

Mind Your Business – Tia’s Tips for Better Rental Management

Assistance Animals: Best Practices for Landlords

*By Tia Politi, Lane ROA President,
with assistance from Victoria Smithweiland*

Federal Fair Housing laws prohibit discrimination against people who are members of protected classes, in the advertising, sale or leasing of real estate. For rental owners, that means making exceptions to your standard policies or allowing a modification of the premises to allow a member of a protected class (in this case a disabled person) the opportunity to enjoy the dwelling unit the way a nondisabled person could by allowing the keeping of an animal that is not a pet. Under the law, an animal that assists a disabled person is seen as an assistive device.

When it comes to things like wheelchair ramps, visual smoke alarms or shower grab bars, rental owners by and large have no objection to making an exception. Some accommodations such as longer grace periods for rent payments or a dedicated space in a first-come, first-served parking lot, can generate some grumbling. But absolutely nothing causes more upset and opposition than the idea of assistance animals – especially for “no pet” rental owners.

Much of this attitude is based on hard experience regarding the damage that animals can inflict on rental property. In my experience, more than half of all residencies involving animals generate at least some animal-inflicted damage to the house or grounds. With pets, rental owners can charge higher deposits and higher rent to offset the financial risks. They can also restrict the size, breed, or types of pets, as well as the number of pets on the property. With assistance animals, rental owners lose a lot of control over those decisions. This seems unfair as they are the ones faced with the expense of repairs that may go beyond the amount of a traditional security deposit. Even though assistance animal owners are responsible for any damage caused by their animal, it can be frustrating to pursue them to repay damages, and difficult to collect.

Also, tenants seem to have become more aware of their rights in this regard, leading to a noticeable increase in those who report disabilities and are able to obtain a prescription or other care provider authorization. While we can all see the need for a blind resident to be allowed their seeing-eye dog, a diabetic their blood sugar-detection dog, or an epileptic their seizure-detection dog, the surge in “comfort” animals is creating bad feelings among landlords whose perception is that residents are blatantly abusing the system.

As a rental owner, I completely understand the angst this generates, but guess what? I personally have two dogs and find great comfort in their presence. Numerous studies have shown that the presence of an animal in a residence leads to better mental health for their owners. Dog owners enjoy a markedly reduced risk that their home will be burglarized or that they will become the victim of a violent crime. Now if I were a person seeking a rental, could I make the case that without Bandit and Penny I would suffer? Probably. I certainly would feel more vulnerable to crime and miss their comforting presence. Does that mean I’m disabled and could not get by without them? Maybe. I don’t feel disabled, but I’m thankfully not in a position of having to choose either. I guess the point of telling you that is we often can’t see the invisible anxieties, disorders, fears, conditions, and past traumas of another person that necessitates an assistance animal, and under federal law meets the definition of a disability.

What is a disability?

“The term “disability” means a person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Major life activities include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether the impairment limits or is perceived to limit a major life activity.

The ADA does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

The definition of disability shall be construed in favor of broad coverage of individuals to the maximum extent permitted.

An impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing assistances and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary assistances or services; or learned behavioral or adaptive neurological modifications.”

-ADA website

Additionally, the term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impediments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction, and alcoholism. This definition does not include any individual who is currently using illegal drugs or is a current user of alcohol who poses a direct threat to property or safety (24 CFR 100.201).

Fair Housing law provides that rental owners shall, without regard to normal rules imposed on tenants, allow for an accommodation to relax those restrictions for a disabled individual to enjoy the rental unit the way a non-disabled person could. To the extent that a specific request is “reasonable” a rental owner must allow an exception to accommodate an individual’s disability. That includes allowing animals when they would otherwise be prohibited. Both rental owners and residents have misconceptions about what requirements are lawful to impose upon the owner of an assistance animal. I hope you find the following FAQ helpful in achieving a better understanding of your rights and responsibilities as a housing provider:

Is a resident required to ask for accommodation for an assistance animal in advance? A reasonable accommodation request may be made at any time, including during the eviction process, and the failure to do so does not mean you have a right to automatically decline the request whenever it’s made.

Am I obligated to inform residents of their right to an assistance animal if they have a disability? No, the request must be initiated by the resident or by another on the resident’s behalf, but rental owners are obligated to consider all reasonable accommodation requests from their residents.

Does the request have to be in writing? No, a verbal request is also required to be honored.

Is there any difference between a service animal, an aid animal, a companion animal, a comfort animal or an assistance animal? Not under the law. Any of the above terms may be used to describe an animal that meets the disability-related need of a resident.

Can I restrict the size or breed of an assistance animal? Maybe. On June 12, 2006, HUD issued a memo to its regional directors indicating that if a specific breed of animal is excluded from coverage under the landlord's insurance policy and if the insurance carrier would, "...cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider. However, the investigator must substantiate the housing provider's claim with the insurance company directly and considering whether comparable insurance, without the restriction, is available on the market. If the investigator finds evidence that an insurance provider has a policy of refusing to insure any housing that has animals, without exception for assistance animals, it may refer that information to the Department of Justice for investigation to determine whether the insurance provider has violated federal civil rights law prohibiting discriminated based upon disability."

Can residents have both pets and assistance animals? Yes, if your policies allow pets.

Does an assistance animal have to be specially trained? While many assistance animals are specially trained to assist their owners with physical disabilities, many assistance animals simply provide comfort and peace-of-mind to their owners, ameliorating the effects of mental, psychological, social, or anxiety disorders in the affected party. Post-Traumatic Stress Disorder (PTSD) is a common diagnosis for combat veterans, rape or assault survivors, or protected classes who have, historically, experienced discrimination. Often children with disabilities find great comfort and stability by relating to and caring for animals. The bottom line is, you are not qualified to determine whether someone needs this type of accommodation and should never try to be the final arbiter of whether an individual's condition requires an assistance animal for purposes of considering a reasonable accommodation request. It is the care provider alone who determines whether someone meets the definition of a disabled person.

Can I ask what the disability is? No. That is private information, and you are not entitled to have it. I have, however, had many doctors, nurses and social workers telling me what the condition is in direct violation of HIPAA privacy statutes, yikes! But that's their liability, not mine.

What kind of paperwork or verification can I require of a tenant with an assistance animal? You may require verification from a qualified care provider who has direct knowledge of the disability (unless the disability is obvious, then you may not require the verification). You may require that the animal be vaccinated and licensed as required by law or ordinance. In most cases you may also request that the animal be spayed or neutered (more on that later), and proof of such provided to you. You may require a photograph of the animal for the purpose of identification. You may require that the tenant name a responsible third party who lives outside the household and agrees to take the animal and care for it should the tenant be unable to do so.

What is the definition of a "care provider"? A care provider can include a medical doctor, a psychiatrist, a counselor or clergy person, a social worker, or a parent or other family member. Basically, any other individual who provides or has provided care to the disabled person, has direct knowledge of the applicant's or tenant's disability, and verifies that the animal is needed to allow the disabled resident to enjoy the unit the way a non-disabled resident could. If an applicant or resident provides a recent care provider verification, it is okay to contact the care provider for verification that they issued the verification, as long as you don't use that as an excuse not to allow the animal to move in in a timely fashion. Also, it can be construed as improper to require them to re-verify their prescription in writing.

When I asked an applicant for a care provider authorization, they presented me with a card saying the animal was a service animal and told me it was illegal to require more. Is that true? No, there is often a misunderstanding among disabled people with service or assistance animals that they are allowed to bring an animal onto a rental property with only a service animal ID card they obtained legitimately or one they printed off the internet. You can require a care provider authorization in most cases, but remember, if a person's disability is obvious, it is considered a violation to require that they verify their obvious disability. HUD

provided new guidance regarding these types of online verifications in early 2020, which clarifies the restrictions, requirements, and responsibilities of both parties to the relationship.

The guidance is called, *Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act*, and may be viewed at:

https://www.tiapoliti.com/files/ugd/342f50_91daf06ca6d64ceaa0e338e1d189138e.pdf

Also, staff at the Fair Housing Council of Oregon (FHCO) are available to help with unusual situations. They want us to do the right thing and have been very helpful providing answers to questions, so don't hesitate to call or email them if you have something out of the ordinary (www.fhco.org). For example, a member called me a few years ago about a verification provided by his resident, and when he checked out the doctor in question, she had her license sanctioned or revoked (can't remember which) for malpractice. He called and they told him he could decline that care provider's verification.

What if the verification says the person would "benefit" from an animal? Well, I would benefit from a million dollars, but that doesn't mean I'm disabled. It is required that the care provider verify that the person meets the definition of a disability and that they need the animal to meet their disability-related need. The provider verification should draw a nexus between the person's disability and the need for the animal to meet disability-related conditions. You could decline a request when the care provider has determined that the individual does not meet the definition but be prepared for them to correct the deficiency in their verification, which then obligates you to reconsider the request.

Can I require that the paperwork be completed prior to the animal taking up residency? That depends. You may not place unreasonable barriers in the way of someone seeking an accommodation, but if an applicant makes a request as opposed to an existing tenant, I usually request that they get their care provider authorization in prior to the animal taking residency. But I also work with people whose records are packed away or need time to get their dog licensed because they just moved to town.

One of the more irritating things rental owners have been experiencing is last-minute notifications that an approved applicant makes (often at the time of move-in) that they have an assistance animal. But many tenants are rightfully wary to disclose this due to concern that a rental owner will find another way to deny their application, so they wait until the time of move in to disclose or wait until they move in, and you discover the animal. While you may certainly feel misled, it doesn't mean you can deny the request.

Can a rental owner have an assistance animal removed pending a care provider verification of the need for the animal? That is extremely risky and could be seen as placing a barrier in the way of a disabled person. Remember, the disabled individual is asserting that they need that animal to assist them with their disability. You don't want to be guilty of creating a breakdown for the resident or otherwise causing them to fear discriminatory treatment, which could result in a claim against you even if you eventually approve the accommodation. It's best to assume, until proven otherwise, that the request is legitimate.

What if a guest brings an assistance animal onto the property, do I have to allow that? Likely, yes, but the visitor is also required to prove that the assistance animal is legit by completing the same paperwork as a resident. Our updated rental agreement identifies specific restrictions in this scenario and states, "If Guest(s) of Tenant(s) receive(s) an exception for a pet or assistance animal to accompany them when visiting the unit, the animal must be with the Guest(s) at all times and may not be left in the unit without the Guest(s). The right for a Guest to bring a pet or assistance animal onto the premises will be revoked immediately if the animal is found running loose, attacks or exhibits menacing behavior to any Tenant, Guest, Staff or other person or their animal, or if the Guest(s) fail(s) to promptly clean up the animal's waste outside the Dwelling Unit. Tenant(s) shall be responsible for all damages, fines, Fees and claims for a Guest's animal violations."

Can I charge a deposit or higher rent for an assistance animal? No.

Can I require that the assistance animal be spayed or neutered? That is disputed. Even among well-educated people within the Fair Housing agency itself, there is some disagreement on this matter. And even HUD can't make up its mind! When I managed Assisted Housing properties, we could not require it, but in Public Housing properties, we could. It is certainly okay to request that the animal be spayed or neutered but be open to an explanation of why that may not be possible or advisable. For example, I had a tenant with a balance disorder who had a large specially trained purebred dog that walked beside her to provide stability and keep her from falling. She had a contract with the breeder that prevented her from spaying the dog until it was at least five years old, so I made an exception for that. Also, once an animal is beyond a certain age, it can be physically risky to subject them to that surgery, which could be another good reason to make an exception. Remember, you can't place unreasonable barriers in the way of the person seeking accommodation.

Can I require that the assistance animal be licensed and current on vaccinations? Yes, if applicable. Owners of assistance animals must still comply with all codes and laws regarding vaccination, registration, and licensing of their assistance animal.

How many animals can be allowed per person? That is not defined under the law. Each animal must qualify on its own regarding the service it provides to the disabled person, but it has been made clear that assistance animals are not entitled to their own assistance animal!

What types of animals are allowed to serve as assistance animals? Domestic animals are clearly allowed, but HUD guidance specifies, "**Animals commonly kept in households.** If the animal is a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes, then the reasonable accommodation should be granted because the requestor has provided information confirming that there is a disability-related need for the animal. For purposes of this assessment, reptiles (other than turtles), barnyard animals, monkeys, kangaroos, and other non-domesticated animals are not considered common household animals. **Unique animals.** If the individual is requesting to keep a unique type of animal that is not commonly kept in households as described above, then the requestor has the substantial burden of demonstrating a disability-related therapeutic need for the specific animal or the specific type of animal. The individual is encouraged to submit documentation from a health care professional confirming the need for this animal, which includes information of the type set out in the Guidance on *Documenting an Individual's Need for Assistance Animals in Housing.*"

So, review each request on its own merits and make exceptions when reasonable to do so. For example, under HUD's guidance, "barnyard animals" are not considered common household animals, but miniature horses can be trained to assist the visually impaired. They are no larger than many dogs, can be house-trained, and live up to three times as long as a seeing-eye dog, making them a better long-term investment. This area of law is always evolving and if you don't want to end up as a test case, it is best to consider all requests and grant them when it is reasonable to do so. There was a recent case where a guinea pig was determined to be a valid assistance animal. FHCO has asserted that rats can be assistance animals, ugh! Could I see a scenario wherein watching fish swim in their tank or having a boa constrictor squeeze your arm have a calming effect related to a resident's disability? What do you think?

What if I have a severe allergy to a specific type of animal? All requests must be reasonable. The definition of reasonable is open for debate, hence the opportunity for litigation, resulting in case law that provides clarity as to what is or is not allowed. I had a potential client once who had purchased her dream home and intended to live in it during retirement which was a few years away but wanted to rent it out in the meantime. She had a life-threatening allergy to cats and asked me if she could exclude cats from residing at the property even if they were assistance animals. I discussed it with staff at the Fair Housing Council of Oregon, who agreed that it could be justification for declining assistance cats, but that the woman should be very sure she could prove it if a complaint were filed against her. I would go further and recommend that you obtain your own verification of disability from your care provider in advance, so that if this issue ever arises you will be prepared.

What if the assistance animal damages the property or the resident won't clean up after it? Assistance animals, just like pets, are not allowed to be destructive, dangerous, or disturb the covenant of quiet enjoyment. Residents are required to take proper care of the animal, provide it with appropriate veterinary care and clean up after it. Non-compliance fees may be charged, and tenancies terminated for failure to clean up animal waste outside the dwelling unit. Residents must pay for any damage caused by their assistance animal and their tenancy may be terminated for failure to pay. In some circumstances you may be able to require an animal to be removed from the premises, but first you must engage in the “interactive process” where you discuss other options to solve the problem short of removal.

What if an assistance animal disturbs the peaceful enjoyment of neighbors? After a good faith effort to allow the tenant to fix the problem, you would be justified in having the animal removed or ending the tenancy. I got a complaint from a resident in a four-plex that his neighbor had a dog and when she left it would bark continuously, interfering with his right to quiet enjoyment. She was also failing to clean up its waste. I served her an ***Unauthorized Pet Violation Notice – ORHA form #VT4***, and she contacted me to let me know her daughter had brought her the dog and it was an assistance animal. I sent her our assistance animal paperwork but told her that since this animal had already proven itself to be disturbing the peaceful enjoyment, she would either need to find a way to stop the incessant barking or find a different assistance animal. I also reminded her of the obligation to clean up after the dog and that any further instances would result in the possible assessment of non-compliance fees, leading to either the removal of the dog or the termination of her tenancy. She removed the dog, but of course we remained open to her obtaining another assistance animal. If she had kept the dog but continued to allow it to disturb the neighbor's right to quiet enjoyment or failed to clean up after it, I would have served a ***Notice of Termination with Cause - ORHA form #VT5***, for the violations, resulting in either a cure of the notice or termination of the tenancy, but only after working with her to find a reasonable solution to the problem.

What steps should I take if I see an unauthorized animal in my unit? I start by serving an ***Unauthorized Pet Violation Notice - ORHA form #VT4***, requiring the renter to remove the animal or their tenancy will terminate after 10 days. I also send along a ***Notice of Non-Compliance - ORHA form #VI***, letting them know that if the animal is not removed within 48 hours, they will be assessed a \$250 noncompliance fee, with additional fees being charged for every 48 hours the unauthorized animal remains on the property. That usually gets a response. About half the time the resident asserts that the animal is an assistance for a disability.

When that happens, take at face value that it really is an assistance animal until proven otherwise, then provide the necessary paperwork - ***Reasonable Accommodation Request and Verification – ORHA form #MO2***. Follow up with the resident to make sure that their verification is valid, and the animal is spayed or neutered (unless you have made an exception), current on vaccinations, and licensed if required by law. Once the verification is complete, the tenant fills out and signs the ***Assistance Animal Agreement - ORHA form #MO3***, recording the pertinent information about the animal as well as a Responsible Party Certification. The form also reminds the resident about the rules for their assistance animal and the consequences of violating those rules. Get a photograph of the animal for your records and keep it with the tenant's file.

Sometimes providing verification of things like spay/neuter records, vaccinations or licensing can take time to accomplish, especially if all the requirements haven't been met and the resident doesn't have the funds. There's no set timeframe within which the resident must fully comply, and there are conflicting thoughts on what is reasonable regarding compliance, so err on the side of caution. If you terminate a tenancy based on a resident's failure to provide assistance animal documentation, make sure you are not placing barriers in their way. For example, requiring that everything be completed in two weeks may not be a problem for one resident, but could be a burden to another on a fixed income with no transportation. Sometimes it can take time to get a vet appointment, or come up with the money for licensing, vaccinations, or spay/neuter.

What is the risk to me for denying an assistance animal? The potential consequences are expensive. The Bureau of Labor and Industries (BOLI) is the enforcement arm of Fair Housing in our state. The system is

complaint driven. What happens after a complaint is filed depends on the nature of the complaint, but testing is often the first step in determining whether discrimination has occurred. In one prominent local case a few years back, a rental owner who was advertising their “no-pet” rental was contacted by a prospective applicant who told the owner he had an assistance animal. The owner responded by saying, “We don’t take pets.” The individual filed a complaint with the Fair Housing Council of Oregon, who tested the rental owner several more times. He failed and was fined \$16,000 by BOLI for discriminating against the disabled. Discrimination penalties are often much, much higher, going into the tens of thousands or hundreds of thousands of dollars for cases where a pattern of ongoing discrimination is identified.

So, what have we learned?

This is how things are. You may not like it, but you must follow the law or risk very painful consequences. Can’t bear it? Then go into a different business. Never try to dissuade someone from making a request for an assistance animal. If you get a call on your no-pet rental and are asked whether it’s okay to have an assistance animal, just repeat the following: “I do not discriminate based on any protected class, and I will consider a reasonable accommodation request for an assistance animal at any of my properties. Would you like an application?” Evaluate each request in relation to the reasonableness of the request and the verification provided, and do not make any decision before you have all the information.

Despite the risks, rental owners are obligated to follow fair housing law, so my best (non-legal) advice to you: Deal fairly. Inspect regularly. Enforce consistently.

This column offers general suggestions only and is no substitute for professional legal counsel. Please consult an attorney for advice related to your specific situation.

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