

Q&A Addendum Updated 10/24/16

Reasonable accommodation requests for assistance animals—including emotional support animals—cause concern for owners. They affect an owner's ability to assess pet deposits and fees and to apply rules and policies to a resident's animal. Additionally, they expose owners to possible fair housing complaints.

To help with this issue, NAA hosted a webinar, "What the What? How to Approach Emotional Support Animal Requests," on Oct. 13. The event was well received by NAA members; over 430 attendees registered for the event. The webinar featured Katie Wrenn, Regional Training and Marketing Director at Milestone Management and President of the First Coast Apartment Association, and Kirk Cullimore, Esq., Board Member and Past President of the Utah Apartment Association.

During the call, speakers explained the basics of the law as well as lessons learned from practical experience in the field. Ms. Wrenn and Mr. Cullimore also provided information about the resources available in the NAA Toolkit, *Emotional Support Animals: A Practical Guide to Reasonable Accommodation Requests*, including sample forms approved by HUD through the conciliation process.

NAA compiled the answers from the webinar speakers to the top 25 questions asked by attendees. Some of the questions have been summarized or condensed as they were asked by multiple people. Many of the questions below can be answered by reviewing the webinar recording or for a more detailed explanation, please see the NAA toolkit. Mr. Cullimore answered many of the questions below that required analysis of specific scenarios. Please contact [him](#) directly for more information on these responses.

All of NAA's resources on reasonable accommodation requests for assistance animals, including the member toolkit, any updates to the toolkit and the webinar recording, can be found [here](#) on the NAA website.

Remember: Like all things in fair housing, every situation is different. It is hard to make generalized statements that will apply to each situation. Make sure you are obtaining good legal advice in how these matters are being adjudicated locally.

- 1. Q: Does making reasonable accommodations/modifications apply to everyone—even those exempt under the Fair Housing Act?**
A: No. Any individual exempt from the Fair Housing Act would be exempt from the accommodation/modification provisions.
- 2. Q: How do we determine if someone has a disability? Do they have to have something in writing from a medical doctor?**
A: Housing providers may ask whether the resident is disabled as defined by the Fair Housing Act. In other words:

- Does the resident have a physical or mental impairment which *substantially* limits one or more of such person's major life activities?
- Does the resident have a record of having such an impairment? or
- Is the resident regarded as having such an impairment?

Remember owners and managers should not ask the resident to give the resident's medical records or history. In some circumstances, housing providers may ask for verification but any questions should be limited to whether there is a nexus between the resident's disability and the disability-related need for the animal. For more information on verification and the request process generally, see the NAA toolkit. Also, review the webinar, around minute 14:10 and 36:50.

3. Q: What is a nexus?

A: Nexus refers to establishing a connection between the resident's disability and the disability-related need for the animal.

4. Q: During the application process, can we inquire about the temperament of an assistance animal through rental verification from previous owners/managers?

A: Yes, you should. Review the webinar, around minute 49:00.

5. Q: What about requiring that we must meet the assistance animal prior to approval to ensure that they do not pose a threat to staff and other residents?

A: It is not clear what a "meeting" with the animal would provide. You could require that they bring in the animal for identification purposes perhaps. Even if the animal "appeared" to be aggressive at a meeting, it may not be enough to deny the request.

6. Q: Can we require a medical professional to name the animal specifically in the doctor's note?

A: You can probably asked for the animal to be named. But if the note doesn't specify, ask that question when you call to verify.

7. Q: We cannot require certification of an assistance animal; however, can we request a letter from physician that an animal is needed if a disability is not obvious?

A: Review the webinar, around minute 12:00 and 56:00.

8. Q: If they have a note from the doctor, can we require that it be on letterhead or something like that?

A: No, but you can verify that the person who gave you the note has sufficient knowledge and expertise to opine on a matter of a handicap. So if the note does not provide enough information, you can request more information. If a Google search can provide it, which may be sufficient. Again, you are trying to assist the person in the verification process so you might have to do a little work to verify the credentials of the person providing the opinion that an individual is handicapped and has a need for the assistance animal.

9. Q: I have been presented with a so-called prescription which is simply purchased online. Do I need to accept that in lieu of the Verification for Assistance Animal Form?

A: Review the webinar, around minute 56:00.

10. Q: Can you ask for an updated prescription from the resident at the time of renewal?

A: Once you have approved the assistance animal, there is no reason to update unless: 1) there is a change in the resident's disability; 2) the animal approved is being replaced; or 3) the note/prescription/form has an expiration date that has passed.

Generally, if the person has been a resident with an approved assistance animal then they should not be required to requalify for the animal. However, remember that the accommodation request is for a specific animal so you can verify that it is the same animal.

In the same vein, if a person is qualified for an assistance animal and it dies or is otherwise lost, you should probably not require new verification but only new documentation on the new animal. Remember that the forms in the toolkit have a place for length of anticipated disability. Once that time has expired, you can request a new verification process. Review the webinar, around minute 55:30.

If you do not have sufficient information in your files to justify the assistance animal, you may request such information upon renewal. This is true particularly if you were not the management company at the original time of approval. However, you need to be careful to not make it too onerous and to give adequate time to get the information. Once they provide it, you can verify the information as normal.

11. Q: Can one person have multiple service animals?

A: Review the webinar, around minute 53:18.

12. Q: If you have a two-animal limit per apartment, do you have to allow a resident a third if one is an emotional support animal (assistance animal)?

A: Again see the webinar, around minute 53:18.

13. Q: How does this apply to a guest with an assistance animal who visits a resident?

A: Review the webinar, around minute 56:35.

14. Q: Can you address HIPAA concerns that may arise when an owner confirms the verification form with the medical or mental health professional?

A: Review the webinar, around minute 43:00.

15. Q: If a resident moves in with a pet and then later claims the animal is an assistance animal, do we have to return pet deposits, fees or rent? What about seeking payment for back pet rent?

A: You do not have to return deposits. Nor do you have to refund monies paid while the animal was considered a pet. Until you have approved the request for the assistance animal, the animal is still a pet.

16. Q: Can we require that an assistance animal is under flea treatment program?

A: If there is a reason to require such treatment and it is applied to all animals, it may be permissible. However, if you cannot establish a valid business reason why it may not. There must exist some existing health or safety issue (not just prophylactic) to require that an assistance animal comply with a required treatment. Also, review the webinar, around minute 26:00.

17. Q: My apartment community has specific pet areas in which we require animals to use the bathroom. Are we allowed to require this of assistance animals?

A: Yes, you can do that, but if the resident needs an accommodation because he or she cannot get to that area or has some other reason that would meet the reasonable accommodation requirements, you may have to make other arrangements. The resident would need to make a separate accommodation request to be excluded from the community rule that requires the use of the specific pet areas.

Owners need to get in the habit of calling general rules “animal rules” and rules that only apply to pets “pet rules”. In this case, it is an “animal rule”. Similarly, we require all animals to be on leashes (animal rule), but if a resident has a reason why his or her assistance animal cannot be on a leash and the resident can establish that he or she has control over the animal without the leash, the resident would need to request a separate accommodation as well.

18. Q: Can we require that when community staff must enter the unit for maintenance, the tenant must be present to control the assistance animal?

A: Yes, you can require that someone be present to control the animal. For the safety of both the staff and the animal. This is true for pets or assistance animals.

19. Q: Can we require the assistance animal to be leashed? What about cats? Can I require that an emotional support animal cat be leashed when the cat is outside?

A: See answer to question 17 and review the webinar, around minute 27:30. Yes, you can require that cats be leashed.

20. Q: What about service animals in training? Can they be treated as pets?

A: This is an interesting issue. There is a provision in the FHA that requires that service animals in training be allowed just as if the person met the definition of handicap. However, this seems to be very uncommon. Most residents with a legitimate need will answer the following questions quickly:

- What is the animal being trained to do? (it will be specific)
- What methodology are you using to train?
- Have you trained other animals, and if so, what type?
- Are you affiliated with a company that is involved in the training and placement of service animals?

- Who is the person for whom the animal is being trained? (rare that the person has not been identified)
- How long will you have the animal for training? (Usually a 2-3 months. The goal is to get the animal in the hands of the handicapped person as quickly as possible.)
- Here is where the ADA helps as well. It will always be a dog.

If they cannot answer these or answer them adequately, they are probably not really training a service animal.

21. Q: Our property uses a service where we DNA screen animals at move in. Residents are charged a fine if we find their animal's waste on the property. Are we allowed to assess the fine on residents with assistance animals?

A: You can assess the fine but you cannot require that they pay for the DNA testing for the assistance animal. Review the webinar, around minute 47:15.

22. Q: How does this apply to a rent by the room situation? With respect to student housing, how would you handle a situation where one roommate requests an assistance animal while a fellow housemate objects? What if one roommate is allergic?

A: Most student housing provides a "preference" questionnaire to applicants that includes preferences like gender, major, age, school class, etc. You are encouraged to include a question such as: *Do you have any medical or therapeutic reason why you could not live with an assistance animal?* If the student does not so state, then you should assume that each person has no reasonable objection to an assistance animal.

It is recommended that you have Animal Rules for Student Housing and that you require that the disabled person review those rules. You should give the rules to the roommates and inform them that one of their roommates will have an assistance animal. If an existing roommate states that they have a medical reason why they cannot live with the assistance animal, you should review that to determine if it is a valid medical reason (and may require similar documentation), then look for alternatives to meet both person's needs. Kirk Cullimore has several forms on this issue for industry professionals involved in student housing. Please [contact](#) him directly for more information.

23. Q: What steps can be taken if the assistance animal exhibits aggressive behavior or has a habit of lunging towards staff or other residents?

A: Review the webinar, around minute 48:00 and 1:00:00.

24. Q: A resident falsifies his/her application and moves in with animals without the knowledge or approval of the housing provider. The housing provider presents a three-day notice. The resident responds with a doctor's note for an emotional support animal. The resident believes he or she cured the lease violation, but the lease violation occurred when he/she lied on the initial application. Can we evict the resident?

A: Review the webinar, around minute 47:15.

25. Q: If you think there are red flags when doing the verification (example-you think a friend is posing as a doctor), do you have tips on how to address this without offending or possibly violating the Fair Housing Act?

A: When you call to perform the verification, confirm with the provider. If the provider does recant and says he or she was only helping a friend, document this. When you craft your response to the resident, tell the resident the request cannot be verified and give the reason stated by the provider. Keep the dialogue open and tell the resident that if he or she cannot provide an alternate form of verification, you must deny the request.