

ASSISTIVE ANIMALS YOU HAVE QUESTIONS, WE HAVE ANSWERS

Does a landlord have to allow assistive animals at no pet communities or no pet properties? Yes. Assistive animals are not pets. Assistive animals are necessary for a disabled tenant to use and enjoy the rental on the same basis as a non-disabled individual. Under fair housing laws, disabled tenants are entitled to an exception to any “no pet” policy if they meet the legal requirements. A disabled tenant’s legal right to have an assistive animal, to meet a disability related need, is called a reasonable accommodation. Failure to accommodate a qualified disabled tenant, by allowing an assistive animal at a no pet community, is housing discrimination and subjects the landlord to significant legal liability.

If the tenant’s animal does not perform a service, do we still have to allow the animal? Yes, if the tenant meets legal requirements. While the rental industry consistently uses the term “service animal”, the proper term is “assistive animal”. An assistive animal is either a service animal or an emotional support animal, also known as a companion animal. Service animals perform a service for the tenant or provide a disability related benefit. An emotional support animal lessens a tenant’s disability related symptoms or provides other disability related benefits. Under fair housing laws, if a disabled tenant has a disability related need for an emotional support animal, you must accommodate the tenant by making an exception to your no pet policy, just as you would be required to make such an exception for a disabled tenant requesting a service animal.

What legal requirements must a tenant meet to have an assistive animal? A tenant must meet three requirements to be granted a reasonable accommodation (an exception to your pet policies). First, the tenant must be disabled as defined by fair housing laws. Generally, this means that the tenant must have a physical or mental impairment that substantially affects a major life activity. However, we advise some caution in basing reasonable accommodation decisions solely on this definition. Specifically, while not likely, a tenant can also be considered disabled under fair housing laws based on other tests. Second, the tenant must have a disability related need for the assistive animal. Generally, this means that there is a relationship between the tenant’s disability and the need for the animal, i.e. the animal will lessen the impact of the tenant’s disability. Third, the request must be reasonable. Whether a specific request for an assistive animal is reasonable can be extremely complicated, and should be left to the experts. Thus, you should never deny a tenant’s request for an assistive animal, because you believe the request is unreasonable, without consulting us.

Can we require the tenant to provide documentation? Maybe. If the tenant’s disability and need for an assistive animal is obvious, then you may not require documentation. If the tenant’s disability and need for the assistive animal is not obvious, then you may require documentation. You should have well thought out and specifically defined policies for handling reasonable accommodation requests in general, and specifically for handling assistive animal requests made by tenants. You should also attend our fair housing classes. Our advanced fair housing class discusses how to properly handle reasonable accommodations in detail, including which forms to use when a tenant makes an assistive animal request.

Is documentation provided by an Internet company sufficient documentation of a tenant's disability and need for an assistive animal? Probably not. Under the law, a person providing documentation must be in a position to know that the tenant is disabled and has a disability related need for an assistive animal. Generally, a company that generates revenue by churning out assistive animal letters, based on ten-minute phone calls, is not in a position to know whether or not a tenant is disabled or has a disability related need for an assistive animal. For an extended discussion of Internet assistive animal letter companies, see the Emotional Support Animal series published in previous editions of Landlord News. Can we deny the request if the assistive animal isn't a dog or cat? No. While most assistive animals are dogs and cats, assistive animals can include other domesticated animals.

Do assistive animals have to be specifically trained or certified? No. An assistive animal does not need any specific training or certification. However, specific training or certification doesn't mean that a tenant automatically should be allowed an assistive animal. Specifically, more and more tenants request landlords to allow an animal because they obtained a certificate or ID Card on the Internet, or because the animal wears a tag, cape, or harness. These issues are all irrelevant. The tenant's disability and disability related need for an assistive animal are the only relevant considerations.

Can we deny the request based on the animal's size or weight, or because the animal is on our restricted breed list? Probably not. Remember, a reasonable accommodation request asks for an exception to your rules and policies because of a disability related need. Thus, a disabled tenant may ask for an exception to your breed restrictions, size, or weight policies. In most cases, if the tenant is disabled, you will have to grant their request. Because exceptions to breed restrictions can be complicated requests for a reasonable accommodation, you should attend THS's advanced fair housing class to explore this issue in more detail. Additionally, HUD has written a specific memo on this issue.

Can we deny certain breeds based on insurance requirements? Maybe, but only after you have exercised due diligence in exploring all available insurance options. Similar to many other reasonable accommodation requests, clients often tell us that they can't grant a certain request because of insurance requirements or limitations, or impose an insurance requirement on the tenant as a condition to granting a reasonable accommodation or a reasonable modification. Both HUD and the courts will view this as an attempt to impose barriers (deny the request) unless you have thoroughly evaluated the insurance issue. Specifically, you can't request an insurance carrier to impose this limitation so that you can deny requests. You must also determine whether other insurance carriers would provide insurance without the limitation, or whether your existing carrier would remove the limitation either upon request or upon the payment of additional premium.

*Can we require an assistive animal to be vaccinated and have applicable pet licenses? **Yes.***

*Can we require an assistive animal to be well groomed and housebroken? **Yes.***

*Can we charge pet deposits, pet fees, and pet rent for an assistive animal? **No. Remember an assistive animal is not a pet.***

Can we require an assistive animal to comply with other community pet related policies? **Yes**, as long as any policy applies to all other animals at the community, and does not act as a barrier to prevent disabled tenants from having assistive animals. For example, you can require assistive animals to be leashed when outside of a tenant's unit. As a condition to granting an assistive animal request, you can also require the disabled tenant to execute an Assistive Animal Addendum that spells out the tenant's responsibilities with respect to the animal, such as picking up after the animal, and that the animal may not disturb or threaten other tenants. Because a typical Pet Addendum may contain provisions that are inapplicable to assistive animals and refers to assistive animals as pets, we advise against using a standard Pet Addendum for assistive animals. Instead, we recommend using the Assistive Animal Addendum drafted by THS.