

“Everything you want to know about Assistance Animals, but
were afraid to ask”

Presented By:
William L. Willis
Willis Law Firm
1160 Goodale Blvd
Columbus, OH 43212
P. 614.324.0442
F. 614.324.0460
wwillis@willislawohio.com

FAIR HOUSING LAWS

- Civil Rights Act of 1866 – guaranteed property rights regardless of race
- Title VIII of the Civil Rights Act of 1968 added color, national origin, religion, & sex
- 1988 FHAA added Familial Status and Handicap

Federal Protected Classes

- Race
- Color
- Religion
- National Origin
- Sex (Sexual harassment)
- Familial Status
- Handicap

The U.S. is Getting Older

The number of Americans ages 65 and older is projected to more than double from 46 million today to over 98 million by 2060, and the 65 and older age group's share of the total population will rise to nearly 24 percent from 15 percent

38% of people 65 and over have disabilities

There is no official tally of emotional support animals, which don't have to go through special training or have any certifications; most are simply recommended by a doctor or therapist. Nevertheless, the number of companies that say they provide those certifications is growing and with that, businesses say, the ranks of people trying to pass their pets off as support animals for illegitimate reasons are increasing as well.

(Chicago Tribune February 9, 2018)

The increase in Assistance Animals in multi-family housing is off the charts. Unfortunately, the apartment industry has no way of tracking this phenomenon

Reasonable Accommodation

A change, exception, or adjustment, to a rule, policy, practice or service, that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling

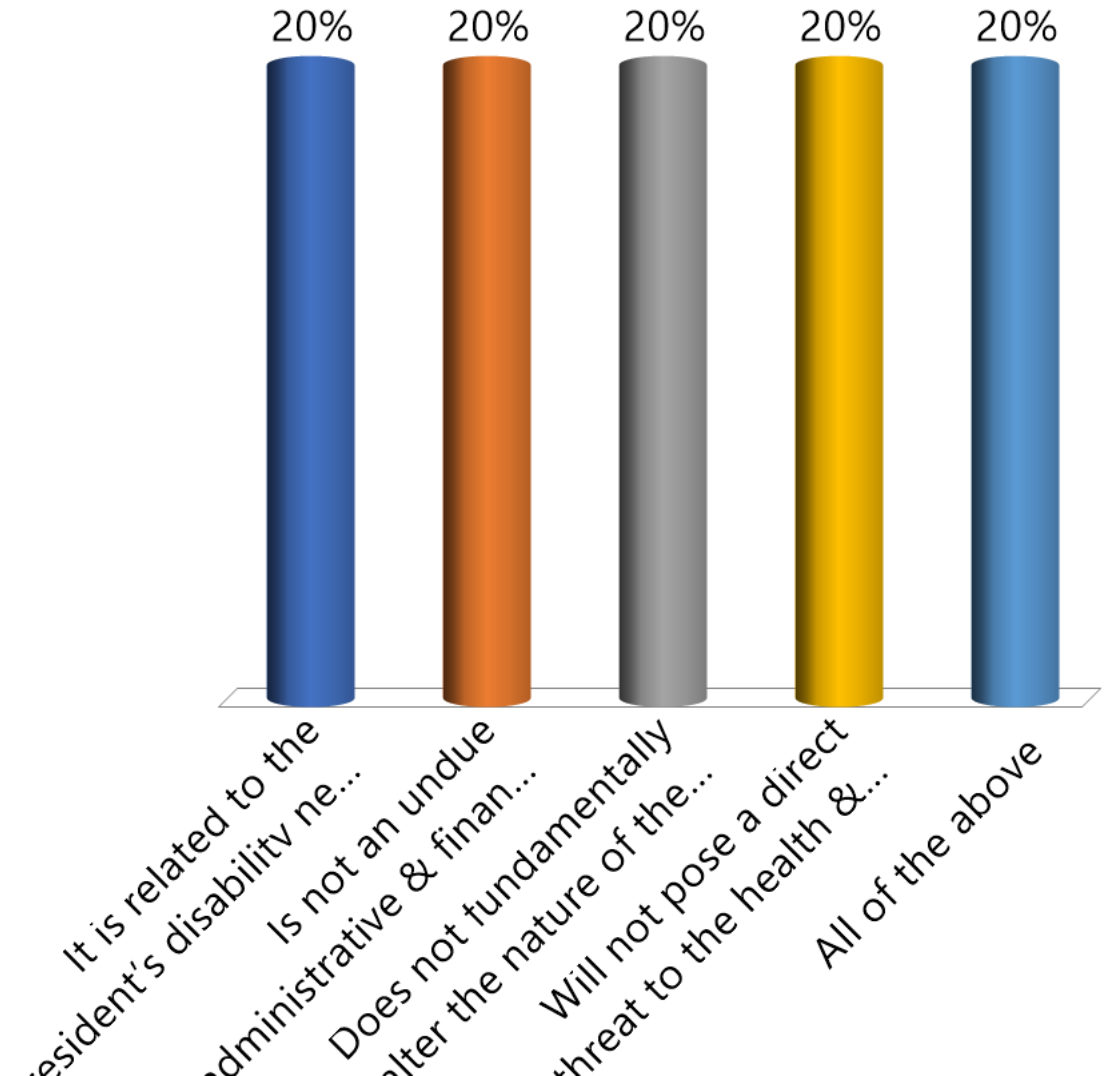
When can a person with a disability request an accommodation or modification?

The need for an accommodation/modification may arise at any time:

- When applying for housing or purchasing housing
- During the tenancy/residency
- To avoid an eviction, foreclosure, or other action that affects their housing

A resident's request for accommodation is reasonable if:

- A. It is related to the resident's disability needs
- B. Is not an undue administrative & financial burden for the housing provider
- C. Does not fundamentally alter the nature of the provider's operations
- D. Will not pose a direct threat to the health & safety of others or will not result in physical damage to property
- ✓ E. All of the above



When must an accommodation be provided?

- When requested, a housing provider must provide a reasonable accommodation, unless the provider can show it will:
 - Impose an undue financial or administrative burden, or
 - Result in a “fundamental alteration” in the service provided

- Overlook Mutual Homes, Inc. v. Spencer et al, No. 3:2007cv00398 – United States District Court for the Southern District of Ohio
- United States Court of Appeals for the Sixth Circuit
 - File Name 11a0061N.06-09-4036

Sixth Circuit

Seventh Circuit

Kentucky

Wisconsin

Michigan

Illinois

Ohio

Indiana

Tennessee

Plaintiff must prove all of the following elements: (1) that the plaintiff or his associate is handicapped within the meaning of 42 USC § 3602(h);

- (2) that the defendant knew or should reasonably be expected to know of the handicap
- (3) that accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling;
- (4) that the accommodation is reasonable;
- (5) that defendant refused to make requested accommodation

The Sixth Circuit, however, has held that an accommodation must be **necessary**. See Howard v. City of Beavercreek, 276 F. 3d 802, 806 (6th Cir. 2002) (noting that “the concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects the disability”) (quoting Bronk v. Ineichen, 54 F 3d. 425, 429 [7th Cir.]). Thus, the third above quoted element has been effectively modified by the Sixth Circuit to replace the “may be” with “is”

BRONK CASE

- The accommodation must facilitate the disabled persons' ability to function

Vs

- The accommodation must survive a cost-benefit balancing that takes both parties' needs into account

- Bronk v. Ineichen – 42 USC § 3604 (f)(2)
- Two adjectives, “reasonable”, “necessary” figure prominently in this definition, modifying both the term “accommodations” and [Landlord’s] obligations under the law.
(Balancing-Test)

Does your company/organization utilize a verification that asks the medical nexus question?

Since reviewing accommodations is very fact-specific, “no one size fits all” verification is possible

Sample Verification

- False Claims
- Qui Tam Actions
- Perjury
- Testify in Court of Law
- “I acknowledge my answers to these questions to be my professional opinion made in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards”

**AFTER LISTENING TO,
LINDA, HIS HUMAN, FOR 12 DAYS
WHILE IN QUARANTINE AS SHE
COMPLAINED FOR HOURS ON END**



**SPARKY REALIZED HE
WAS NOT CUT OUT TO BE
AN EMOTIONAL SUPPORT DOG**

UNDER NEW HUD FHEO 2020-1 ASSISTANCE ANIMALS IN HOUSING

Housing providers may not require a health care professional to use a specific form (including this document) to provide notarized statements, to make statements under penalty of perjury, or to provide an individual's diagnosis or other detailed information about a person's physical or mental impairments. Housing providers and the US Department of Housing and Urban Development rely on professionals to provide accurate information to the best of their personal knowledge, consistent with their professional obligations.

- Make sure your verification form is compliant
- Make sure you are using my current forms

COMMON REASONABLE ACCOMMODATIONS

Animals & Housing

Generally, it is reasonable to make an exception to a “no pet policy” for a tenant/resident that has a service animal or an emotional support animal because of his or her disability, unless the specific animal would create:

- Direct threat to the health and safety of others that cannot be reduced/eliminated by another reasonable accommodation
- Cause substantial physical damage to the property of others that cannot be reduced/eliminated by another reasonable accommodation

SERVICE ANIMAL vs ASSISTANCE ANIMAL

Under the Americans with Disabilities Act (ADA)

Service animal must be:

“Individually trained” to do work or perform tasks for the benefit of an individual with a disability”

- Guiding
- Alerting
- Retrieving
- Reminding

UNDER THE ADA

- Limited to dogs and miniature horses
- Generally, most permit “service animals” to accompany people with disabilities (PWD) in all areas where members of the public are allowed to go
- Generally, service animals must be harnessed/leashed. Must be under PWD’s control
- Allergies, fear of dogs is not a legal basis to deny access

UNDER THE ADA (continued)

- PWD cannot be asked to remove animal unless: (1) animal is out of control and PWD does not take effective action to control, or (2) animal is not housebroken. If legitimate reason to ask for removal, staff must offer the PWD the opportunity to obtain good/services without the animal's presence
- Can not require:
 - Vests
 - Tags
 - Registration
 - Certificates

UNDER THE ADA

- Staff may only ask two questions:
 - (1) is the animal a service animal because of a disability, and
 - (2) what work or service has the animal been trained to perform

UNDER THE ADA

- Staff cannot ask about the person's disability
- Require medial documentation
- Require special identification
- Require PWD to demonstrate the work or task

UNDER FHA or 504

HUD Regulations do not use or define terms such as:

- Service Animal
- Support Animal
- Therapy Animal
- Companion Animal
- Emotional Support Animal

UNDER FHA and 504

Use the term “Assistance Animal”

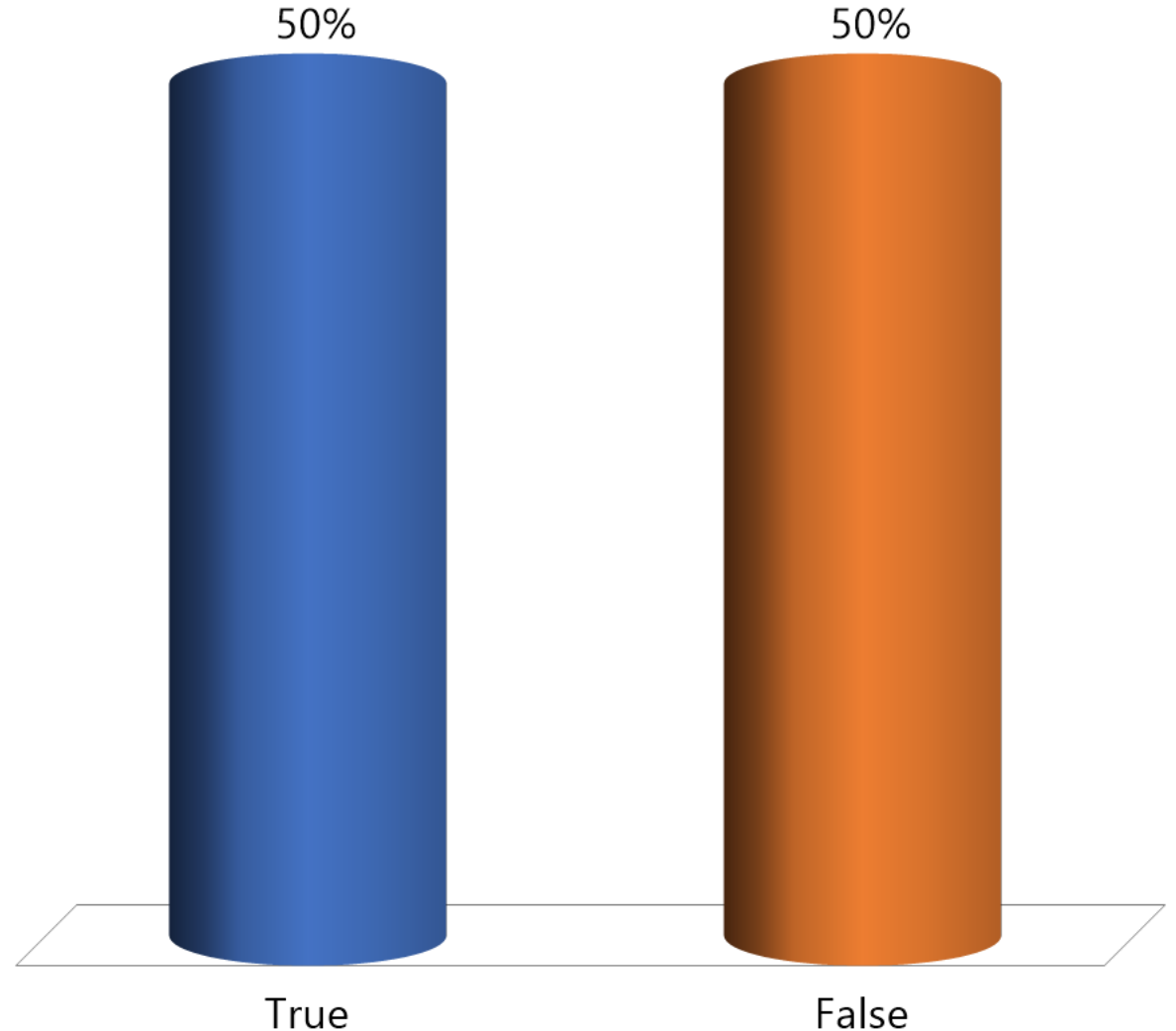
UNDER FHA and 504

FEDERAL STATUTES AND REGULATIONS DO NOT ATTEMPT TO DEFINE THE ANIMALS THAT CAN BE USED AS ASSISTANCE ANIMALS

- Monkeys, horses, birds, goats, chickens and pot bellied pigs
- “Animal works for the benefit of the disabled person by aiding him to cope with his disability”
- New HUD FHEO 2020-1 Unique Animals

It is ok to impose a weight restriction on assistance & service animals as long as it is consistent with your pet rules for all residents

- A. True
- ✓ B. False



The correct answer is : B

- NOT A PET
- No weight or breed restrictions
- Case by case

Generally, assistance animals are not granted the same public access rights of a service animal.

- Common access of the community
- Case by case

Requirements of Assistance Animals

- To claim coverage under federal laws defining and protecting Emotional Support Animals in specific situations, a person will need the following:
 - 1) Verifiable Disability and
 - 2) Legitimate Need for the animal
- Usually, this is in the form of a letter from a medical professional with stated credentials.

What documents are required?

- If disability is KNOWN OR OBVIOUS, documentation may not be required.
- HOWEVER, housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal.
 - Generally, a letter from a medical provider that explains how the reasonable accommodation helps or mitigates symptoms of the disability is sufficient

Case by case

What does the housing provider need to consider in order to determine if the request for accommodation is reasonable? 2 questions:

- 1) Does the person seeking to use and live with the animal have a disability – i.e., a physical or mental impairment that substantially limits one or more major life activities?
- 2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

IF ANSWERS TO BOTH ARE **YES**, then landlord must accommodate

- There are no Federal or State “credentials” for assistance animals
- Federal and Ohio laws do not define the animals that can be used as an assistance animal
- Assistance animals do not necessarily need to be trained: animal may relieve depression and anxiety
- Pet deposit must be waived
- Breed, size, and weight limitations may not be applied

Assistance Animal in dwelling unit vs entire community

THE OHIO ATTORNEY GENERAL AND THE OCRC REVISED T-31 IN AUGUST 2019

Some Interesting Points:

1. *If an assistance animal becomes threatening, hostile or aggressive, or if the animal is unusually disruptive, and the animals owner does not take effective action to control the animal; or if the animal is not housebroken. In these situations, although the animal may be removed, the disabled tenant may be asked to leave or be evicted because of the animal assistant

***So do we issue a 30 Day under 5321.11?

2. No pet fees; no deposits
3. Policy definition where the verification can come from:
 - i. Physician, including Medical Doctor, Podiatrist, Doctor of Osteopathic Medicine
 - ii. Ophthalmologist and Optometrist
 - iii. Chiropractor
 - iv. Physicians Assistant
 - v. Psychiatrist and Psychologist
 - vi. Registered Nurse, Advanced Practice Nurse, Nurse Practitioner & Nurse Anesthetist
 - vii. Physical Therapist and Occupational Therapist
 - viii. Audiologist
 - ix. Speech Pathologist
 - x. Licensed Counselor, Social Worker or Therapist

**This is not an exhaustive list

- Tenant supplied verification
- Veteran's Services Commission
- Obviously disabled
- Check to see if on SSI Disability

What about out of State Providers?

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.”

ORC 4731.296. (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 ORC § 4731.22(B)(20); 5164.95; 4715.43; 4732.33; O.A.C. § 5160-1-18.)

Indiana Code 22-9-7-12

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. (ORC § 5164.95)

The Commission takes the position that a health services provider does not have to hold an Ohio License to 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 verify the disability or need for an ESA as long as the last contact with the patient occurred within the past twelve months from the date of the accommodation request.

IS THE PROSPECT FROM CALIFORNIA?

- Is the provider licensed in the state of Ohio? Telemedicine Certificate?
- When was the prospect tenant last seen?
- 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 medical verification from an Ohio licensed or telemedicine-certified provider

OCRC recommends allowing applicants and residents a “reasonable” time and opportunity to secure appropriate documentation

Remember the Sample Verification Slide?

- Don't ask for more than you need
- Don't 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

HUD FHEO-2020-01

Issued January 28, 2020

- The First Section – best practices for Reasonable Accommodations requests involving animals
- The Second Section – Guidance on documenting an individual's need for Assistance Animals in housing

(SEE HANDOUT)

IMPORTANT POINTS CONCERNING FHEO 2020-01

1. A landlord may also use its discretion to accept a tenant/prospects information and grant the animal
2. Requests do not need to be in writing and do not need to contain the “magic” words “reasonable accommodation”. Cannot mandate certain forms. Must review on case-by-case basis
3. Keep list/information concerning reasonable accommodation requests.
4. A resident may request a reasonable accommodation either before or after acquiring the assistance animal

IMPORTANT POINTS CONCERNING FHEO 2020-01

5. A person with a disability may make a reasonable accommodation request ANYTIME: even after eviction
6. The request doesn't need to be made by the prospect/tenant can be made by others
7. If tenant has an observable disability (blindness, hearing, mobility limitations, stroke, parkinsons, cerebral palsy...)
8. SSDI or SSI for a person under 65, veterans disability benefits
9. Website Certifications by themselves generally not sufficient
10. Telehealth from a licensed healthcare professional "when the provider has personal knowledge of the individual" (compare to OCRC T-31)

IMPORTANT POINTS CONCERNING FHEO 2020-01

11. Unique animals – requestor has burden of demonstrating a disability related need
12. Reasonable accommodation determination should be prompt – generally within 10 days of receiving documentation
13. Direct Threat recognized
14. Before denying a reasonable accommodation for lack of information (disability or disability need) housing provider is encouraged to engage in a good-faith dialogue (discussing alternative accommodation that can satisfy the tenant's needs without imposing an undue burden or fundamentally altering the provider's program.
15. HUD recommends best practice guidance

Can a person have more than one service or emotional support animal?

While there do not seem to be any cases dealing with the issue of multiple emotional support animals, the basic requirements for this reasonable accommodation would still be the same. In other words, if a person were claiming the need from his or her physical or medical professional. The practitioner would need to provide documentation that each support animal alleviated some symptom of the disability.

OCRC Policy T-31

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 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 about the assistance animals of my guests?

HUD does not cover this issue specifically in its notice to housing providers. However, the underlying purpose of the FHA is to provide an equal opportunity to use and enjoy housing regardless of disability. If a tenant cannot have a particular guest over who uses a service or assistance animal, then the tenant may be deprived of the ability to use and enjoy his or her dwelling based on the presence of a disability. There do not yet appear to be any published legal causes that have reviewed this issue.

Housing

When does a landlord NOT have to accommodate an assistance animal?

- 1) If the presence of the animal would impose an **undue** financial or administrative **burden**, or
- 2) Would **fundamentally alter** the nature of the housing provider's services, **or**
- 3) The specific assistance animal in question poses a **direct threat** to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, **or**
- 4) The specific assistance animal in question would cause **substantial physical damage** to the property of others that cannot be reduced or eliminated by another reasonable accommodation.