

T-31.3.1 Emotional Support Animals (ESA) in Housing

While the topic of emotional support animals sometimes arises in employment, public accommodation and higher education matters, the subject of ESAs is most prominent in the context of accommodation in housing. Under Ohio law, it is an unlawful discriminatory practice to refuse to rent or sell housing, evict, require extra compensation for or harass a qualified disabled individual, who demonstrates a disability-related need for an animal assistant because he or she keeps such an animal in a housing unit. This legal mandate has been relatively well-defined when examining it in the context of a service animal.¹ However, it is less clear when the focus shifts to the topic of “emotional support animals,” also known as ESAs.

Due to a myriad of issues, from misrepresentations about the need for an ESA to questions about what animal may qualify as an ESA, some states have enacted legislation in response. The Commission takes a balanced approach when weighing the rights of housing providers to fairly enforce no pet policies and pet deposits and fees, with the legal rights of qualified disabled persons, who need service and emotional support animals as an accommodation of a disability. The agency’s stance on the application of ESAs under Ohio’s fair housing statutes is outlined below.

➤ What is an “emotional support animal?”

“Emotional support animal” is not yet defined in Ohio discrimination laws or regulations or in the federal Fair Housing Act. Ohio law utilizes the term, “animal assistant,” defined as “any animal which aids the disabled.” O.A.C. § 4112-5-02(C).² An “emotional support animal” has been defined as, “an animal that provides emotional support, well-being, comfort, or companionship for an individual but that is not trained to perform tasks for the benefit of an individual with a disability.”³ An ESA has also been defined as “a companion animal that a health services provider has determined provides a benefit for an individual with a disability, which may include improving accommodation at least one symptom of the disability.”⁴ Emotional support animals are generally considered as a reasonable accommodation for a disability, providing therapeutic benefit to their owners/guardians through companionship.⁵

In the case of an ESA, the animal need not perform specific tasks, but must have a direct correlation in providing emotional support that alleviates one or more symptoms or effects of a person's disability.

➤ Who may certify **verify the need for an emotional support animal?**

Under the federal Fair Housing Act and R.C. Chapter 4112, the requester must demonstrate one or more persons living or intending to reside in the unit have a disability, and there must be a relationship between the requested accommodation of an animal and the disability. Once the request is made, a housing provider has a limited right to additional information. On occasions, the person ~~certifying~~ **verifying** the need for the emotional support animal is at issue. Though not an exhaustive list, the Commission takes the position that

¹ Defined as a dog trained to do work or perform tasks for the benefit of an individual with a disability.

² The only reference to an ESA in the Ohio Codes is found in the rules promulgated by Bowling Green State University. “An assistance animal (also known as an ‘emotional support animal’) is an animal that provides comfort to an individual with a disability within that individual's dwelling unit in university housing.

³ Wisconsin Statutes Annotated § 106.50(m).

⁴ Indiana Code § 22-9-7-6 "Emotional support animal".

⁵ Ala.Code §§ 24-8A-2; 24-8A-3; 41 Okl.St. Ann. § 113.2(A); S.D. Cod. Law § 43-32-33; 68 Pa. Stat. § 405.2.

any of the following health service providers may have a role in ~~certifying~~ supporting a disabled person's need for an ESA:

- i. Physician, including Medical Doctor, Podiatrist, Doctor of Osteopathic Medicine
- ii. Ophthalmologist and Optometrist
- iii. Chiropractor
- iv. Physician's Assistant
- v. Psychiatrist and Psychologist
- vi. Registered Nurse, Advanced Practice Nurse, Nurse Practitioner and Nurse Anesthetist
- vii. Physical Therapist and Occupational Therapist
- viii. Audiologist
- ix. Speech Pathologist
- x. Licensed Counselor, Social Worker or Therapist

There are times when the tenant provides the information about his or her disability or the disability of a family member without more. Other times, the tenant may provide information from a non-medical entity supporting the need for an ESA. For example, a county veteran's services commission sends a letter in support of the tenant's need for an emotional support cat to alleviate conditions of depression, anxiety and post-traumatic stress disorder. In either situation, the housing provider may accept this information in support of the request or may choose to seek additional confirmation from a health services provider. As a note of caution, in both cases, the information is likely sufficient to place the housing provider on notice of an alleged disability and need for accommodation. This information, therefore, must not be ignored. If the housing provider asks ~~the tenant to provide~~ for additional verification from a health services provider, a short statement is sufficient. Detailed information or extensive medical records is not necessary to grant an accommodation.

A correlated issue is the subject of health services providers, who are not licensed in the state of Ohio, but diagnose the disability and/or who prescribe the need for an ESA. Through technology, the subject of "telemedicine," is an increasing issue as it pertains to the health care industry in general. Ohio law defines telemedicine as, "the practice of medicine in this state through the use of any communication, including oral, written, or electronic communication, by a physician located outside this state." O.R.C. § 4731.296.⁶ Telehealth service means "a health care service delivered to a patient through the use of interactive audio, video, or other telecommunications or electronic technology from a site other than the site where the patient is located." O.R.C. § 5164.95.

The Commission takes the position that a health services provider does not have to hold an Ohio license to ~~certify~~ verify the need for the animal. First, a provider, who holds a valid Ohio telemedicine certificate, may so attest. Additionally, if the patient has seen a health care professional licensed in another state, the provider may ~~certify~~ verify the disability or need for an ESA as long as the last contact with the patient occurred within a reasonable period of time, at least within a year (the past twelve months from the date of the accommodation request). The Commission does not recognize non-certified providers, who for a fee, will ~~certify~~ attest to the need for an emotional support animal, without some sort of provider-patient relationship. As a result, if a provider is not licensed in Ohio; does not hold an Ohio telemedicine certificate; or has not seen the patient within the past twelve months, then it is reasonable for a housing provider to require the tenant to obtain updated medical verification from an Ohio licensed or telemedicine-certified provider.

⁶ The conduct, responsibilities and obligations of telemed providers are outlined in various provisions of the Ohio Revised and Administrative Codes. Health care providers are encouraged to read and follow these regulations. See, e.g., O.R.C. §§ 4731.22(B)(20); 5164.95; 4715.43; 4732.33; O.A.C. § 5160-1-18.

As an example, a college student moves from West Virginia to Ohio to attend school and moves into an off-campus apartment. She requests to bring her cat to live with her as an emotional support animal. The cat alleviates the effects of Asperger's Syndrome. Her family physician in West Virginia last examined her six months ago and provides a certification for her new landlord's review. The landlord must waive the no pet policy and allow the cat to live in the apartment with the student.

In the same example, the student submits a request to an on-line company advertising to issue therapy animal letters to qualified persons within 24-hours of application. The student has no prior relationship with the internet professional signing the letter. The Commission takes the position it is reasonable for the landlord to ask for additional documentation in support of the request, ideally from an Ohio licensed or telemed certified provider. If the student cannot produce documentation within a reasonable amount of time, the landlord can ask her to remove the cat until she produces documentation supporting that she is a qualified disabled person in need of an ESA.

Similarly, if the nexus between the provider and patient is too remote, landlords should give applicants and residents reasonable opportunity to secure appropriate documentation. In the example above, assume the West Virginian physician last saw the tenant when she was 15, and she is now 18. Because three years have elapsed since the health services provider last communicated with the student, the landlord may ask her to find a current health services provider, who can attest to the need for the ESA and should give her a reasonable amount of time to do so.

➤ **What information is required? What questions may be asked?**

Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment.⁷ A housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is *readily apparent or already known* to the provider. For example, individuals who are blind or have low vision may not be asked to provide documentation of their disability or disability-related need for a service dog. Conversely, a landlord may deny a request for an exception to a no pet policy if a person, who does not have a readily apparent or known disability, fails to provide appropriate documentation as requested.

Additionally, a housing provider may not ask an applicant or tenant to sign a release allowing open access to medical records or medical providers or to provide detailed or extensive information or answer extensive questions about the disability.

The Commission adopts the position the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Justice ("DOJ") took in 2004. A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability. However, in response to a request for a reasonable accommodation, a provider may request *reliable* disability-related information that "(1) is necessary to verify that the person meets the [legal] definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation." See, Reasonable Accommodations Under the Fair Housing Act, Joint Statement of the Department of Housing and Urban Development and the Department of Justice (May 17, 2004).⁸

⁷ Sandoval, Service, Therapy, & Emotional Support Animals, Colo. Law. 69, 72–73 (2015).

⁸ *Ajit Bhogaita v. Altamonte Heights Condo. Assn., Inc.*, No. 6:11-CV-1637-ORL, 2012 WL 6562766, at *6 (M.D. Fla. Dec. 17, 2012) *aff'd sub nom.*, *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F.3d 1277 (11th Cir. 2014); *Overlook Mut. Homes, Inc. v. Spencer*, 415 F. App'x 617, 621-22 (6th Cir. 2011); *Hawn v. Shoreline Towers Phase I*

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. See, *Overlook Mut. Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 856 (S.D. Ohio 2009). Accordingly, persons seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional supporting that the animal provides support that alleviates at least one of the identified symptoms or effects of the disability.⁹

Finally, the Commission has observed lease applications with overly detailed questions concerning medical information reaching far beyond the scope of what is allowable. Similarly, the Commission has observed lease language threatening pet violators with criminal penalties or litigation. This is not only unnecessary, it is discouraged as it gives the appearance of intimidation or coercion, which is unlawful under Ohio law.

➤ **Does the animal have to be trained or certified?**

There are companies, predominantly internet-based, that advertise providing registration and certification of pets as emotional support animals, including vests and tags, for a fee. Housing providers and rental agents cannot require a special certification, identification card or training documentation for the ESA or ask that the animal demonstrate its ability to perform work or a task. Therefore, such companies are irrelevant for purposes of R.C. Chapter 4112.

However, a landlord is entitled to request medical information demonstrating both a qualified physical or mental condition that substantially limits one or more major life activities and proof from a health services professional that the animal improves the effects of the disability. Production of certification via website or internet, without more, will not suffice.

➤ **How many animals are allowed?**

Generally, one ESA is sufficient. However, the number may vary depending upon the number of residents and the type(s) of qualifying medical conditions necessitating the ESA. In all cases, an appropriate health services provider must ~~certify~~ **verify** the need for each animal for independent purposes (i.e. one animal alerts a child of impending epileptic seizures, while a second animal ameliorates the effects of a mother's high blood pressure). Reasonableness is factored into this standard. For example, the Commission acknowledges it would likely be an undue hardship for a landlord to waive a no pet policy to allow 15 cats in a one-bedroom apartment. Again, the number of animals allowed is best determined on a case-by-case basis.

➤ **What type(s) of animals may qualify as an ESA?**

Unlike a "service animal" under federal law, or "animal assistant," as defined in Ohio law, it is the Commission's position that an emotional support animal is not limited to any particular type of animal, such as a dog or cat, but reason must come into play. Unlike a service animal, an ESA is not specifically trained to perform tasks; however, the animal's presence must provide some sort of therapeutic or other benefit to an individual with a disability. An ESA may be viewed as a "reasonable accommodation" in a

Condominium Ass'n, Inc., No. 3:07-cv-97/RV/EMT, 2009 WL 691378 at * 7 (N.D. Fla. 2009), *aff'd* 347 F. App'x 464 (11th Cir. 2009); *Kennedy House, Inc. v. Philadelphia Com'n on Human Relations*, 143 A.3d 476, 489-90 (Pa. Commw. Ct.2016).

⁹ Pet Ownership for the Elderly and Persons with Disabilities, 73 FR 63834-01.

housing unit that has a no pets rule or pet fee for residents.¹⁰ Therefore, an ESA may be a cat, a bird, a hamster, a rabbit or some other domesticated animal.

Housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability is a wild animal or a domesticated animal with a *history* of dangerous behavior, the housing provider does not have to allow the animal in the housing unit. Moreover, a housing provider is not required to make a reasonable accommodation if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose a significant undue financial and administrative burden; or (3) fundamentally alter the nature of the housing provider's operations.

Landlords should treat each situation on a case-by-case basis and not deny an ESA simply because of the breed of the animal, such as a pit bull or mixed breed dog.¹¹ Ohio law was amended to remove breed specific restrictions. If concerns are raised, more exploration can be conducted with the disabled person about the animal. Landlords are encouraged to seek additional legal guidance when necessary.¹² In severe cases where certain breeds are strictly banned (e.g., the Village of Golf Manor Ordinance 505.18 bans pit bull terriers), the Commission may deem the municipality a necessary party to the case to effectuate an appropriate resolution.

➤ **What other factors should be considered?**

An individual with a disability, who keeps an emotional support animal in housing, accepts liability for sanitation and damage to the premises caused by, the animal. Any determination that an emotional support animal poses a threat of harm to others or would damage the property of others must be based on an individualized assessment of the specific animal's actual conduct. The assessment may not be speculative and may not be based on evidence of harm that other animals have caused.¹³ If therapy or service animals cause damage, housing providers may certainly seek restitution for the damages caused; however, service and emotional support animals *are not pets*. Therefore, pet fees and deposits must be waived.¹⁴ Conversely,

¹⁰ Wisch, Animal Legal and Historical Center, FAQs on Emotional Support Animals (2013) www.animallaw.info. See also HUD, February 17, 2011 Memo, Sandoval, Serv., Therapy, & Emotional Support Animals, Colo. Law. at 70; Ala.Code § 24-8A-3.

¹¹ The Commission recognizes that several Ohio municipalities still have ordinances on the books declaring certain breeds, such as pit bulls, as “dangerous” or “vicious,” despite changes to Ohio law removing them from the definition of “vicious dog.” In such cases, the housing provider, upon satisfactory proof the animal is an ESA or service dog, should permit the dog in the unit. The provider should also seek legal guidance concerning compliance with the ordinance, such as requiring the tenant have the requisite amount of liability insurance, until the issue can be resolved.

¹² See, O.R.C. § 955.11; *Russ v. Reynoldsburg*, 2017-Ohio-1471 (Licking App. April 19, 2017) (finding city ordinance banning pit bulls outright conflicts with state law abolishing breed-specific restrictions and unconstitutionally exceeds city’s home rule authority). See also, *Warren v. Delvista Towers Condominium Ass’n, Inc.*, 49 F.Supp.3d 1082 (S.D.Fla.2014) (Miami–Dade County breed-restriction ordinance preempted by the FHA).

¹³ Notice FHEO-2013-01 at 3; *Castellano v. Access Premier Realty, Inc.*, 181 F.Supp.3d 798 (E.D.Cal.2016).

¹⁴ Additionally, absent restrictions or requirements in state statute or vicious breed ordinances as outlined above, unreasonable restrictions or limitations on emotional support or service animals, such as confinement to the housing unit or containment to specified areas is not permissible. For example, forbidding the animal to be in the common areas, or asking a tenant to use the service elevator and service entrance when the animal accompanies the resident, will be considered a violation of R.C. Chapter 4112. Similarly, absent legal requirements, the Commission discourages requiring additional liability insurance, vaccinations or veterinary records for service and emotional support animals.

animals that do not meet the criteria and conditions outlined will be considered pets. In such instances, landlords may enforce no pet restrictions or pet fees.

Finally, the Commission acknowledges a housing provider may have legal rights if a person obtains a reasonable housing accommodation by knowingly making a false claim of having a disability that requires the use of an assistance animal or by knowingly providing fraudulent supporting documentation in connection with an ESA. Those remedies are beyond the scope of R.C. Chapter 4112 and may be more appropriately raised under the Ohio Landlord-Tenant Act. In the rare instance of proven abuse, the Commission will take appropriate action to dismiss the case.
