

Could my landlord deny my request for a 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. See *Warren v. Delvista Towers Condo. Ass'n*, 49 F. Supp. 3d 1082 (S.D. Fla. 2014) (waiving a no pet policy did not impose any undue burden on housing association nor fundamentally alter nature of its operations); *Tamara v. El Camino Hospital*, 964 F. Supp. 2d 1077 (N.D. Cal. 2013) (hospital failed to show that allowing service dogs in psychiatric ward would fundamentally alter nature of facility).

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), where 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 properly dispose of animal waste.

Could my landlord propose an alternate accommodation?

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.

Although the ADA no longer covers emotional support animals, 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., *Sabal Palms Condos. of Pine Island Ridge Ass'n v. Fischer*, 6 F. Supp. 3d 1272 (S.D. Fla. 2014). There, the court found an alternate accommodation unreasonable where a housing provider proposed that a dog under 20 pounds would be equally effective in meeting tenant's disability-related needs as a dog over 20 pounds. Because the tenant required a dog of comparable height to her wheelchair and relied on the dog for significant assistance, the landlord's proposed alternate accommodation was not reasonable.

Similarly, in the event that a landlord suggests an alternative accommodation, a tenant can reject it if he or she feels it is inadequate. In *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253 (D. Or. 1998), the federal district court of Oregon rejected a defendant housing authority's proposed substitute accommodation of a flashing smoke alarm and doorbell for a hearing assistance dog. There, 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 less effective in ameliorating the effects of the tenant's hearing impairment. Thus, the tenant was not obligated to accept the proposed accommodation.

My landlord will allow an emotional support animal, but wants to charge an excessive deposit. Do I have to pay?

Generally, a landlord is entitled to charge a deposit for a pet to cover any resulting damage to the property. But, if a pet is more properly characterized as a service animal, 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 assistance animal.

Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, 2-44(E) (2013).³ If the assistance 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.

Additionally, while HUD and DOJ have stated that requiring pet deposits for assistance animals is discriminatory, courts have been hesitant to find that imposing such fees is per se unreasonable. *See, e.g., Joint Statement of the Dept. of Housing and Urban Dev. and the Dept. of Justice, "Reasonable Accommodations under the Fair Housing Act,"* at 9 (May 17, 2004)⁴ ("a housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal"); *but see* U.S. v. Barber, 2014 WL 4988200 (W.D. Wash. Oct. 7, 2014) (the court noted that while numerous cases resulted in settlement decrees requiring waiving of a pet deposit for service animals, settlement decrees do not establish rules of law and thus declined to decide the matter).

I live in campus residential housing. Do these laws apply to me?

HUD has interpreted the FHA to cover residence halls and dormitory rooms, and district courts have typically sided with this position. In *U.S. v. Nebraska at Kearney*, 940 F.Supp.2d 974 (D. Nebr. 2013), the court found that a university's student housing is a "dwelling" within the meaning of the FHA and thus is subject to the same legal requirements as other covered housing. In that case, the court held that the university violated the FHA by denying a student tenant's requests to live with her emotional support dog in a student housing facility based on university's no pets policy.

HUD's guidance states that housing providers should use general reasonable accommodation principles in evaluating requests to bring assistance animals into covered housing. Thus, colleges and universities may request information regarding a student's disability and disability-related need for the animal, including supporting documentation. The educational institution must conduct an individualized inquiry when deciding whether an accommodation is reasonable and may not rely on long-standing policies to deny a student's request for accommodation. *See, eg., Fialka-Feldman v. Oakland Univ. Bd. of Trustees*, 678 F.Supp.2d 576 (E.D. Mich. 2009).

³ <https://portal.hud.gov/hudportal/documents/huddoc?id=43503HSGH.pdf>.

⁴ <https://www.justice.gov/crt/us-department-housing-and-urban-development>.

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

Resources

C.W. Von Bergen, *Emotional Support Animals, Service Animals, and Pets on Campus*, Admin. Issues. J. Spring 2015 5(1): 15-34, <http://files.eric.ed.gov/fulltext/EJ1062480.pdf>.

Kate Brewer, *Emotional Support Animals and Waiver of "No Pets" Rules by Landlords*, Animal & Hist. Ctr. (2005), <https://www.animallaw.info/intro/emotional-support-animals-and-waiver-no-pets-rules-landlords>.

Cynthia K. Chandler, *Confirming the benefits of emotional support animals*, Counseling Today (April 20, 2015), <https://ct.counseling.org/2015/04/confirming-the-benefits-of-emotional-support-animals/>.

Anna Chur-Hansen, Cindy Stern & Helen Winefield, *Gaps in the evidence about companion animals and human health: some suggestions for progress*, Int'l J. of Evidence-Based Healthcare 8(3), Sept. 2010 at 140.

Animals & the Fair Housing Act, Disability Rights N.C. (2012), <http://www.disabilityrightsncc.org/sites/default/files/SelfAdvocacyPacket-Animals%20in%20Housing.pdf>.

John Ensminger & Frances Breitkopf, *Service and Support Animals in Housing Law*, Am. Bar Ass'n: GP Solo (July 2009), https://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/servicesupportanimals.html.

Three Formulations of the Nexus Requirement in Reasonable Accommodations Law, Harvard L. Rev. 126(5) (March 2013), 1392-1413.

The Fair Housing Act and Assistance Animals, Humane Society of the U.S., <http://www.humanesociety.org/animals/resources/tips/assistance-animals-tenants-rights.html?referrer=https://www.google.com/>.

June McNicholas & Glyn M. Collis, *Animals as Social Supports: Insights for Understanding Animal-Assisted Therapy in Handbook on Assisted Animal Therapy* (Aubrey H. Fine ed., 2006).

Olabisi L. Okubadejo, *Service animals in residence halls – an overview of federal requirements*, Ballard Spahr, LLP (May 14, 2014), <https://www.housingplusblog.com/2014/05/dogs-miniature-horses-and-reptiles-in-residence-halls-an-overview-of-ada-section-504-and-fha-requirements/>.

Frequently Asked Questions about Service Animals and the ADA, U.S. Dep't of Justice (2015), https://www.ada.gov/regs2010/service_animal_qa.pdf.

Shirley S. Wang, *Rise in Pets as Therapy for Mental Conditions*, Wall St. J. (Nov. 4, 2013), <https://www.wsj.com/articles/rise-in-pets-as-therapy-for-mental-conditions-1383609937>.

Relevant Studies

- Allen, K., Izzo, L., Shykoff, B.E. (1999). Pet dogs or cats, but not ACE inhibitor therapy, attenuate blood pressure and renin reactivity among hypertensive stockbrokers: A controlled randomized trial Paper presented the American Heart Association conference in Atlanta, Nov. 6, 1999.
- Allen, K. M. (1995). Coping with life changes & transitions: The role of pets. *Interactions*, 13 (3) 5-8.
- Allen, K.M., & Blascovich, J. (1996). The Value of Service Dogs for People with Severe Ambulatory Disabilities. *JAMA*, 275 (13), 1001-1006.
- Allen, K. M., Blascovich, J., Tomaka, J. & Kelsey, R. M. (1991). Presence of human friends and pet dogs as moderators of autonomic responses to stress in women. *Journal of Personality and Social Psychology*, 61, 582-589.
- Anderson, W. P., Reid, C. M., Jennings, G. L. (1992). Pet ownership and risk factors for cardiovascular disease. *Medical Journal of Australia*, 157, 298-301.
- Ascione, F. R., Weber, C. V. (1996) Children's attitudes about the humane treatment of animals and empathy: One-year follow up of a school-based intervention. *Anthrozöös* 9 (4) 188-195.
- Ascione F. R. (1992). Enhancing children's attitudes about the humane treatment of animals: Generalization to human-directed empathy. *Anthrozöös* 5 (3) 176-191.
- Bauman, L., Posner, M, Sachs, K, & Szita, R. (1991) The effects of animal-assisted therapy on communication patterns with chronic schizophrenics. *The Latham Letter*, 13(4) 3-5.
- Baun, M. M., Oetting, K. & Bergstrom, N. (1991). Health benefits of companion animals in relation to the physiologic indices of relaxation. *Holistic Nursing Practice*, 5 (2) 16-23.
- Batson, K., McCabe, B. W., Baun, M. M. and Wilson, C. M. (1998). The effect of a therapy dog on socialization and physiologic indicators of stress in persons diagnosed with Alzheimer's disease. In *Companion Animals in Human Health*. Eds. C. C. Wilson, D. C. Turner, pp. 203-215, Sage Publications, Thousand Oaks, CA. (Available from Dogwise.)
- Beck, A. M., Rowan, A. N. (1994). The health benefits of human-animal interactions. *Anthrozöös* 7 (2), 85-88.
- Bodmer, N. M. (1998). Impact of pet ownership on the well-being of adolescents with few familial resources. In *Companion Animals in Human Health*. Eds. C. C. Wilson, D. C. Turner, pp. 237-247, Sage Publications, Thousand Oaks, CA. (Available from Dogwise.)

Bryant, B. K. (1995). Animal assisted therapy within the context of daily institutional life. Paper presented at the 7th International Conference on Human-Animal Interactions, Geneva.

Bustad, L. K. (1996). Recent discoveries about our relationships with the natural world. In *Compassion: Our Last Great Hope (DLT200)*, 2nd edition, pp. 115-121, Delta Society, Renton, WA. (Available exclusively from Delta Society.)

Carmack, B.J. (1991). The role of companion animals for persons with AIDS/HIV. *Holistic Nursing Practice*, 5, 24-31.

Cawley, R., Cawley, D. and Retter, K. (1994). Therapeutic horseback riding and self-concept in adolescents with special educational needs. *Anthrozöös*, 7 (2) 129-34.

Davis, J.H., McCreary J. (1995). The preadolescent/pet friendship bond. *Anthrozöös*, 8 (2), 78-82.

Fick, K.M. (1993). The influence of an animal on social interactions of nursing home residents in a group setting. *American Journal of Occupational Therapy*, 47 (6), 529-534.

Friedmann, E. & Thomas, S.A. (1995). Pet ownership, social support and one year survival among post-myocardial infarction patients in the cardiac arrhythmia suppression trial (CAST). *American Journal of Cardiology* 76: 1213-1217.

Fritz, C. L., Farver, T. B., Kass, P. H. & Hart, L. A. (1995). Association with companion animals and the expression of noncognitive symptoms in Alzheimer's patients. *The Journal of Nervous and Mental Disease*, 183 (7).

Garrity, T. F., Stallones, L., Marx, M. B. & Johnson, T. P. (1989). Pet ownership and attachment as supportive factors in the health of the elderly. *Anthrozöös*, 3 (1), 35-44.

Hansen, K.M., Messinger, C.J., Baun, M.M. & Megel, M. (1999). Companion animals alleviating distress in children. *Anthrozöös*, 12(3), 142-148.

Hart, L.A., Hart, B.L., & Bergin, B. Socializing Effects of Service Dogs for People with Disabilities. *Anthrozöös*, 1(1), 41-44.

Hart, L.A., Zasloff, R.L., & Benefatto, A.M. (1995). The Pleasures and Problems of Hearing Dog Ownership. *Psychological Reports*, 77, 969-970.

Hesselmar, B., Aberg, N. Aberg, B., Eriksson, B. & Bjorksten, B. (1999). Does early exposure to cat or dog protect against later allergy development? . Department of Pediatrics, University of Goteborg, Goteborg, Sweden. *Clinical Exp Allergy*, May; 29(5): 611-7.

Hien, E. & Deputte, B.L. (1997). Influence of a Capuchin Monkey Companion on the Social Life of a Person with Quadriplegia: An Experimental Study. *Anthrozöös*, 10(2/3), 101-107.

- Holcomb, R., Jendro, C., Weber, B., Nahan, U. (1997). Use of an aviary to relieve depression in elderly males. *Anthrozöös*, 10 (1), 32-36.
- Holcomb, R. & Meacham, R. (1989). Effectiveness of an animal-assisted therapy program in an inpatient psychiatric unit. *Anthrozöös*, 2 (4) 259-273.
- Jessen, J., Cardiello, F., & Baun, M. M. (1996). Avian companionship in alleviation of depression, loneliness and low morale of older adults in skilled rehabilitation units. *Psychological Reports*, 78, 339-348.
- Lago, D., Delaney, M, Miller, M. & Grill, C. (1989). Companion animals, attitudes toward pets, and health outcomes among the elderly: A long-term follow-up. *Anthrozöös* 3 (1) 25-34.
- Mallon, G. P. (1994). Cow as co-therapist: Utilization of farm animals as therapeutic aides with children in residential treatment. *Child & Adolescent Social Work Journal*, 11 (6), 455-474.
- Mader, B., Hart, L., & Bergin, B. (1989). Social Acknowledgements for Children with Disabilities: Effects of Service Dogs. *Child Development*, 60, 1529-1534.
- Melson, G. F. (1998). The role of companion animals in human development. In *Companion Animals in Human Health*. Eds. C. C. Wilson, D.C. Turner, pp. 219-236, Sage Publications, Thousand Oaks, CA. (Available from Dogwise.)
- Montague, J. (1995). Continuing care - back to the garden. *Hospitals & Health Networks*, 69(17), 58, 60.
- Morrow, V. (1998). My animals and other family: Children's perspectives on their relationships with companion animals. *Anthrozöös*, 11 (4), 218-226.
- Nagengast, S. L., Baun, M.M., Megel, M. & Leibowitz, J.M. (1997). The effects of the presence of a companion animal on physiological arousal and behavioral distress in children during a physical examination. *Journal of Pediatric Nursing*, 12 (6), 323-330.
- Nielson, J. A. & Delude, L. A. (1994). Pets as adjunct therapists in a residence for former psychiatric patients. *Anthrozöös*, 7 (3), 166-171.
- Parker, H. (1996). JAMA asks animal-assisted therapy to prove it. *News and Analysis, Anthrozöös* 8 (4) 244-45.
- Parker, H. (1996). JAMA asks animal-assisted therapy to prove it. *News and Analysis, Anthrozöös* 8 (4) 244-45.
- Poresky, R. H. (1996) Companion animals and other factors affecting young children's development. *Anthrozöös*, 9 (4) 159-181.

- Sable, P. (1995). Pets, attachment, and well-being across the life cycle. *Social Work*, 40 (3), 334-341.
- Serpell, J. A. (1991). Beneficial effects of pet ownership on some aspects of human health and behaviour. *Journal of the Royal Society of Medicine*, 84, 717-720.
- Serpel, J.A. (1990). Evidence for long term effects of pet ownership on human health. In *Pets, Benefits and Practice*. Waltham Symposium 20, April 19, 1990. Ed.: I.H. Burger, pp. 1-7, BVA Publications.
- Siegel, J.M., Angulo, F.J., Detels, R., Wesch, J, & Mullen, A. (1999). AIDS diagnosis and depression in the Multicenter AIDS Cohort Study: the ameliorating impact of pet ownership. University of California, Los Angeles, USA. *AIDS Care*, 11(2) 157-170.
- Siegel, J. M. (1993). Companion animals: In sickness and in health. *Journal of Social Issues*, 49, 157-167.
- Siegel J. M. (1990). Stressful life events and use of physician services among the elderly: The moderating role of pet ownership. *Journal of Personality and Social Psychology*, 58 (6), 1081-1086.
- Stallones, L., Marx, M. B., Garrity, T.F. & Johnson, T.P. (1990). Pet ownership and attachment in relation to the health of US adults, 21 to 64 years of age. *Anthrozöös*, 4 (2), 100-12.
- Taylor, E. (1993). Effects of animals on eye contact and vocalizations of elderly residents in a long term care facility. *Physical and Occupational Therapy in Geriatrics*, 11 (4).
- Triebenbacher, S. L. (1998). The relationship between attachment to companion animals and self-esteem. In *Companion Animals in Human Health*. Eds. C. C. Wilson, D.C. Turner, pp. 135-148, Sage Publications, Thousand Oaks, CA. (Available from Dogwise.)
- Vidovic, V.V., Stetic, V.V. & Bratko, D. (1999). Pet ownership, type of pet and socio-emotional development of school children. *Anthrozöös*, 12(4), 211-17.
- Wilson, C. C. (1991). The pet as an anxiolytic intervention. *Journal of Nervous and Mental Disease*, 179, 482-89.