



Frequently Asked Questions (FAQ): Assistance Animals and the Fair Housing Act



The Arizona Fair Housing Act (AzFHA) and the federal Fair Housing Act (FHA) make it unlawful for covered housing providers to discriminate because of race, color, national origin, religion, sex, familial status, and handicap. These laws make it unlawful to refuse to make reasonable accommodations (or changes) to rules, policies, and practices, including pet rules. This FAQ document provides information about reasonable accommodations to pet rules to allow people with disabilities to use assistance animals in their housing.

1. What is an assistance animal?

An assistance animal is not a pet. Assistance animals are sometimes called service animals, assistive animals, emotional support animals, or therapy animals. Assistance animals work, provide assistance, perform tasks for the benefit of a person with a disability, or provide emotional support to a person with a disability. The tasks or support that assistance animals provide, ease or improve one or more symptoms or effects of a person's disability. Some examples of disability-related or support tasks that assistance animals carry out include:

- guiding individuals who are blind or have low vision
- alerting persons to coming seizures, anxiety episodes, or panic attacks
- fetching items
- bracing or providing support for balance
- pulling a wheelchair
- providing protection or rescue assistance
- alerting individuals who are deaf or hard of hearing to sounds
- providing emotional support to persons with disabilities.

While dogs are the most common type of assistance animal, other animals can also be assistance animals.

2. Does my assistance animal need to be trained or certified?

Neither the FHA nor AzFHA require that an assistance animal be individually trained or certified as a service animal to qualify as a reasonable accommodation in housing. While many assistance animals are trained to perform certain tasks for persons with disabilities, others do not need training to provide assistance. For example, some animals have an innate ability to detect that a person is about to have a seizure and can alert the individual so he/she can prepare for it. And some animals by their very nature provide emotional support that ease anxiety, panic attacks, or depression.

3. What types of housing are covered by fair housing laws?

The FHA and AzFHA cover *dwellings*, which these laws define. Types of housing that may be covered by state and federal fair housing laws include:

- apartments
- mobile home parks
- seasonal housing
- nursing homes
- condos
- nursing homes
- group homes
- shelters.
- public housing units
- university dormitories
- assisted living units

Types of housing **NOT** covered:

- buildings with 4 or fewer units where the landlord occupies one of the units;
- some single family housing sold or rented without a real estate broker (depending upon number of transactions);
- hotels and motels (covered under the Americans with Disabilities Act); and
- private clubs.

4. Who is protected under the FHA and AzFHA?

The duty under state and federal fair housing laws to provide reasonable accommodations to rules and policies protects tenants, prospective tenants, and homeowners with disabilities, family members with disabilities, and others with disabilities associated with tenants, prospective tenants, and homeowners. Under fair housing laws, a disability means a mental or physical impairment that substantially limits one or more major life activities. Examples of disabilities include:

- blindness
- diabetes
- Multiple Sclerosis
- Post-Polio Syndrome
- deafness
- depression
- PTSD
- epilepsy
- autism
- mobility impairments
- Traumatic Brain Injury
- HIV or AIDS.

5. What if my housing provider has a no-pet rule?

An assistance animal is not a pet. Generally, housing providers should make exceptions to their no-pet rules to permit an assistance animal for tenants, homeowners, family members, and those associated with tenants who have a disability and disability-related need for an assistance animal.

6. What if my housing provider allows pets, but charges a pet deposit or extra rent for a pet?

While housing providers may require applicants, tenants, or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit or additional rent for an assistance animal. Housing providers may require tenants or residents to cover the costs of repairs for damage the assistance animal causes to the housing unit or the common areas (except for reasonable wear and tear) if it generally charges tenants for any damage they cause to the premises.

7. What if my housing provider allows pets, but has banned dogs of a certain breed, size, or weight?

Breed, size, and weight limitations may not be applied to assistance animals. Housing providers may, however, ban animals that pose a direct threat of harm to others or would cause substantial physical damage to other people’s property. Whether an assistance animal is dangerous or destructive must be determined based on the assistance animal’s actions, not just its breed. Fear about or assuming that the types of harm or damage an animal may cause that is not based on evidence about harm or damage is not enough to ban an assistance animal.

8. Can my housing provider lawfully ban assistance animals of a certain breed for insurance reasons, even if my assistance animal is not a safety threat?

It depends. Even though the law requires housing providers to make changes in the rules, the exception must be reasonable. Housing providers are not required to provide accommodations that would result in significant expense or disruption. If allowing your assistance animal on the property because of its breed would cause the housing provider’s insurance company to cancel their policy, significantly raise the premiums, or adversely change the policy terms, and alternative insurance cannot be obtained, they may be allowed to ban the assistance animal. Reasonable accommodation requests must be decided on a case by case basis based on the evidence.

9. Can a housing provider require health care documentation to support a request for a waiver of a pets rule for an assistance animal?

It depends on whether your disability and need for an assistance animal is obvious or already known by the housing provider at the time you make your request.

If the disability and need for an assistance animal is obvious, a housing provider cannot ask you for *any* documentation. For example, if you are a tenant who is blind and have a guide dog, no documentation should be required.

If the disability is obvious or known but the disability-related need for the assistance animal is not, the housing provider may ask for documentation about how the animal eases or improves the symptoms or effects of your disability. For example, a housing provider may ask persons who ask to waive the no-pet rule for an assistance animal for an autistic child for a note from a mental health professional or case manager that the animal provides emotional support that improves one or more symptoms or effects of the disability.

If neither the disability nor the disability-related need is obvious or known to the housing provider, a housing provider can ask for appropriate and reasonable documentation. For example, if you are living with diabetes and your assistance animal alerts you of a dangerous drop in blood sugar levels, you may need to provide documentation of the diabetes diagnosis and how the assistance animal alerts you of changes in your blood sugar level.

10. What type of health care documents can housing providers require to support a request for an assistance animal?

Housing providers may not ordinarily ask questions about the nature and severity of a resident or potential resident's disability. However, when a resident asks for an exception to a pets rule for an assistance animal, a housing provider may request reliable disability-related information when it is necessary:

- to check that the individual has a disability, as defined by fair housing laws; and
- to describe the disability-related need for the assistance animal.

According to the Housing and Urban Development Department (HUD), adequate disability information can often be provided by the individual himself or herself, such as proof of receipt of Supplemental Security Income (SSI) or Social Security Disability Insurance benefits (SSDI) or a credible statement by the individual. A health care professional, a peer support group, a non-medical service agency, or a reliable third party who knows about the individual's disability may also verify disability. Usually, medical records or detailed information about the nature of a person's disability is not necessary. Once disability documentation has been provided, the provider's request for documentation should seek only enough information to determine if the accommodation is needed because of a disability.

For assistance animals, this means the task for support that the animal provides and how that eases or improves the symptoms and effects of the disability.

11. Can housing providers that allow an assistance animal in a housing unit restrict them from common areas?

Usually, assistance animals should be allowed in the housing unit and common areas when the person has a disability-related need.

12. Can housing providers enforce leash rules for assistance animals in common areas?

Housing providers may make reasonable rules for pets in common areas, such as leash laws. Generally, assistance animal handlers must keep their animal on a leash, harness, or lead when in common areas. However, if an individual has a disability-related need to not have the animal on a leash, then the individual may request an exception as an accommodation to the rule. Two examples of disability-related reasons for not having an assistance animal on a leash are: (1) the nature of the disability prevents the individual from using a leash or harness, or (2) the assistance animal cannot perform its task on a leash. However, in any case, the handler must have control over the assistance animal through another method, such as voice control or hand signals.

13. Can a housing provider ever deny a request for an exception to pet rules for an assistance animal?

Yes, if the (1) individual does not have a disability, (2) the assistance animal does not perform any task or provide any support that is necessary because of a disability, (3) the request would result in significant expense or disruption, (4) the assistance animal poses a safety hazard or will cause substantial property damage that cannot be reduced by a reasonable accommodation, or (5) would cause a fundamental alteration in the operations of the housing provider.

14. What steps should I take to get an exception to a pet rule for an assistance animal?

Request a reasonable accommodation from the landlord or homeowner's association in writing. Use the sample reasonable accommodation request in this packet. Include a note or prescription from your health care provider. Keep a copy of the letter. If possible, confirm that the reasonable accommodation request was received. Follow up in writing if you do not receive a response. If it is not a direct threat, undue burden or fundamental alteration, the landlord or homeowner's association must grant the request.

15. Can a housing provider lawfully limit the number of assistance animals in a household?

In some situations, more than one household member may be a person with a disability who needs an assistance animal. In that case, each household member who needs an assistance animal will need to show that they have a disability and there is a connection between their disability and the need for the assistance animal. If each household member proves they need a service animal for a disability related reason, it would be a reasonable accommodation to approve more than one assistance animal in the household.

In other cases, a tenant with a disability may need assistance animals for different purposes. However, a tenant with a disability must show a connection between the disability and the task each assistance animal provides. If a resident with a disability demonstrates that she needs one assistance animal to limit the effects of a mental or emotional disability and another to detect and alert her of a seizure, approving two assistance animals would likely be a reasonable accommodation.

In some cases, more than one assistance animal may be necessary because one is a new assistance animal that is being trained to replace an older, retiring animal and this could also be a reasonable accommodation to the limit on number of assistance animals in one household.

On the other hand, it may be difficult to prove that having two assistance animals is necessary when both assistance animals perform the same tasks or functions and one is not in training to replace the other.

16. What if my request is denied?

Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development within one year of the incident. For more information visit: www.hud.gov/offices/fheo or call 1-800-669-9777.

Complaints of Arizona Fair Housing Act violations may be filed with the Arizona Attorney General's Office within one year of the incident. For more information, visit www.azag.gov or fill out and send in an online intake questionnaire at <https://www.azag.gov/complaints/civil-rights>.

MORE INFORMATION:

For more information about state and federal fair housing laws, reasonable accommodations, and assistance animals, go the following links:

Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, http://www.justice.gov/crt/about/hce/jointstatement_ra.php.

HUD Notice Re: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs (April 2013), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-060A.

2006 HUD Memo For: FHEO Regional Directors From: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs Re: Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation (a copy available from the ACDL upon request).

Service Animals and Emotional Support Animals, ADA National Network (2014), <https://adata.org/publication/service-animals-booklet>.

The documents in this packet contain general information for educational purposes and should not be construed as legal advice. The sample letter and information is intended to provide you with tools to help you self-advocate and does not create an attorney-client relationship between you and the Arizona Center for Disability Law (ACDL). The ACDL does not make any representation regarding the merits of your case or its projected outcome by providing these materials. This information is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney.

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Sample Letter to Request Assistance Animal as a Reasonable Accommodation

[DATE]

[NAME OF HOUSING PROVIDER]
[ADDRESS]

Re: Assistance Animal as a Reasonable Accommodation for my disability

Dear [OWNER OR MANAGER]:

I live [or applied to live] at [ADDRESS]. I am an individual with the following disability: [state the condition or disability].

The rules state [e.g. no pets, no dogs over 40 pounds, no Pit Bulls on the premises, or pet deposit]. I need an exception to this rule because of a disability-related need for an assistance animal. A [health care professional, mental health care professional or disability services case manager] has written a note [or prescription] that explains my disability-related need for an assistance animal because of a disability. A copy is attached.

Please keep this request for accommodation confidential, as required by law. Please let me know what, if any, additional information you need to approve this request for reasonable accommodation to this rule.

Under the Fair Housing Amendments Act, it is unlawful discrimination to deny a person with a disability a reasonable accommodation of an existing rule or policy if the accommodation may be necessary to afford such person full enjoyment of the premises.

Please contact me within the next ten days to let me know if my request is approved. Thank you for your attention to this matter.

Sincerely,
Signature

Your Name