



## **Service and Emotional Support Animals**

Tiffany Banks, NVAR Legal Counsel

There is some confusion or frustration surrounding service animals, emotional support or therapy animals. What are they? Do I have to rent to someone with an emotional support animal? Can I charge them a pet deposit? What if I think they are lying about needing this type of animal? What if they say their animal is an elephant? What is the difference between the American with Disabilities Act (“ADA”) and the Fair Housing Act? These are some of the many questions I have heard over the years from REALTORS®. Below are some of the answers to these burning questions, and will hopefully add some clarification to many of these frequently asked questions.

### **What is the difference between the ADA and FHA?**

The ADA applies to public accommodation only. Federal law, through the federal Fair Housing Act (“FHA”) and the Rehabilitation Act of 1973 (applies to housing that received federal funding assistance), may require accommodations by housing providers for service animals that provide assistance to individuals with a disability.

### **How does this all apply to you as a REALTOR® and specifically a property manager?**

You need to be aware of the following specifics in order to better serve your clients and the community as well as keep yourself and your office in compliance with Fair Housing.

### **Purpose of service animals or accommodation animals:**

HUD sent out a memo describing the differences between a service animal and an accommodation animal. Please see this link:

<http://www.fairhousing.com/include/media/pdf/serviceanimalmemo.pdf>

Both service and accommodation animals provide an important service. While there are some disabilities you can see, there are also many other disabilities that you cannot see. Under the FHA, a therapy or emotional support animal would be considered an accommodation animal. These are the animals that help people with emotional and mental disabilities cope with symptoms of post-traumatic stress, anxiety or depression.

### **What if my owner has a “no pets” policy?**

Many developments have what they call a “no pets” policy. An important thing to remember is that a request for an assistance animal is a form of a request for an exception. The law calls this an accommodation. An owner receiving a request is entitled to consider two things. Those two things are discussed in the next paragraph.



### **What a tenant should request to landlord:**

When a request is made to the housing provider, you as the PM or owner, must respond to it. You have to begin an interactive dialogue.

A reasonable request for accommodation to a housing provider for a service animal must meet the following criteria:

1. The person making the request must have a disability, which is a physical or mental impairment that substantially limits one or more major life activities; and
2. The person has a disability-related need for the assistance animal.

These are the criteria that must be exhibited in the form of a letter from a medical provider.

This memo from HUD addresses: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs goes into more detail regarding this:

[http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf)

“If the answer to question (1) or (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider's "no pets" policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) and (2) are "yes," the FHAct and Section 504 require the housing provider to *modify or provide an exception to a "no pets" rule* or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go.”

### **When can a landlord deny the tenants request?**

A landlord may deny a request if, this would impose an undue financial and administrative burden or would fundamentally alter the nature of the owner’s services. In addition, the request can be denied if the animal is deemed a risk to health and safety of other tenants or that specific animal would cause substantial physical damage to the property. Certain limitations such as breed and size cannot be applied to an assistance animal. This determination cannot be made on speculation, but rather, based on an individual assessment of that particular animal’s conduct. When a request for reasonable accommodation can be made the housing provider must respond to it.

### **What a landlord may request from a tenant:**

A landlord is allowed to ask for a letter from a medical professional who conveys the need for that animal. The tenant doesn’t however have to supply the landlord with their medical record.



### **Can I charge a pet deposit?**

The answer to this is no, no, no. Once an animal has been deemed a service animal or an emotional support animal, you cannot charge a fee. Whatever you want to call it, however creative, be very careful that charging the tenant anything that looks like a pet deposit could be grounds for trouble.

### **Is there Nevada Law on this topic?**

Yes. There is one section of NRS 118 that covers this. This law says that a landlord may not *refuse to rent* to a person with a disability solely because an animal that assists or supports them will be residing with them.

#### **NRS 118.105 Landlord may not refuse to rent dwelling because person with disability will reside with animal that provides assistance, support or service.**

1. Except as otherwise provided in subsection 2, a landlord may not refuse to rent a dwelling subject to the provisions of [chapter 118A](#) of NRS to a person with a disability solely because an animal will be residing with the prospective tenant in the dwelling if the animal assists, supports or provides service to the person with a disability.

2. A landlord may require proof that an animal assists, supports or provides service to the person with a disability. This requirement may be satisfied, without limitation, by a statement from a provider of health care that the animal performs a function that ameliorates the effects of the person's disability.

(Added to NRS by 1977, 1347; A 1981, 1915; [1987, 824](#); [1991, 1021](#), [1981](#); [2003, 2975](#); [2005, 630](#))

### **Where does someone file a discrimination complaint?**

These complaints end up with either a State fair housing agency or HUD.

While this article addresses many of the key questions many REALTORS® may have, if you have any additional questions feel free to call the Legal Information Line at 800-748-6999.

October 2015

Statements made by the NVAR Information Line attorneys on the telephone, in e-mails, or in legal e-news articles are for informational purposes only. NVAR's staff attorneys provide general legal information, not legal representation or advice regarding your real estate related questions. No attorney-client relationship is created by your use of the Legal Information Line and any information you receive you should not act upon this information without seeking independent legal counsel. Information given over the Legal Information Line or in these articles is for your benefit only. Do not practice law! Inform your clients they must seek their own legal advice.