

# Emotional Support and Service Animals

## What you need to consider

### **What is the Americans with Disabilities Act?**

The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

### **What is the Fair Housing Act?**

Since 1968, The Fair Housing Act (FHA) has prohibited discrimination in renting, buying, or securing financing for any housing. The prohibitions specifically cover discrimination because of race, color, national origin, religion, sex, disability, and the presence of children.

This law requires housing providers to make **reasonable accommodations** for persons with disabilities and requires housing providers to allow persons with disabilities to make reasonable modifications.

It is important to remember that the ADA and FHA are discrimination laws, not building codes. Compliance with the ADA and FHA, where applicable, is mandatory.

### **What's the difference with a service animal and an emotional support animal (ESA)?**

A service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Tasks performed can include, among other things, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, or pressing an elevator button.

Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities.

[Service Animals and Emotional Support Animals | ADA National Network \(adata.org\)](http://adata.org)

### **What are the Accessibility Requirements for Sorority and Fraternity Facilities?**

[ADA Inspections Nationwide, LLC — ADA Compliancy \(inspectionsada.com\)](http://inspectionsada.com)

### **Fair Housing Act and ESA information**

[What Does The Fair Housing Act Say About Emotional Support Animals? \(fairhousinginstitute.com\)](http://fairhousinginstitute.com)

### **What's the process to register an Emotional Support Animal?**

[Emotional Support Animal Registration of America | ESARA \(esaregistration.org\)](http://esaregistration.org)

### **What are the litigation trends?**

Organizations cannot rely on blanket “no-pet” policies to prohibit such service/emotional animals.  
[Emotional Support Bunny Case Has Settled - Fraternal Law](#)

### **What about insurance?**

From an insurance standpoint, the General Liability policy will respond should the animal bite someone or cause some sort of bodily injury to a member, guest, invitee, etc. The property policy will exclude coverage for any type of property damage caused by the animal.

### **Housing Corporation Considerations:**

- Who owns the property? University or Housing Corporation
- Which party is responsible for the ESA process? University or Housing Corporation
- Has the Housing Corporation universally accepted past ESA granted by the university?  
*If the Housing Corporation has always accepted the University decision, you have created a precedent. We strongly recommend that each Housing Corporation have their own process as each housing situation is unique and needs to be evaluated independently. The University approval is not binding on a Housing Corporation.*
- Does your national/international organization have a process in place for ESA?
- Have you formed a process and committee to address ESA requests?
- Before housing contracts are signed, you should alert new and incoming residents of the ESA process before they sign Housing Agreements.

### **Have a process, have a plan.**

#### **Step One:**

Require a letter from the member explaining:

- the need for the animal
- the type of animal
- a description of the animal
- the animal’s name
- whether the animal is housebroken
- the date[s] of the medical examinations and prescriptions specifying the need for such the animal
- the date when the animal was acquired

Require a letter on professional letterhead from the student’s physical or mental healthcare provider or licensed therapist or another qualified professional that includes, at a minimum:

- the nature of the applicant’s disability
- the provider’s opinion that the condition affects a major life activity
- how the animal is necessary to provide the impaired student access to fraternity/sorority housing
- the relationship between the disability and the assistance the animal provides

#### **Step Two:**

Review the letter/documentation and make a decision based on the Fair Housing Act.

- Is the accommodation request reasonable?
- Would accommodation result in an undue financial or administrative burden?
- Would accommodation fundamentally alter the nature of the house/property?

- Does the *specific animal* pose a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation?
- Does the *specific animal* pose a risk of substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation?

**Step Three:**

If after request, consideration, and assessment, accommodation is deemed reasonable, come up with a plan.

The first step should be what the Housing Corporation would require to make the accommodation. This should be presented in the form of a draft plan for student comment and input. When the student comments are received, then the Housing Corporation should consider whether it can accept those comments on an individual basis – perhaps some items are OK and others not. But it should be a back and forth conversation, not simple a presentation of demanded terms. The interactive nature of the process is important.

Members can be required to assume all risks of having the animal, agree to repair and restore any damage cause by the animal, and indemnify the Housing Corporation against harm and injury caused by the animal.

If a Housing Corporation is unable to accommodate a member’s emotional support animal, be prepared to release the member from their housing obligation.

“The process is the key here. Anytime a Housing Corporation just says “no” without giving the situation an individualized consideration, or make decisions without evidence but based on opinion, these are the times when the landlord is exposed. If you go through the interactive process in good faith and at the end determine the accommodation cannot be made, then that is a different matter. Just make sure that any negative decision is backed up by articulable and demonstrable evidence, not opinion or generalized concerns about the type of animal at issue.” *Sean P. Callan*

*Holmes Murphy offers this educational information to provoke thought and discussion and it should not be viewed as a mandate, requirement, or legal advice. We view part of our role as an insurance and risk management professional to anticipate your needs and educate you in an effort to complement the organization’s loss prevention and control efforts, not replace the decision-making autonomy of our client organizations.*

*For additional questions, we recommend seeking legal counsel. We thank Sean P. Callan Fraternal Law Partners, a division of Manley Burke, LPA for his input with this resource and recommend you utilize their firm’s expertise in this area.*

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