

Landlord's Rights Regarding Emotional Support Animals

The FHA Prohibits Discrimination Against Persons with Disabilities

The Fair Housing Act is a federal law that protects people from discrimination when they are renting, buying, or securing financing for any housing.

It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose a different application or qualification criteria for those with mental or physical disabilities. The rental fees, sales price, or rental terms or conditions cannot differ from those required by non-disabled persons.

My tenant's ESA is a "restricted breed animal" – can they be an ESA?

According to HUD, "breed, size, and weight limitations may not be applied to an assistance animal." Instead, a housing provider may only determine if **the specific assistance animal in question** poses a direct threat to the health and safety of others. This determination of a "direct threat" must be based on "individualized assessment that relies on objective evidence about the specific animal's actual conduct." It may not be based on fears about a certain type of animal or evidence from damage done by previous animals of the same type.

For example, if a dog has been previously declared a dangerous dog, this may indicate that the dog poses a direct threat in an individualized assessment. However, breed alone will not result in this determination.

I'm concerned that my tenant's "restricted breed" emotional support dog might make my insurance increase. Surely, I can reject them if that's the case!

Could the owner's emotional support dog breed be a liability?

The insurance company may label certain breeds of dogs as "dangerous" in the policy. Each reasonable accommodation determination must be made on a case-by-case basis. An accommodation is considered unreasonable if it imposes an undue financial and administrative burden on a housing provider's operations.

If a housing provider's insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence

of a certain breed of dog or a certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider.

This claim must then be substantiated with the insurance company directly and comparable insurance coverage must be considered. If the insurance company has a policy that does not have an exception for an assistance animal, an investigation may be launched against the insurance company for potential disability discrimination.

What could happen if I violate the FHA?

When a person with a disability believes that he/she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, he/she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

If their case goes to an administrative hearing HUD attorneys will litigate the case on their behalf. An Administrative Law Judge (ALA) will consider evidence from them and the respondent. If the ALA decides that discrimination occurred, the respondent can be ordered:

- To compensate you for actual damages, including humiliation, pain and suffering.
- To provide injunctive or other equitable relief.
- To pay the Federal Government a civil penalty to vindicate the public interest.
The maximum penalties are \$16,000 for a first violation and \$70,000 for a third violation within seven years.
- To pay reasonable attorney's fees and costs.

What kind of housing does this apply to?

There are very few properties that are exempt from these laws — a building with 4 or fewer units, one of which is owner-occupied; single-family homes where the owner does not use a real estate agent to buy or rent the property, and the owner owns less than three single family houses; and housing owned by organizations or private clubs that is used for members.

What kind of documentation can I require from the tenant?

The tenant must provide documentation from a physician, psychiatrist, social worker, or other mental health professionals that the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability.

This does not mean that any animal providing some benefit to a tenant must always be accepted. The mental health professional must connect the tenant's possession of the animal with an alleviation of at least one symptom of the disability.

This requires more than a mere statement that an emotional support cat or dog or any other type of animal makes a tenant feel good. Alleviating depression (if depression is a symptom of the mental condition, or the condition itself) is a function of an emotional support animal and should satisfy the requirement.

Can a landlord verify the emotional support animal letter?

Landlords are more than welcome to verify an ESA letter. The letters should come on the professional letterhead of the mental health professional along with their contact information, phone number, and email address. The letter will also include the therapist's license number.

As a landlord, you can verify the letter in a number of ways. Keep in mind, however, that you may not, for any reason, have direct contact with your tenant's therapist. Attempting to do so may be considered a violation of federal law and the client could have cause to report you or your business to HUD. In order to avoid that, please use the following suggestions below to verify your client's letter:

How to verify an ESA letter without violating Federal Law:

1. **Politely talk to your tenant about your concerns** and let them know that you would like to work together to make sure that you're comfortable with the letter. Remember, the tenant is disclosing to you that they are someone who is having a hard time. *Being short with them or accusing them of lying is not a very nice thing to do and could be used against you in the event that a HUD case is filed.*
2. **Verifying the validity of the therapist's license number** which you can do by visiting the state website for their clinical discipline and entering their license

number. *If you have trouble doing so, your tenant should be able to ask their therapist to assist by sending the client a screenshot of their license verification.*

3. Asking the client to have their therapist complete a Reasonable Accommodation form.

As a landlord you may not ask your tenant's therapist:

- Anything at all directly!
Be careful! Remember, It may be a violation of the Fair Housing Act to contact your tenant's therapist yourself. If you reach out to the therapist anyway, the therapist would likely not be able to speak to you due to HIPAA privacy laws. If you'd like this form completed, you would need to ask your client to have their therapist complete it and the client would need to return the form to you directly.

As a landlord may not ask your tenant:

- "Do you have a disability?"
- "How severe is your disability?"
- "May I have permission to see your medical records?"
- "Have you ever been hospitalized because of a mental disability?"
- "Have you ever been in a drug rehabilitation program?"
- "Do you take medications?"
- "How long have you been in therapy?"
- "How many sessions have you had with your therapist?"
- Anything else at all about their symptoms or diagnosis besides what is provided to you on the letter.

Does the animal need to have special training?

Although a 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.

Can a person have more than one service or emotional support animal?

While there do not seem to be any cases dealing with the issue of multiple emotional support animals, the basic requirements for this reasonable accommodation would still be the same. In other words, if a person were claiming the need for multiple emotional support animals, then he or she would need documentation supporting this need from his or her physician or medical professional. The practitioner would need to provide documentation that *each* support animal alleviated some symptom of the disability.

Can animals besides cats and dogs act as emotional support animals/assistance animals?

Yes, an assistance animal is not limited to a cat or dog. HUD specifically states that “While dogs are the most common type of assistance animal, other animals can also be assistance animals.”

What other areas of the housing complex can the person take their emotional support animal/assistance animal?

HUD indicates that an assistance animal is allowed “in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services.” This would generally include a tenant’s residence and tenant common areas of the building.

Can a landlord deny a request for an Emotional 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. 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.

A landlord is not allowed to deny a reasonable accommodation based on the animal’s breed, weight or size since there is no restriction for an Emotional Support Animal.

Can a landlord charge a pet deposit or pet rent?

Since an Emotional Support Animal is not considered a pet 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 emotional support animal.

Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(E) (2013). 5 If the emotional support 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.

What if the need for an accommodation arises after the person has signed the lease?

The tenant is entitled to an accommodation whenever they have a need for one. The tenant must request accommodation and must provide all of the required documentation.