ¶ 19,372 (HUDALJ July 31, 1990), in which a HUD administrative law judge issued an injunction barring the owner and manager of an apartment complex from charging a tenant a deposit for her service dog. It could be argued that a landlord would be likewise prohibited from imposing such a deposit for an emotional support animal. Generally, under the FHA, ADA, and § 504, landlords are required to incur some expenses in making reasonable accommodations, so long as those costs are not an undue financial burden. See *United States v. California Mobile Home Park Management Co.*, 29 F.3d 1413, 1416 (9th Cir. 1994), in which the Court of Appeals of the Ninth Circuit held that, "the history of the FHAA clearly establishes that Congress anticipated that landlords would have to shoulder certain costs involved [in making reasonable accommodations], so long as they are not unduly burdensome."

When a tenant requests an emotional support or other assistive animal, the landlord should not assume, without justification, that the animal will cause excessive, financially burdensome damage. In the event that a tenant's assistive animal does cause significant damage, that tenant should certainly be held financially liable. However, it would contravene the purpose of the statutory protections afforded people with disabilities to allow a landlord to charge a deposit at the outset, in the absence of any significant damage. Just as it would be inappropriate to charge a tenant who uses a wheelchair a deposit for potential damage to carpeting, it would be similarly imprudent to demand a deposit from a tenant who uses an assistive animal.

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**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

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Provided by The Delta Society, <http://www.deltasociety.org>

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