

WHAT EVERY LANDLORD NEEDS TO KNOW ABOUT FAIR HOUSING LAWS



Article #1: The Top Fair Housing Questions About Assistive Animals

Both federal, state and city Fair Housing laws apply to most residential housing situations. You need to learn these laws and understand how they impact your decisions as a landlord. This overview will help a landlord and their agent learn to make the correct decision when faced with some confusing situations that may impact fair housing laws. The following are some general guidelines and the most frequently asked questions.

An assistive animal is not a pet. It is considered an assistive device, like a wheel chair or cane. These animals perform services, tasks or alleviate symptoms of a disability and help the tenant to use and enjoy the rental dwelling.

There are several categories of assistive animals. The categories are similar but these animals provide very different services and are treated differently under state and federal law:

- A) **Service animals**. These animals are specifically and rigorously trained to perform specific tasks or alerts to mitigate their handler's disability. These animals are permitted to accompany the human in public areas because of ADA laws. They are working and should not be interacted with by others unless the handler gives permission to do so. These animals qualify as an assistive animal under Fair Housing laws.
- B) **Emotional Support** (also called Comfort animals). These animals do not have to have any specialized training. They help alleviate symptoms of that person's disability that impact one or more daily activities. These animals also qualify as an assistive animal under Fair Housing laws.
- C) **Therapy animals**. These animals are trained to provide psychological or physiological therapy to individuals other than their handlers. Typically, they visit various institutions like hospitals, schools, hospices, psychotherapy offices, nursing homes and more. These animals are encouraged to interact positively with others. These animals **do not** qualify as an assistive animal under Fair Housing laws.

- D) **Working animals.** These animals have been specially trained for specific jobs and are used by the military, law enforcement, search and rescue. These animals **do not** qualify as an assistive animal under Fair Housing laws.

Now that you understand the different names used for the categories of assistive animals, let's look at some of the questions typically asked by landlords:

1. Do I have to allow a tenant to have an assistive animal? The general answer is you may have to approve the assistive animal as a reasonable accommodation if the tenant requests you waive your policy that would otherwise limit the size, breed, species, pet deposits/rent or a ban on animals at the dwelling. However, there are some steps you can take to determine what you must allow.
 - a. First verify that the tenant is disabled and that their disability impacts one or more daily life activities. If the disability is obvious (mobility impaired, blind, etc.), you can't ask for any documentation of their disability. If it is not obvious, you may ask for them to provide documentation of the disability from a medical provider. You do not have the right to know the details of the disability.
 - b. The next question is whether the animal performs a service, task or alleviates a symptom of the disability for the tenant. You have the right to verify what the animal does for the resident but no special license or training of the animal is required.
 - c. The final question is whether the request for this assistive animal is reasonable. This is a situation based inquiry. While an assistive miniature horse may be reasonable for a single-family rental, it is not likely to be reasonable in a third-floor apartment in a multifamily rental.
2. Do I have to allow an assistive animal that is out of control, dangerous or damaging the premises? You do not have to allow an animal that is creating a safety hazard, that is not properly under control by the tenant, or is causing physical damage to the premises. You should notify the tenant in writing of the issues and first allow them to remedy the situation (unless this is a serious health and safety issue). You may also want to offer to allow them to have a different assistive animal or mutually terminate their lease if they do not want to remove that animal. You can file an eviction for these behaviors by the assistive animals.
3. Can I regulate size or breed of the assistive animal? You can't restrict the size or breed of the assistive animal even if your CC&R's or insurance carrier has a restriction. We suggest that you send the written request for the waiver of that restriction to the HOA or insurance carrier and include the tenant's specific request as part of that process. If your insurance carrier threatens to cancel your insurance if you allow this assistive animal, you can use this written letter as a legal reason for denying the tenant's request for this specific animal.

4. Are there any restrictions on the species of the assistive animal? You may have to allow a unique species of an assistive animal but you may also inquire into whether this species request is reasonable. A request for an assistive crocodile would be difficult for a tenant to support because this species is very dangerous, can't be domesticated, probably does not provide a specific service or task, and requires a special handler's license in most states. An assistive rooster may cause a serious noise disturbance that can't otherwise be resolved by the tenant. However, a request for a 10-foot boa constrictor might be reasonable if the tenant agrees to address the safety risk to others by caging it when the tenant is gone, sleeping or when the landlord or their agent is present in the residence.
5. Do I have to allow multiple assistive animals? If a tenant has multiple disabilities, they may need a different animal to perform more than one service, task or alleviate a different symptom. You do have the right to inquire into which service the animals provide and whether one animal can address the needs of more than one disability issue. An example would be if the tenant is blind and suffers from a seizure disorder and needs both an alert animal and a guide dog.
6. Can I require that the animal is house-trained, spayed or neutered? The issue of being house trained is clearly allowed. However, you need to allow a tenant to choose whether to spay or neuter the assistive animal if they can provide a medical or other valid reason why the animal should not be required to be neutered or spayed.
7. Do I have the right to demand that the tenant provides the documentation of the disability and the need for the service animal from a current and appropriate medical provider? There currently is no clear guidance from any governing agencies about what background or training the medical provider must possess or whether they are currently treating the patient. We suggest you proceed with caution until more specific information is provided by federal or state authorities.
8. Am I allowed to require the tenant to use my specific forms for their request and medical verification? It is suggested that you use clear and consistent forms so that you have a procedure in place for addressing these types of requests. However, if the tenant can provide written confirmation from a medical provider that addresses the same information you are requesting in your form, you should allow the use of that medical provider's form. If it does not, however, you should temporarily allow the animal while the tenant is given additional time to get the form filled out by their provider. Finally, if the tenant has a disability that interferes with their ability to fill out the form, you must adjust your procedures to account for this situation.
9. How do you answer a question from another resident about why you are allowing this tenant to have an animal that does not meet your pet restrictions? You are not allowed to disclose to other residents that the animal is an assistive animal

because you can't share information about that tenant's file with other residents. The best answer is "I am unable to discuss another resident's private information with you."

10. Is it appropriate to ask the tenant in the application if they have an assistive animal? You can ask a potential resident whether they have a pet or an assistive animal. You should also notify all applicants that you allow assistive animals and that additional documentation is necessary. Additionally, your lease should specifically note that there are no deposits or pet rent charged on assistive animals.
11. Can I require the tenant to sign an addendum that they agree to abide by certain requirements involving their assistive animal? You can require the tenant to sign an addendum that they agree to care for, pick up after, control, etc., their animal. Those rules are the same for all animals, even for assistive animals.
12. What if the tenant continues to allow their assistive animal to run off leash or fails to pick up the animal's waste? If the tenant creates a health or safety issue by failing to control their animal, pick up the waste or allows the animal to relieve itself in inappropriate areas, you can issue a breach notice and terminate the lease for these issues. You are not necessarily required to arrange for the pick-up of the animal's waste but you may need to allow additional time for the tenant to get the waste picked up if that is reasonable. A typical example involves a blind tenant that needs to contact someone to help them properly dispose of their guide dog's waste so they should not be given a breach notice for failing to immediately pick up after their pet.
13. My tenant failed to disclose that they have an assistive animal on their application or their lease. When I served a breach notice, they now produced a note from their doctor on a prescription that they need the animal because it makes them happier. Do I have to allow this? This is a complicated situation. The first question is "Did you specifically ask whether they had an assistive animal in the application?" If the answer is yes and the tenants said no but moved in with the animal, then the tenants falsified their application and you can terminate their lease with a 10 Day Material Falsification notice. This notice is not curable and terminates the lease and requires them to move in 10 days. If the tenant said no, but later got this animal, the second question is "Does your lease specifically say that no animals are allowed unless the landlord gives written permission and does it notify the tenant that you allow assistive animals?" If it does, the tenant is in breach and a 10-day breach notice is appropriate. However, this notice is curable and the completion of a Reasonable Accommodation Request and the accompanying verification by a medical provider will resolve this issue. We suggest that you allow the tenant some additional time if they can demonstrate why they were unable to get the medical verification within the 10 days. You do not have to allow the prescription as the verification because it does not verify that the tenant is disabled and needs the animal because of a disability.

14. My tenant said they use this animal as part of their job and that I must allow them to have it as a reasonable accommodation. Is this true? No. This animal is considered a working animal. Their professional need for the animal is not covered by the fair housing laws.
15. My tenant trains service and therapy dogs for a living and uses the therapy animal to go to schools and hospitals. Do I have to allow them to keep and train these animals at my rental property? No. Their business operations that involve the training of the animal and the beneficial use of these animals at facilities for the benefits of others are not covered by fair housing laws.

KEY POINT TO REMEMBER: Every situation is different and the **laws frequently change.** You need to consult a lawyer and provide the specific details of the situation involved BEFORE you determine what the next appropriate action involves.