

LAW IN BRIEF

WHAT ARE MY RIGHTS TO USE A SERVICE ANIMAL OR EMOTIONAL SUPPORT ANIMAL FOR MY DISABILITY UNDER THE FAIR HOUSING ACT?

Introduction to the Fair Housing Act

Overview: Disability advocates have long recognized how animals can be beneficial to assisting people with disabilities. Lawmakers, also recognizing these benefits, ensured that individuals who use assistive animals are not discriminated against in housing, governmental spaces, or private businesses because of their animals.

One such law is the Civil Rights Act Title VIII, known as The Fair Housing Act ("FHA"). This law protects individuals and families from discrimination in the sale, rental, financing, or advertising of housing. Under the FHA, tenants with disabilities are entitled to reasonable accommodations necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability. For example, a landlord would be required to make an exception to a no-animals policy which would accommodate a tenant's use of an assistive animal. This reasonable accommodation applies to all areas of the premises where persons are normally allowed to go.

Also, the FHA requires the landlord to allow a tenant's visitor to bring a service animal into the rental unit as a reasonable accommodation for the visitor's disability, assuming all other requirements of the Act are met. This is because the FHA's protections extend not only to renters, but also to persons "associated" with the tenant.

Definition: Under the FHA, the term assistive animal is used to include both service animals and emotional support animals. An assistive animal is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.

An assistive animal is not a "pet."

Under the FHA, assistive animals are not limited to dogs. Also, municipalities that prohibit specific breeds of dogs must make an exception for an assistive animal of a prohibited breed.

The FHA is enforced by the U.S. Department of Housing and Urban Development (“HUD”). According to HUD, animals necessary as a reasonable accommodation in housing do not necessarily need to have specialized training.

Restrictions: A landlord does not have to allow an assistive animal if it would pose an undue financial and administrative burden; or it would fundamentally alter the nature of the provider’s operations. For example, a landlord would not have to allow a horse as an assistive animal in a small one bedroom apartment.

An assistive animal may be denied if the animal’s behavior poses a direct threat to the health or safety of others. However, the risk must be significant and immediately identified, and must be based on objective medical/factual evidence, not fear or opinions. This must be determined on a case-by-case basis.

Covered Housing: The FHA covers most housing, including single and multi-family housing (homes, apartments, and condominiums), nursing homes, group homes, student shelters and assisted-living housing. The Act exempts buildings that only have four (or less) units and the landlord lives in one of them, single-family homes sold or rented without a real estate agent, and housing operated by organizations and private clubs that limit occupancy to members.

Fees: Housing providers cannot charge a “pet deposit” or extra rent for individuals with disabilities who rely on assistance animals. Again, assistive animals are not pets.

Identification and Inquiry of Assistive Animals

Under the FHA, a landlord is not required to automatically allow a tenant to have an assistive animal. Instead, the tenant must request the reasonable accommodation and the landlord must consider the request.

The FHA provides landlords the right to require verification for the need of the assistive animal if the need for the assistive animal it is not known or readily apparent (such as a guide dog for a person who is blind). This documentation is usually a letter from a medical doctor, treating therapist, psychologist, etc. who can establish the disability and need for the assistance animal. This letter must state the animal is not just a companion, but rather there for health issues. Also, it has to be on the professional’s own letterhead, signed and dated no later than one year from the time the individual is obtaining the housing.

The housing provider may not ask for access to medical records or unreasonably delay the request.

Chart – Fair Housing Act Summary

	Service Animals	Emotional Support Animals
Protected in covered housing	Yes	Yes
Definition Note: HUD uses the term “assistive animal” to include both service animals and emotional support animals.	An animal that “works, provides assistance, or performs tasks for the benefit of a person with a disability”	An animal that “provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability”
Type of Animal Permitted	Not Specified	Not Specified
Must submit documentation	Yes, if not obvious or readily apparent	Yes

Handler’s Responsibilities

Under the FHA, the handler of an assistive animal is responsible for the care and supervision of his or her animal. These responsibilities include:

- Having control of the animal.
- Housebreaking the animal and cleaning up after the animal.
- Feeding, grooming and providing veterinary care.
- Following state and local vaccination laws.
- Following local leash laws unless it interferes with the task the animal is trained to do.
- Following state and local muzzle laws unless it interferes with the task the animal is trained to do.

Also, the assistive animal handler is responsible for property damage to the same extent that other individuals would be held responsible.

Resources

Individuals who believe that they have been illegally denied housing or access because they use assistive animals may file a complaint against the property manager/owner with the U.S. Department of Housing and Urban Development (HUD) within one year of the incident. Also, individuals may be able to sue under state law.

Note, this is intended for educational purposes; it is not intended to provide legal advice. Information is copyright free and intended for sharing, but please credit Disability Rights Nebraska when doing so.

Where to file a Complaint:

HUD's Office of Fair Housing and Equal Opportunity (FHEO)

https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint# How to File

This website explains how to file a complaint online, email, phone or mail.

More information about the Fair Housing Act can be found at the following sites:

- www.hud.gov
- www.nationalfairhousing.org

Sample Letters

Sample Letter from Tenant to Landlord for an Emotional Support Animal or Service Animal:

DATE

Dear NAME OF LANDLORD/HOUSING MANAGER:

My name is TENANT'S NAME and I live in unit UNIT NUMBER. I am a person with a disability, as defined under the Fair Housing Act and the Rehabilitation Act of 1973. My disability limits my ability to DETAIL THE LIMITATIONS. I would like to request a reasonable accommodation of exempting me from the "No Pets" policy that is currently in place. My service animal/emotional support animal helps me to DETAIL THE ASSISTANCE. Please see the attached verification from my provider explaining how the accommodation would assist me with my disability.

I am asking that you modify your rules prohibiting pets to allow me to have a service animal/ emotional support animal. This reasonable accommodation to your "No Pets" policy would provide me with full use and enjoyment of the housing unit as a person with a disability.

I look forward to hearing from you by A DATE IN THE NEAR FUTURE.

Thank you for your consideration.

Sincerely,

TENANT'S NAME AND SIGNATURE

Sample Letter from Professional to Landlord for an Emotional Support Animal:

Note: The letter should be on the physician's or mental health provider's letterhead

DATE

NAME OF PROFESSIONAL (therapist, physician, psychiatrist, rehabilitation counselor)
ADDRESS

Dear HOUSING AUTHORITY/LANDLORD:

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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 OF TENANT has certain limitations regarding LIST LIMITATION. 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 OF TENANT 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 OF TENANT. I would be happy to answer any 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,

PROFESSIONAL'S NAME AND SIGNATURE