

Animals and the Fair Housing Act

The Fair Housing Act

The Fair Housing Act (FHA) prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.¹

- The FHA makes it unlawful for a person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”² “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 . . .”³
- Exceptions to “No Pets” policies have been shown to be a reasonable accommodation. The person with the disability must show a link between his/her disability and the task the animal provides.

Who is protected under the Fair Housing Act?

The FHA protects persons with disabilities from housing discrimination. In the FHA, the term that is used is “handicap.” The FHA also protects people with disabilities who are associated with a tenant or homeowner.

- “Handicap” is defined as: “a physical or mental impairment which substantially limits one or more of such person’s major life activities.”⁴

Examples of Disabilities:

- Visual Impairments
- Auditory Impairments
- Mobility Impairments
- AIDS, HIV
- Epilepsy
- Mental Illness
- Cognitive Disability
- Past Substance Use Disorder
- Traumatic Brain Injury

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What types of housing are covered by the FHA?

- The FHA defines “dwelling” as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof”.⁵
- The term “dwelling” has been broadly interpreted.
- Examples of housing covered:
 - Nursing Homes
 - Group Homes
 - Seasonal Facilities
 - Residential Facilities
 - Mobile Homes
 - Trailer Parks
 - Condominiums⁶
- Types of housing NOT covered:
 - Buildings with 4 or less units where the landlord occupies one of the units
 - Single family housing sold or rented without a real estate broker⁷
 - Hotels and Motels are not considered dwellings under the FHA but are considered places of public accommodation under the Americans with Disabilities Act
 - Private Clubs

What is a “Reasonable Accommodation”?

“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 to have an **equal opportunity to use and enjoy a dwelling**, including public and common use spaces.”⁸

- **To qualify for a reasonable accommodation:**
 - Tenant must have a **disability**, and
 - Reasonable Accommodation must be necessary to afford tenant an equal opportunity to use and enjoy the dwelling.⁹
- Landlords must allow an exemption to a “No Pets” policy for a tenant that has an emotional support animal because of his/her disability, **unless**:
 - The animal would create an undue burden, or
 - It would be a fundamental alteration of the service provided.
- A person with a disability **must show a link between his/her disability and the task the animal provides**. Examples include:
 - Guiding individuals with visual impairment;
 - Alerting individuals who are hard of hearing;
 - Providing protection or rescue assistance;
 - Pulling a wheelchair;
 - Alerting to impending seizures;
 - Providing emotional support for persons with a disability-related need for such support.¹⁰
- Other examples of reasonable accommodations include:
 - Accommodating behaviors directly related to a person’s mental disability
 - Providing an assigned parking spot near the unit of a person with a mobility disability
 - Allowing a variance of a rule about fence height to accommodate the needs of a child with autism
 - Assigning a mailbox to an accessible location

When may my landlord ask questions about my disability?

- Generally, landlords may not ask questions about an applicant's disability, unless the applicant is:
 - (1) Requesting an accommodation or modification,
 - (2) Applying for a housing program designated for persons with disabilities,
 - (3) Applying for a preference or priority for persons with disabilities, or
 - (4) Trying to qualify for an allowance that reduces rent because of a disability

Service Animals vs. Emotional Support Animals

- **Service Animal:** any animal that is **individually trained** to do work or perform tasks for the benefit of an individual with a disability. The service animal learns to **recognize and respond** to the person's environment and actions
 - Under the ADA, **only dogs and miniature horses** are recognized as service animals.
- **Emotional Support/Comfort/Assistance Animal:** any animal that provides emotional support, well-being, or companionship; **not individually trained**. Emotional support animals have been proven to help diminish the symptoms of disabilities by providing therapeutic nurture and support.¹¹
 - Emotional support animals are not limited to dogs and can be any species of animal.

Where is my animal permitted?

This depends on whether you are a tenant or homeowner and whether your animal is classified as a "service animal" or an "emotional support animal."

- **If you are a tenant or homeowner**, your emotional support animal or service animal is allowed in the home and common areas and in places of public accommodation within the housing complex.
- **If you are not a tenant or homeowner**, your service animal is permitted in the home and common areas and in places of public accommodation within the housing complex. However, if you are **not** a tenant or homeowner, an emotional support animal is not permitted in places of public accommodation within the housing complex.

- The FHA also protects prospective tenants or homeowners and guests of tenants or homeowners. A prospective tenant or homeowner, or a guest of a tenant or homeowner, must also be permitted to bring both service animals and emotional support animals into the home and common areas and in places of public accommodation within the housing complex.
- **Under the FHA**, as long as the requestor is a person with a disability and can show that the animal helps to alleviate symptoms, he/she will be entitled to a reasonable accommodation allowing the emotional support animal into the housing unit.¹²
- **Under Title III of the Americans with Disabilities Act** only service animals are permitted in places of public accommodation. If you are not a tenant or homeowner, a prospective tenant or homeowner, or a guest of a tenant or homeowner, emotional support animals are not permitted.
- **In the housing context, what is a “place of public accommodation”?**
 - Rental Offices;
 - Areas of a private housing complex open to the public.

Examples:

1. A private apartment complex has a swimming pool which may be used by apartment tenants and their guests. The apartment complex also sells memberships to the **public** for use of the pool. The pool is considered a common area for tenants and their guests and a place of public accommodation for the general public. Therefore, a member of the public may bring his or her service animal, but his or her comfort animal may be excluded. However, a tenant or a tenant’s guest must be permitted to bring his or her service animal or emotional support animal.
2. A private condominium complex restricts the use of its party room to residents and their guests. The complex does not rent the party room to businesses or organizations. The party room is **not** a place of public accommodation, but a common area under the FHA. Therefore, tenants, homeowners, and their guests must be allowed to use either service animals or emotional support animals in such locations. However, because these areas are not public accommodations, the ADA does not apply and members of the public do not have any right to enter.
3. A rental office of a private residential apartment complex is a place of public accommodation.¹³ Therefore, a member of the public may bring his or her service animal, but his or her emotional support animal may be excluded. However, a prospective tenant or tenant must be permitted to bring his or her service animal or emotional support animal.

Am I required to pay a pet fee?

No. The housing provider must waive any pet fees or pet deposits. But, if the animal causes damage, the tenant may be required to pay the repair costs.¹⁴

When can my request for an accommodation be denied?

Landlords and managers **may deny** a request for an assistance/comfort/emotional support animal if:

- It would pose a direct threat to the health or safety of others
- Would result in substantial physical damage to the property of others, unless the threat can be eliminated or significantly reduced by a reasonable accommodation
- Would pose an undue financial and administrative burden, or
- Would fundamentally alter the nature of the provider's operations.¹⁵

What steps should I take?

Request a reasonable accommodation from the landlord **in writing**.

- State that you are a tenant with a disability and tell the landlord how an accommodation would be useful.
- Include a note from your doctor or therapist explaining the need for the animal.¹⁶
- If it is not an undue burden or fundamental alteration, the landlord must grant the request.

What if my request is denied?

The U.S. Dept. of Housing and Urban Development enforces the Fair Housing Act.

- Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development within one year of the incident.
 - **For more information visit:** www.hud.gov/offices/fheo or call 1-800-669-9777
- Complaints may also be filed with the Civil Rights Division of the Justice Department.

- Disability Rights NC is available for questions or concerns.
 - **Please visit:** <http://www.disabilityrightsncc.org> or call Toll-Free: (877) 235-4210
- Legal Aid's Fair Housing Project
 - The Fair Housing Project of Legal Aid of North Carolina is available to provide information concerning your rights under the Fair Housing Act.

Please visit <http://www.fairhousingnc.org> for more information.

Call 1-855-797-3247 or **email** info@fairhousingnc.org

Sample Letter to Landlord

Date

Dear Name of Landlord/Housing Manager:

I am _____ and live in unit _____. I am a person with a disability, as defined under the Fair Housing Act. My disability limits my ability to _____.

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 _____.

Please see the attached verification from my health care 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 of your "No Pet" 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,

Your Name

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

Disability Rights North Carolina
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Raleigh, North Carolina 27612
www.disabilityrightsncc.org

919-856-2195
877-235-4210 (toll free)
888-268-5535 (TTY)
919-856-2244 (fax)

¹ 42 U.S.C. §3601-3619.

² 42 U.S.C. §3602 (f)(3)(B)

³ Joint Statement of HUD and DOJ on Reasonable Accommodations Under the Fair Housing Act (2008).

⁴ 42 U.S.C. §3602 (h)

⁵ 42 U.S.C. §3602 (b)

⁶ Service Animals and Housing, <http://www.deltasociety.org/page.aspx?pid=489>

⁷ *The Fair Housing Act: An Overview for People with Disabilities*, <http://www.drnpa.org/File/publications/the-fair-housing-act> (2008).

⁸ Joint Statement of HUD and DOJ on Reasonable Accommodations Under the Fair Housing Act (2008).

⁹ Marley J. Eichstaedt, *Assistance Animals in Housing – New HUD Guidance Regarding Assistance Animals*, Northwest Fair Housing Alliance

¹⁰ Pet Ownership for the Elderly and Persons With Disabilities, 73 FR 63834-01

¹¹ *Right to Emotional Support Animals in “No Pet” Housing*, Bazelon Center for Mental Health Law

¹² *Right to Emotional Support Animals in “No Pet” Housing*, Bazelon Center for Mental Health Law

¹³ The Directory of Accessible Housing, <http://www.accessiblehousing.org/rights/1990.asp>

¹⁴ Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 ANIMAL L. 69 (2005)

¹⁵ Marley J. Eichstaedt, *Assistance Animals in Housing – New HUD Guidance Regarding Assistance Animals*, Northwest Fair Housing Alliance

¹⁶ *Right to Emotional Support Animals in “No Pet” Housing*, Bazelon Center for Mental Health Law