

Assistance Animals for People with Disabilities

A guide to fair housing law



Legal Disclaimer: The information contained in this guidebook is provided for informational purposes only and should not be construed as legal advice on any subject.



2023 © The Fair Housing Council of Oregon

Contents

Introduction to Fair Housing Laws	3
Fair Housing Act Definition of Housing	4
The Protected Class of Disability	4
Assistance Animals	5
Reasonable Accommodations	7
Sample letter for reasonable accommodation	8
Reviewing the Reasonable Accommodation Request for Assistance Animals	9
Seek an Alternative Solution	9
Verification of the Need for an Assistance Animal	10
Verifiers and Needed Information	10
Sample verification letter	11
A Note about Group Living Facilities and Assistance Animals	12
Discrimination and Retaliation Are Prohibited	12
Reporting Discrimination	13
Conclusion	13
Resources	14



Introduction to Fair Housing Laws

For many people living with disabilities, having an assistance animal is essential to their well-being. Whether you are a veteran living with post-traumatic stress disorder, a child with autism who struggles with interpersonal dynamics, a person living with multiple sclerosis who needs assistance handling objects, or a survivor of domestic violence who lives with chronic anxiety, if an assistance animal serves to ease the limitations of daily living, you have a right to advocate for having that animal in your life and in your home.

However, it was not until 1988 that people living with disabilities themselves were added as a protected class under the Fair Housing Act, which had been established twenty years prior. It has been a long, incremental journey to develop fair housing rights for all.



In the mid-1960s, the Civil Rights Movement, led by the Rev. Dr. Martin Luther King, Jr., was gaining momentum in its mission to attain equal rights for Black Americans. These rights included the right to vote, the right to equal education and employment opportunities, the right to move freely in public spaces without segregation, and the right to equal housing. While the Voting Rights Act was passed in 1965, it wasn't until one week after the assassination of Dr. King on April 4, 1968, and a surge of outrage and protest that followed, that President Lyndon B. Johnson signed into law the Fair Housing Act. The initial classes protected under the Fair Housing Act included race, color, national origin, and religion.











 Race	 Color	 Religion	 National Origin	 Sex
 Sexual Orientation	 Gender Identity	 Victims of Domestic Violence	 Familial Status	 Disability

Table 1: Protected Classes under the Federal Fair Housing Act



Certain counties, cities, and jurisdictions may have additional protected classes such as age over 18, occupation, housing status, etc. To learn what additional protected classes exist where you live, visit: bit.ly/ProtectedClassesOR

It took another six years for sex to be added as a federal protected class. Up until 1974, women could be legally denied rental units, mortgage loans and access to *any* housing services based solely on their sex. (Domestic violence survivorship, sexual orientation, and gender identity are identities that have since



been included under the protected class of sex.) Another twelve years would pass before familial status (families with children under the age of 18) and people living with disabilities were added as protected classes in 1988.

Until that time, housing options were extremely limited to many people with disabilities and even then, when housing was provided, they were not accessible. This 1988 law greatly expanded housing and wellbeing opportunities for people living with disabilities. This law protects the rights of people with disabilities to be allowed any *reasonable accommodation* that will create *access to or equal enjoyment of a dwelling*, including the use of assistance animals.

It is important to be aware that housing providers, whether they are landlords, property managers, transitional housing staff, or homeowners associations, need to understand *and comply* with fair housing laws. Part of this legal expectation includes working with people with disabilities to ensure they have that equal access to and equal enjoyment of their dwelling.

Fair Housing Act Definition of Housing

The official term the Fair Housing Act (FHA) uses when talking about housing is *dwelling*. The Act's definition of a dwelling is, "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence for one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." In simpler terms, Fair Housing Council of Oregon lists the following as examples of dwellings:

- Houses
- Apartments (regardless of number of units)
- Condominiums
- Floating Homes
- Transitional housing/shelters
- Mobile homes (only when hooked to services and in one place)
- Retirement housing/assisted living
- At times, motels (when used as primary residence)

The Protected Class of Disability

According to the United States Department of Justice, the Fair Housing Act defines "persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities." Taking into consideration we are looking at both mental and physical impairments, it makes sense the definition is a broad one. When we talk about *mental impairments*, which is the language used by the Department of Housing and Urban Development, we are referring to people living with schizophrenia, depression, anxiety, post-traumatic stress disorder (PTSD), attention deficit hyperactive disorder (ADHD), bipolar disorder, or other disorders. When talking about *physical impairments*, we are referring to chronic medical conditions such as blindness, hearing impairment,



multiple sclerosis, traumatic brain injuries, and beyond. The primary factor to consider when determining if a condition is a mental or physical impairment under the FHA is whether the disability *substantially* limits any of a person's major life activities. Does the condition substantially limit, for example, walking, talking, breathing, learning, performing manual tasks, working, thinking? If yes, then we are talking about a disability.

History of addiction is also included in fair housing law as a disability. Whether it falls under physical or mental impairment or both, addiction can indeed and often does substantially limit a person's ability to fully function and care for themselves. If a person is actively using illegal controlled drugs such as methamphetamines or heroin, they will not be protected by fair housing law. Only when a person shows verifiable signs of recovery or shows a change in behavior will they be protected. Verification could come from a drug and alcohol treatment certificate, a letter from a sponsor, therapist, or drug and alcohol counselor, to name a few examples.

Another significant bottom line to understand regardless of whether you identify as someone with a disability or not is that the Fair Housing Act does *not* protect individuals who present a direct threat to others or to the property of others. Guidance from the Department of Housing and Urban Development (HUD) indicates that a determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence.

Still, a person cannot be discriminated against under fair housing law if they have a history of addiction but are currently sober or if a housing provider *assumes* that that person has an addiction or addiction history. Assuming any disability or history of disability is discriminatory.



Assistance Animals

First and foremost, assistance animals are *not* pets. Assistance animals serve the specific purpose to assist a person living with any disability that creates a substantial impairment of one or more major life activities. Furthermore, under fair housing law, assistance animals include a much broader range of animals than does the American Disabilities Act (ADA), which only speaks to service animals. Assistance animals, under fair housing law, include:



- Trained service animals
- Companion animals
- Emotional support animals

It's very important for both tenants and housing providers to understand that because assistance animals are not pets, *the housing provider cannot charge pet fees or deposits for any assistance animal.* To charge a tenant for living with an assistance animal would be as discriminatory as charging someone for a wheelchair or a walker.



Assistance animals can provide a wide array of services, depending on a person's disability or disabilities. Here are some examples:

- A person who is deaf has an assistance dog who alerts them when the doorbell rings or when a fire alarm goes off.
- A person with PTSD has an emotional support cat whose presence helps calm him when he is experiencing a flashbacks or an anxiety attack.
- A person with balance issues due to a head injury uses her large assistance dog to help stabilize her when she is standing.
- A person with epilepsy has an assistance dog to alert him when the dog detects an oncoming seizure.
- A person with depression uses their emotional support ferret by holding it and caring for it to help alleviate some of their symptoms.
- A seeing eye dog helps a man with blindness move from place to place while his older, retired seeing eye dog now serves as his emotional support animal.

Possible assistance animals include more than typical household pets such as dogs and cats. The Fair Housing Act may permit different species, breeds, weights, sizes, and numbers of animals than what might be allowed under a housing provider's more restrictive pet policy. For example, certain exotic animals may provide a service that a normal household pet cannot, such as a monkey who can help feed someone or a pony used for stabilization.

Unlike with pets, a housing provider cannot deny an assistance animal solely because of its breed, weight, or species. What the housing provider should be focusing on is the behavior and the function of the animal, not what kind of animal it is or how big it is. For example, some housing providers or insurance policies may limit aggressive breeds (pit bulls, german shepherds, etc.). But an entire breed cannot be judged based on the behavior of individual dogs. It's the individualized behavior, not the breed, that needs to be the focus. Similarly, while housing providers might enforce weight restrictions for pets, a person with a disability may need a large dog, such as a Boxer or a Rottweiler, to help keep themselves stable when standing, walking, or transitioning from standing to sitting.



As mentioned earlier, assistance animals are not limited to dogs and cats. As long as a person with a disability has verification for why, for instance, a guinea pig suits their need for an emotional support animal, they should be allowed to have that guinea pig. If someone with a disability has verification for how a parrot serves as their companion animal, again, the parrot should qualify.

When it comes to fair housing, what's essential to understand is that if you are a person living with a disability, your right to use an assistance animal is as protected as your right to access medication, a cane, or a wheelchair.

Reasonable Accommodations

A reasonable accommodation is when a landlord/housing provider makes an exception to a policy, standard, or procedure in order to facilitate a person with a disability having *equal access to or equal enjoyment of a dwelling*. A landlord who has a no-reserved-parking policy might, for instance, allow a person with mobility issues to have a reserved parking space near their apartment.

The applicant or tenant needs to initiate the reasonable accommodation process by initiating a reasonable accommodation request. For a person with a disability who has or who is planning to have an assistance animal, this means making a reasonable accommodation request that shows that the assistance animal is needed for *equal access to or equal enjoyment of a dwelling*.

Although a reasonable accommodation request is not required to be in writing, it is best that it is, so that you can make a copy and have documentation of your request. Here is a sample of what a reasonable accommodation request for an assistance animal might look like for someone in the housing application process.

EXAMPLES OF ASSISTANCE ANIMALS

A person with clinical depression finds that their cat helps motivate them to get out of bed and be in the world.

A person who has lived with anxiety and depression most of her life has started living with and caring for an English Angora rabbit as an emotional support animal.

A man who struggles to manage his emotions keeps an African grey parrot who senses when there is building tension and begins to repeat calming phrases.

A child who was born prematurely and struggled to walk made a deep bond with a donkey who has helped them develop their coordination as well as their self-confidence.

A woman with epilepsy has a boa constrictor who will give her a slight squeeze when he detects that the person is going to have a seizure.



Sample letter for reasonable accommodation

[Date:]

To **[Landlord/housing provider/property manager's name]:**

As defined by fair housing law, I am a person living with a disability that substantially limits one or more major life activities. I have an assistance animal that serves to ease some of the symptoms and/or effects of my disability and need my assistance animal in order to have equal access to or equal enjoyment of housing. Therefore, I am requesting a reasonable accommodation regarding your pet policy that **[state housing provider's pet policy here]**. Attached to this letter you will find a letter of verification from **[third party verifier of need for assistance animal]** verifying my disability, the limitations my disability creates, and the resulting need for an assistance animal in my dwelling.

I understand that I am responsible for caring for my assistance animal and for controlling it when it comes outside of the unit. I am responsible for picking up my assistance animal's waste on a consistent basis, for preventing any possible property damage, and for promptly addressing any nuisance concerns that may arise in relation to my assistance animal.

Under fair housing law, assistance animals do not require certification or registration as assistance animals. Verification from a qualified third party establishing my disability and my need for an assistance animal in direct relation to that disability is sufficient.

If you have any questions or concerns about my reasonable accommodation request, I would be happy to address them with you.

I look forward to your written response to my request and would ask that you respond to my request by **[specified date usually between 10-14 days from the date of the request]** Thank you for your time and consideration,

Sincerely,

[signed name]

[printed name]



Reviewing the Reasonable Accommodation Request for Assistance Animals

By law, housing providers are required to approve a reasonable accommodation request if it effectively meets the requester's disability-related needs and is reasonable. When a housing provider reviews your request, how they determine whether the request is reasonable should be driven by the actual impact that the request will have on the housing provider, not on their hunch, bias, or second-guessing of verification letters. There are three essential factors that play into how an accommodation request might be found as *unreasonable*. Questions housing providers can ask in determining the reasonability of the request include:



- **Will it be too costly and an administrative burden?** An example could be that the housing provider's insurer reports back to them that insuring a certain kind of assistance animal would be too costly. (Even then, though, the housing provider is obligated to inquire with at least one other insurer.)
- **Will it be outside of the housing provider's job description?** Perhaps a person with an assistance animal that requires a litter box requests that the property manager clean the box for them. That would not be within their job description.
- **Will the request pose a direct threat to residents of the property or the property itself?** Remember, it's the behavior of the individual assistance animal that counts. If an assistance dog, for example, ends up biting someone or destroying property, then that is evidence of a direct threat that is not protected under fair housing laws. That said, evidence of a threat must be specific to that one animal, not based on any assumptions being made because of its breed, size, or species.

In any of these situations, the applicant or tenant does not have to just take the housing provider at their word. The housing provider must show sufficient proof that the request will be either too costly, too much of an administrative burden, not within the housing provider's job description, or will pose a direct threat to residents and/or property.

Seek an Alternative Solution

When a request is determined to be unreasonable based on any of the questions above, the best practice is for a landlord and an applicant/tenant to work together to find an alternative solution. Assessing an accommodation can get more complicated when a resident wants an assistance animal for which another resident has an allergy. Since allergies may be a form of disability, the housing provider must attempt to provide an accommodation for both residents. For instance, the housing provider could establish different paths of travel for the two residents.



Verification of the Need for an Assistance Animal

Depending on how evident a person's disability is, a housing provider can require that that person show verification from a third party of their disability. But if the person's disability is clearly evident, asking for verification could be interpreted as discriminatory. Let's look at two different scenarios.

- In the first, a person with epilepsy states she has a disability and that she needs her assistance dog in her dwelling with her. Initially, a housing provider might not understand that the assistance dog is able to detect an oncoming seizure in its owner. So, requesting verification of the disability would be seen as needed.
- On the other hand, a person with blindness who arrives with his seeing eye dog has a disability that is evident upon introductions. Asking that person for verification of his disability would be perceived as casting doubt on his disability and therefore discriminatory.



If the housing provider does legitimately need verification, there are some boundaries as to what they can ask for and how they request that the applicant or tenant submit that verification.

Housing providers are not allowed to require that the applicant or verifier:

- Use a specific form provided by the housing provider
- Have the verification notarized
- Face penalty of perjury for statements made.

Housing providers are also *not* allowed to:

- Ask for an individual's specific diagnosis
- Require disclosure of details about the diagnosis or severity of a disability
- Request medical records from or discussion with an individual's health care provider
- Request an independent evaluation obtained specifically for the housing provider
- Engage in their own evaluations.

Verifiers and Needed Information

When considering who might be qualified to verify your need for an assistance animal, it is best to think of a professional you work with who is familiar with your disability and who can articulate why and how an assistance animal would facilitate equal access to or equal enjoyment of your housing. Examples of such professionals include physicians, nurse practitioners, optometrists, pediatricians, psychologists, social workers, case managers, and psychiatrists.



Sample verification letter

[Date]

[Verifier's name and credentials]

Re: Verification of need for Reasonable Accommodation or Modification

[Tenant's name] has contacted me regarding their need for a reasonable accommodation. **[Tenant's name]** makes this request pursuant to the Fair Housing Act, 42 U.S.C § 3604, which requires housing providers to make reasonable accommodations in existing rules, policies, practices, or services if such accommodations may be necessary to afford such person full use and enjoyment of the premises. I have been informed that the accommodation they have requested is: **[List requested accommodations]**.

I am aware of the nature and extent of **[Tenant's name]** disability and I understand the reasons for their request for this reasonable accommodation. I do hereby verify that, in my judgement, **[Tenant's name]** is a qualified person with a disability as defined by the Fair Housing Act and that the above stated reasonable accommodation is necessary to afford **[Tenant's name]** the opportunity to fully use and enjoy the premises, as provided by the Fair Housing Act.

Sincerely,

[Verifier's name and credentials]

[Verifier's contact information]



A Note about Group Living Facilities and Assistance Animals

The challenges facing both tenants and providers in group living environments, such as transitional housing, shelters, and long-term care facilities, can be complex. For instance, at a shelter, living quarters might be set up in dormitory style, with several people sleeping and living in the same space. If one or more of those people has an assistance animal, questions of how to contain the animals, how to accommodate anyone who is afraid of or allergic to animals may arise.

In a long-term care facility, some might express concern about an assistance animal's distracting presence among staff. Often, such group living places have relied on what they see as the simplest solution to these complexities and that is to simply not allow animals in their spaces.

However, people with assistance animals have a *legal* right to keep their animals with them. At the very least, *any* housing provider should work with a tenant or applicant who has an assistance animal to find an alternative solution if a particular accommodation request is too costly, too much of an undue burden, or too much of a direct threat.

Many shelters in Oregon, for instance, have been creating kennel areas in their shelters. Others have started working with community partners to find and sustain foster homes for assistance animals while their owners are in a group living environment, arranging for daytime visits. However innovative a housing provider is, a primary point is that being separated from one's assistance animal *denies* that person equal access to and equal enjoyment of a dwelling. It also, just as importantly, traumatizes—or *retraumatizes*—a person who has depended on their assistance animal to survive homelessness, abuse, discrimination, and many other traumatic experiences. In the end, it's imperative that that group living facilities be proactive in creating non traumatizing solutions for people with disabilities who depend on their assistance animals for their well-being.



Discrimination and Retaliation Are Prohibited

It is illegal for housing providers to practice or exhibit any kind of discrimination or retaliation against an individual living with an assistance animal as a result of the individual's needs or the assistance animal's presence. Some examples of what discrimination or retaliation could look like:

- The housing provider rejects the individual's application when they find out that person has an assistance animal;
- Once the individual's assistance animal comes to live with them, housing provider refuses to make repairs to the unit;
- Housing provider is verbally or physically abusive to the assistance animal;
- Housing provider continuously expresses doubt about the individual's disability directly to individual or to other residents, making individual feel unsafe and unsupported;
- Housing provider raises individual's rent;



- Housing provider suddenly gives the individual a termination notice alleging the tenant has broken the lease agreement when they haven't.

Reporting Discrimination

If such behavior occurs, the individual with the assistance animal is encouraged to contact The Fair Housing Council of Oregon (www.fhco.org) to report possible discrimination. To support one's claim, it is helpful to document all occurrences of possible discrimination or retaliation. That could mean writing incidents down in a journal, keeping text messages and emails, or even recording any relevant encounters via audio or video. An individual can also seek the support of witnesses to any possible acts of discrimination or retaliation. If you are for any reason hesitant to call, here are some things to know about Fair Housing Council of Oregon:

- FHCO serves people regardless of income or immigrant status
- FHCO keeps individual's information confidential until and unless they consent to make their name known
- FHCO use a language bank for interpreters if you speak a language other than English
- FHCO does not charge people for receiving advocacy from FHCO
- FHCO can help take your case to litigation if necessary and as individual consents

Conclusion

The 1968 Fair Housing Act was established on the basis of the 14th amendment of the United States Constitution, which claims that everyone has equal protection under the law. Because for so long many people were *not* given equal protection of the law, much of the twentieth century and into the 21st century has been an uphill climb for marginalized people's rights to be seen, heard, and validated. For people living with disabilities, this has meant, in part, advocating for equal access to and equal enjoyment of housing.

But it is not only up to people living with disabilities to ensure their rights are honored. Lawmakers, social service workers, medical and mental health professionals, and all parties, who interact with people with disabilities, including housing providers, also must work together to guarantee equal access to and equal enjoyment of housing. For tens of thousands of people living with disabilities, assistance animals are central to that guarantee. The Fair Housing Council of Oregon is committed to raising awareness about the rights of people living with disabilities to have assistance animals as needed and to work with all parties—from tenants to advocates, to housing providers, to lawmakers—to see that that guarantee is upheld.



Resources

Animal Legal and Historical Center, Michigan State University:

<https://www.animallaw.info/article/faqs-emotional-support-animals>

Department of Housing and Urban Development (HUD):

https://www.hud.gov/program_offices/fair_housing_equal_opp/assistance_animals

Fair Housing Institute

<https://fairhousinginstitute.com/assistance-animals-hud-notice/>

Humane Society of the United States:

<https://www.humanesociety.org/resources/fair-housing-act-and-assistance-animals>

FHCO Disability Guide:

<https://fhco.org/document/fair-housing-guide-for-people-living-with-disabilities/>



Informational video about fair housing and reasonable accommodations:

<https://fhco.org/document/fair-housing-for-families-reasonable-accommodation-and-modification-for-people-with-disabilities/>



Accommodations FAQ:

<https://fhco.org/document/frequently-asked-questions-on-reasonable-accommodations-modifications/>

