

Animals & 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 need for the animal.



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 tenants or homeowners from discrimination because they are associated with a person with a disability.
- “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 | • AIDS, HIV | • Cognitive Disability |
| • Auditory Impairments | • Epilepsy | • Past Substance Use Disorder |
| • Mobility Impairments | • Mental Illness | • Traumatic Brain Injury |

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)

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

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).

- **To qualify for a reasonable accommodation:**
 - Tenant or homeowner must have a disability, and
 - Reasonable Accommodation must be necessary to afford an equal opportunity to use and enjoy the dwelling.⁹
- Landlords or homeowner’s associations must allow an exemption to a “No Pets” policy for a tenant or homeowner that has an emotional support or service 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 I be asked questions about my disability?

- Generally, landlords or homeowner’s associations may not ask questions about disability, unless the person 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

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

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 that alleviates the symptoms of disability; not individually trained. Emotional support animals have been proven to help diminish the symptoms of disabilities by providing therapeutic nurture and support.¹¹
 - Under the FHA, emotional support animals are not limited to dogs and can be any species of animal.



Where is my animal permitted?

- This depends on whether your animal is classified as a "service animal" or an "emotional support animal."
 - Service Animals are permitted in all areas of the home, common areas, and places of public accommodation within the housing complex, whether you are a resident, prospective resident, or guest.
 - Emotional Support Animals are only allowed in home and common areas. A guest of a resident may also be permitted to have an emotional support animal in home or common areas.
- In the housing context, what is a "place of public accommodation"?
 - Rental Offices;
 - Areas of a private housing complex open to the public.

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

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 may 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 is a common area under the FHA. Therefore, tenants, homeowners, and their guests may be allowed to use either service animals or emotional support animals in such locations.
3. A rental office of a private residential apartment complex is a place of public accommodation to the public and may also be a common area for residents.¹² Therefore, prospective tenants, residents and their guests, or members of the public may bring his or her service animal, but only residents and their guests may bring his or her emotional support animal to the rental office.

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 (or homeowner) may be required to pay the repair costs.¹³

When can my request for an accommodation be denied?

- Landlords and homeowner's associations may deny a request for a service animal or assistance/comfort/emotional support animal if it would:
 - Pose a direct threat to the health or safety of others
 - Result in substantial physical damage to the property of others, unless the threat can be eliminated or significantly reduced by a reasonable accommodation
 - Pose an undue financial and administrative burden, or
 - Fundamentally alter the nature of the provider's operations.¹⁴



¹² The Directory of Accessible Housing, <http://www.accessiblehousing.org/rights/1990.asp>

¹³ Rebecca J. Huss, *No Pets Allowed: Housing Issues and Companion Animals*, 11 ANIMAL L. 69 (2005)

What steps should I take?

- Request a reasonable accommodation from the landlord or homeowner's association **in writing**
 - State that you are a tenant or homeowner with a disability and tell the landlord or homeowner's association how the accommodation is needed for you to use and enjoy your home.
 - Include a note from your doctor or therapist explaining the need for the animal.¹⁵
 - If it is not a direct threat, undue burden or fundamental alteration, the landlord or homeowner's association 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. **For more information, visit:**
<http://www.usdoj.gov/crt/housing/hcehome.html>
- Disability Rights NC is available for questions or concerns.
Please visit: <http://www.disabilityrightsn.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

¹⁴ Marley J. Eichstaedt, *Assistance Animals in Housing – New HUD Guidance Regarding Assistance Animals*, Northwest Fair Housing Alliance

¹⁵ *Right to Emotional Support Animals in "No Pet" Housing*, Bazelon Center for Mental Health Law

Sample Letter to Request an Accommodation

Date

Dear Name of Landlord/Housing Manager/Homeowner's Association:

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

The documents in this packet contain general information for educational purposes and should not be construed as legal advice. The sample letter and information is intended to provide you with tools to help you self-advocate and does not create an attorney-client relationship between you and Disability Rights NC. Disability Rights NC does not make any representation regarding the merits of your case or its projected outcome by providing these materials. This information is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney.

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