

## **"person with a disability"**

### **Is the tenant a "person with a disability"?**

In order to qualify for a reasonable accommodation under the FHA, § 504, or the ADA, the tenant must meet the statutory definition of having a "disability." The statutes recognize three broad categories of disabilities: (1) a physical or mental impairment that substantially limits one or more major life activities (such as walking, seeing, working, learning, washing, dressing, etc.); (2) a record of having such an impairment; or (3) being regarded as having such an impairment. Being able to substantiate one's disability is critical in requesting a reasonable accommodation.

### **Request an exception to the landlord's no pet rule**

If one needs an emotional support animal to ease the symptoms of a disability (as defined above), he or she should request a reasonable accommodation, in writing, from the landlord, manager or other appropriate authority. The request should state that the tenant has a disability and explain how the requested accommodation will be helpful. In addition, the tenant should include a note from his or her service provider, such as a doctor or therapist, verifying the need for the support animal. Note that the tenant need not disclose the details of the disability, nor provide a detailed medical history. If it is not an undue burden or a fundamental alteration, the landlord must grant the requested accommodation. In the event that a landlord suggests an alternative accommodation, the tenant can reject it if he or she feels it is inadequate.

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. Written reasonable "assistance animal house rules" should be supplied with the lease. For example: walking a dog in designated areas and to using a pooper-scooper.

### **The landlord will allow an emotional support animal, but wants to charge an excessive deposit...**

Service animals that assist persons with disabilities are considered to be auxiliary aids and are exempt from the pet policy and from the refundable pet deposit. Examples include guide dogs for persons with vision impairments, hearing dogs for people with hearing impairments, and emotional assistance animals for persons with chronic mental illness. When a tenant requests an emotional support or other assistive animal, the landlord should not assume, without justification, that the animal will cause excessive, financially burdensome damage. In the event that a tenant's assistive animal does cause significant damage, that tenant should certainly be held financially liable.



## **Right To Emotional Support Animals In "No Pet" Housing**

**WAYNE COUNTY FAIR HOUSING  
IN PARTNERSHIP WITH  
COMMUNITY ACTION**

**330-621-8038**

**COMMUNITY LEGAL AID**

**330-983-2528**

## ...protect the right of people with disabilities to keep emotional support animals

Advocates and professionals have long recognized the benefits of assistive animals for people with physical disabilities, including seeing eye dogs or hearing dogs who are trained to perform simple tasks such as carrying notes and alerting their owners to oncoming traffic or other environmental hazards. Recent research suggests that people with psychiatric disabilities can benefit significantly from assistive animals, too. Emotional support animals have been proven extremely effective at ameliorating the symptoms of these disabilities, such as depression and post-traumatic stress disorder, by providing therapeutic nurture and support.

The Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act protect the right of people with disabilities to keep emotional support animals, even when a landlord's policy explicitly prohibits pets. Because emotional support and service animals are not "pets," but rather are considered to be more like assistive aids such as wheelchairs, the law will generally require the landlord to make an exception to its "no pet" policy so that a tenant with a disability can fully use and enjoy his or her dwelling. In most housing complexes, so long as the tenant has a letter or prescription from an appropriate professional, such as a therapist or physician, and meets the definition of a person with a disability, he or she is entitled to a reasonable accommodation that would allow an emotional support animal in the apartment.

### What exactly is a reasonable accommodation?

Discrimination under the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a disability] an equal opportunity to use and enjoy a dwelling. So long as the requested accommodation does not constitute an undue financial or administrative burden for the landlord, or fundamentally alter the nature of the housing, the landlord must provide the accommodation. The Department of Housing and Urban Development (HUD) and several courts have explicitly stated that an exception to a "no pets" policy would qualify as a reasonable accommodation.

Depending upon the type of housing in which the tenant resides, his or her right to a reasonable accommodation will be grounded in one, or any combination, of the following statutes:

#### Fair Housing Act

Applies to virtually all forms of housing, whether for sale or rent. The exceptions include (a) buildings with four or fewer units where the landlord lives in one of the units, and (b) private owners who do not own more than three single family houses, do not use real estate brokers or agents, and do not use discriminatory advertisements.

#### Elements of Reasonable Accommodation Claim

- (1) Tenant has a disability;
- (2) Landlord/Housing Authority knows about disability;
- (3) Reasonable accommodation may be necessary to afford tenant an equal opportunity to use and enjoy his or her dwelling; and
- (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.

#### Rehabilitation Act of 1973, § 504

Applies to any program that receives federal assistance, such as public or subsidized housing (although a landlord who only accepts Section 8 rental assistance is not subject to § 504).

#### Elements of Reasonable Accommodation Claim

- (1) Tenant has a disability;
- (2) Tenant was excluded from and denied participation in services, programs, and activities;
- (3) Exclusion was because of disability; and
- (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.

#### ADA, Title II

Applies to any state or local government, or its instrumentalities, regardless of federal financial assistance. This would include local housing agencies, such as your public housing authority.

#### Elements of Reasonable Accommodation Claim

- (1) Tenant has a disability;
- (2) Tenant was excluded from and denied participation in services, programs, and activities;
- (3) Exclusion was because of disability; and
- (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.