High Plains Fair Housing Center

Guide to Requests for Reasonable Accommodations
Related to Animals Needed for Those with Disabilities

Fair housing laws require that applicants and residents with disabilities be provided with "reasonable accommodations" as needed, in order for them to have an opportunity for full use and enjoyment of their housing. An example of this is when an individual who meets the definition of disability and who needs an animal for their disability asks their housing provider for a reasonable accommodation in "no pets" policies to allow the animal. Allowing tenants, residents and their guests who have disabilities to be accompanied by their service, assistive, therapeutic, emotional support, or companion animals is a reasonable accommodation to housing policy and practice. To deny the accommodation, the housing provider must prove that such an accommodation is unreasonable or causes an undue burden to the housing provider.

Disability, under federal and North Dakota fair housing laws, is defined as a physical or mental impairment that substantially limits one or more major life activities, a record of having had such an impairment or being regarded as having had such an impairment.

What is an Animal Needed for Those with Disabilities?
These animals help people overcome the limitations of their disabilities and the barriers in their environment. They are working animals and not pets, and this work may also entitle them to access of public places and common areas. The most common animals for persons with disabilities are dogs, but sometimes other species are used (for example, a cat or a bird). These animals may be any breed, size, or weight. Some, but not all, of these animals wear special collars and harnesses. Depending upon the duties the animal will perform, these animals may be called service, assistive, therapeutic, emotional support, or companion animals.

What Do These Animals Do?
Animals perform many types of services for persons with disabilities. Here are some examples:

- A guide animal serves as a travel tool by a person who is legally blind.
- A hearing animal alerts a person with significant hearing loss or who is deaf when a sound occurs, such as a ringing alarm or a knock on the door.
- A service animal helps a person who has a mobility or health disability. Duties may include carrying, fetching, opening doors, ringing doorbells, activating elevator buttons, steadying a person while walking, helping a person up after a fall, etc.
- A seizure response animal assists a person with a seizure disorder. The animal's service depends on the person's needs. The animal may go for help, or may stand guard over the person during a seizure. Some animals have learned to predict a seizure and warn the person.
- A companion animal or emotional support animal assists people with psychological disabilities.

Emotional support animals can help alleviate symptoms such as depression, anxiety, stress and difficulties regarding social interactions, allowing tenants to live independently and fully use and enjoy their living environment. They are sometimes also called assistance animals.

Because these animals provide different types of assistance and/or service, a person with a disability may require more than one animal to assist them in coping with different disabilities.

Request for a Reasonable Accommodation

The tenant or resident who needs an animal because of his or her disability should submit a request in writing to the housing provider requesting an accommodation for the person's disability. The tenant/resident cannot be required to make a written request although it is recommended. The tenant/resident is also not required to disclose the nature of his/her disability. The tenant/resident should keep copies of all correspondence including any attachments. Please note that if a tenant/resident has a verified disability and need for an animal, the tenant/resident should try not to refer to the animal as a "pet" and instead refer to it as a service or assistance animal.

Verification of Disability and Need for an Animal

Unless the disability and/or need are visually apparent, the tenant/resident may provide written verification that s/he has a disability under law and that the accommodation is necessary to give the tenant/resident equal opportunity to use and enjoy the community. The tenant should obtain a signed letter on professional letterhead from his/her healthcare or mental health provider addressed to the housing provider answering the following questions:

- Is the person disabled as defined by fair housing laws?
- In the health care provider's professional opinion, does the person need the requested accommodation (use of an animal) to have the same opportunity as a non-disabled person to use and enjoy the housing community?

Guidelines for Housing Provider Staff

Housing providers must review and respond to all requests a resident with a disability makes for reasonable accommodations, including requests for an accommodation for an animal. The housing provider can require the tenant/resident provide verification from the tenant's healthcare provider or other knowledgeable person that the tenant/resident has a disability and needs the animal if the disability is not obvious.

Medical or licensed medical professionals means a person licensed by a public regulatory authority to provide medical care, therapy or counseling to persons with physical, mental or emotional disabilities, including, but not limited to, doctors, physician assistants, psychiatrists, psychologists, or social workers. Please note that fair housing laws do not require that verification of a disability and need of a reasonable accommodation come from a medical professional. The HUD-DOJ Statement notes that "a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability".[I]

What's the Difference between an Animal Needed for Those with Disabilities and a Pet?

Service, assistive, therapeutic, emotional support, and companion animals are not considered to be pets because they provided needed assistance to the person with the disability in coping and/or dealing with their disabilities. A person with a disability uses an animal as an auxiliary aid, similar to the use of a cane, crutches or wheelchair. For this reason, fair housing laws require that housing providers make accommodations to "no pet" policies to permit the use of an animal by an individual with a disability. In addition, pet fees, pet deposits or increased rent for the animal cannot be charged for animals needed for those with disabilities.

Pet Rules and "No Pets" Rules

[I] Joint Statement of the Department of Housing and Urban Development and the Department of Justice on Reasonable Accommodations Under the Fair Housing Act-Question 18

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If a housing complex has a “no pets” rule, such rules do not apply to animals needed for those with disabilities. If property management has documentation that the tenant/resident has a disability and needs the animal as a result, then the tenant/resident can live with the animal despite the “no pets” rule.

If a property allows tenants to have common household pets and places limitations on the size, weight, and type of pets allowed, these rules cannot apply to animals for tenants or residents with disabilities. Animals needed for those with disabilities may be any type of animal and any breed, size, or weight. An accommodation may also involve more than one animal if the tenant/resident can provide verification of such a need.

Training

Animals needed for persons with disabilities do not have to receive specialized training in order to be considered an approved animal. Fair housing laws consider emotional support, assistive, therapeutic and companion animals to be a type of service animal; however, they are not always professionally trained to perform required tasks. Often, these animals are individually trained by their owners to provide support, companionship, or a calming influence. An animal need only exhibit the ability to serve the person with the disability as is required for that person’s needs.

Certification

Some animals receive certification papers but others do not. Currently, there is no state or national standard which tests whether an animal qualifies as a service, assistive, emotional support, therapeutic or companion animal so “certification” cannot be required of persons with disabilities who need such animals. As noted previously, the animals can be individually trained to meet the needs of the individual’s disability.

Animal Care and Supervision

The tenant/resident is responsible for the care of his/her animal. The animal must be supervised and the tenant/handler must retain full control of the animal at all times. This generally means that while the animal is in common areas, it is on leash, in a carrier, or otherwise in the direct control of the owner/handler. When in the presence of others, the animal is expected to be well behaved (not jumping on or nipping at people, not snarling or barking, etc.). The tenant/handler is responsible for the proper disposal of animal waste. For those with animals:

- Never allow the animal to defecate on any property, public or private (except the tenant/resident’s own property or in approved areas), unless the tenant/resident immediately removes the waste.
- Always carry equipment sufficient to clean up the animal’s feces whenever it is in the common areas or off the tenant/resident’s property.
- Properly dispose of waste and/or litter.
- If you need assistance with cleanup, make arrangements for such help through family, friends or advocates.

However, these animals are typically highly trained and work in partnership to increase the independence, safety, and mobility of the person with the disability. A housing provider may make inspections to determine whether unreasonable wear and tear is being caused by an animal for someone with a disability; however, these inspections cannot be any more stringent or often than those inspections of those residents without animals. The inspections should also follow the North Dakota’s landlord/tenant law in regard to a landlord’s right of entry and reasonable notice to a tenant/resident.

Removal of a Service, Assistive, Therapeutic, Emotional Support, or Companion Animal

If an animal is unruly or disruptive (aggressively jumping on people, nipping, or other troublesome behavior), the property manager should warn the tenant/resident to take corrective action. The housing provider may also ask the tenant/handler to remove the animal from the immediate area. If the animal’s improper behavior happens repeatedly, the manager may tell the tenant not to bring the animal into any common area until significant steps have been taken to mitigate the behavior. Mitigation can include

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obedience training for the animal and/or refresher training for both the animal and the tenant/resident. A housing provider has the right to request an animal be removed if it continues to be noisy or disruptive or a different animal be obtained which is not noisy or disruptive.

Requiring Additional Insurance Coverage, Security Deposits, Pet Deposits, or Additional Rent for an Animal Needed by a Tenant/Resident with Disabilities

Fair housing laws prohibit imposition of additional burdens on the residency of a person with a disability if those tenancy provisions would subject that person to different and/or more adverse treatment than a similarly situated person without a disability. Imposing an additional term such as additional insurance coverage, security deposit, a pet deposit, and/or increased rent for a service, assistive, therapeutic, emotional support, or companion animal would subject a person with a disability to different and/or adverse treatment because of their disability. Regardless of whether a property allows pets, a resident with disabilities who needs an animal is not required to pay a pet deposit or pay any pet-related fees. Remember animals for those with disabilities are thought of as auxiliary aids, like a wheelchair, versus as a pet.

A housing provider can enforce the same conditions of tenancy/residency against a person with a disability as are imposed on persons without disabilities. For example, the lease may contain a clause that the tenant is liable for harm caused by his or her negligence. The housing provider would enforce this clause against a resident who is using a barbecue that malfunctions and causes a fire damaging to another resident's property and/or person. A housing provider enforces the same provision against a tenant with a disability who fails to control his/her animal. The key is uniform treatment and enforcement of terms and conditions for which a reasonable accommodation is not required.

Requiring Proof of Inoculation

Requiring proof of inoculation of a service, assistive, therapeutic, emotional support or companion animal would likely be permitted under certain circumstances. For example, a lease agreement includes provisions requiring tenants to abide by all applicable state and local laws. The housing provider enforces these provisions against tenants with respect to storage and/or use of vehicles, equipment, firearms, etc. on the subject premises. If there is a local law requiring inoculation and/or licensing of all animals, the housing provider may require proof that the animal meets the local requirements in that area as well.

An alternative rationale for this provision may be that no accommodation that creates a material risk to health and/or safety is reasonable. Proof of inoculation establishes that there is no material risk to health and/or safety in respect to inoculations.

What about Other Tenants/Residents who are Afraid of or Allergic to Animals?

While some people might have fear of dogs or other animals, this fear does not typically amount to meeting the definition of disability under law, so a housing provider need not "accommodate" the fear. For most people with allergies, the presence of an animal will cause only minor discomfort, such as sneezing or sniffling. Because this reaction does not meet the definition of disability under law, no accommodation is necessary for the person with the allergy. In rare situations, a tenant's allergy is so severe that they meet the definition of disability under law and animal contact may cause respiratory distress. In these cases, the resident with the allergy may also request an accommodation. For example, to keep the animal and the resident with the allergy in separate areas of the building as much as is possible, to use different routes, increased vacuuming to remove hair or dander, increased shampooing of the animal, etc. In these situations, it's important for the parties to work together to find a solution which can accommodate both resident's disabilities.

Areas Off Limits to Animals

Management may designate certain areas off limits to service, assistive, therapeutic, emotional support or companion animals, such as swimming in the pool or inside the sauna room. However, such designations should not infringe upon the right of a person with disabilities to full enjoyment of the

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amenities of the community.

Other Frequently Asked Questions Regarding Animals Needed for Those with Disabilities

- *How do I know an animal is safe to be around?* Service dogs are carefully screened for temperament and stability *before* they are trained and placed with persons with disabilities. These professional animals are focused on their human partners and their work. Other types of animals for people with disabilities must be under the control of their handler at all times.
- *How do I recognize a service, assistive, therapeutic, emotional support, or companion animal?* Most of the working animals wear a tag, vest, harness or backpack identifying the animal when they are in areas of public accommodation. Animals in their housing environment are not required to be identified in similar capacities.
- *May I pet the animal?* No, not when the animal is working or without approval from the owner. Petting is distracting and these animals need to focus on the instructions and needs of their human partner. Do not call or distract the animal with whistles and sounds, as this could endanger their partner.
- *Some people do not look disabled. Why do they need an animal with them?* The human partner may have a "hidden disability," for example, cancer, chronic back pain, seizure disorder, or a hearing impairment to name a few.
- *Can I ask the person, "What's wrong with you?"* No. Federal law protects the privacy of persons with disabilities. They are not required to explain their disability in detail nor are they required to explain or demonstrate why they are accompanied by an animal.
- *Is the animal likely to "make a mess" indoors?* The working animals are carefully selected and trained to have excellent manners. A person with a disability who requires the use of any animal is responsible for any clean up and care. If damage occurs above reasonable wear and tear, it could be addressed with the resident as with any resident who is found to have allowed damage.

Awareness Training

Property management should ensure that staff is properly trained in the facility's animal policies for those with disabilities, including the following suggested rules:

- Allow the animal to accompany the tenant/resident at all times and everywhere on the property except where animals are specifically prohibited under law.
- Do not pet or touch an animal without approval of its owner. Petting these animals when they are working may distract it from the task at hand.
- Do not feed an animal needed by those with disabilities. The animal may have specific dietary requirements. Unusual food or food at an unexpected time may cause the animal to become ill.
- Do not deliberately startle an animal that is assisting a person with disabilities. Avoid making noises at the animal (calling, whistling, etc.).
- Do not separate or attempt to separate a resident with disabilities from her or his animal.
- Avoid initiating conversation about the animal or the resident's disabilities. If you are curious, you may ask if the tenant/handler would like to discuss it, but be aware that many people with disabilities do not care to share personal details about their disabilities or needs to accommodate.

Remember, not all disabilities are visible. The nature of the person's disability is a private matter, and you are not entitled to inquire for details except as it relates to approving a person for disability based housing or in approving the need of a reasonable accommodation or modification. If other tenants complain about the fact that they are not allowed to have a pet and want to know why you have made an exception, simply state that your company complies with fair housing laws. You can also refer your residents to the fair housing laws or to the HPFHC for further details.

As discussed previously, a service, assistive, therapeutic, emotional support, or companion animal does not need to wear any special identifying gear such as tags, harnesses or capes when in areas of

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housing. Owners/handlers are not required to carry any paperwork documenting the animal as a service animal.

A tenant/resident may train his or her own animal and is not required to provide any information about training or the specific tasks the animal performs. These rules are especially relevant for the working animal who accompanies its handler out in the public.

Resources

For more information, see:

- HPFHC Guide for Residents on Requests for Reasonable Accommodations and/or Modifications
- HPFHC Fact Sheet 4 on Reasonable Accommodations and Modifications and HPFHCFact Sheet 5 on Animals for Those with Disabilities
- Joint Statement of the U.S. Department of Housing and Urban Development and the U.S. Department of Justice on Reasonable Accommodations Under the Fair Housing Act, May 17, 2004
- Federal Register Pet Ownership for the Elderly and Persons With Disabilities Federal Register: October 27, 2008 (Volume 73, Number 208)
- The U.S. Department of Housing and Urban Development memorandum "Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation," June 12,2006
- North Dakota Century Code-Chapter 47-16; Leasing of Property

If you have questions about this topic or other fair housing issues, please contact:

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The work that provided the basis for this publication was supported by funding under a grant/cooperative agreement with the U.S. Department of Housing & Urban Development. The substance and findings of this work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication.

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