



Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

SPECIAL ISSUE

FEATURE

We'll give you 12 Dos & Don'ts for handling requests for assistance animals.

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How to Handle Requests for Assistance Animals

Disability discrimination claims account for more than half of all fair housing complaints, often based on disputes over requests by members and other residents with disabilities to have their assistance animals.

There's a lot of confusion over assistance animals, which can go by so many names—service animals, therapy animals, companion animals, emotional support animals—and there are different sets of rules on when, where, and what types of animals may be used by individuals with disabilities in various settings.

The confusing terminology and conflicting rules often lead to fair housing complaints if, for example, communities apply the wrong rules to deny requests for assistance animals needed by individuals with disabilities. And the confusion can cut both ways if, for example, residents mistakenly believe that their impairments qualify as a disability, so they're entitled to keep their pet as an assistance animal.

To cut through the confusion, we'll focus on federal fair housing law—the primary law governing use of assistance animals in multi-family housing communities. To keep things straight, we'll use the umbrella term “assistance animals” to cover all types of animals that provide assistance to individuals with disabilities.

What Does the Law Say?

The federal Fair Housing Act (FHA) bans housing discrimination against individuals with disabilities, including the refusal to make reasonable accommodations in rules, policies, practices, or services when they're necessary to provide individuals with disabilities an equal opportunity to use and enjoy their home at the community.

When someone requests a reasonable accommodation, she's asking for an exception to your rules or policies, whatever they may be, which she says is needed because of a disability. So the reasonable accommodation provisions come into play whenever an individual with a disability wants to use an assistance animal in communities that either prohibit or impose restrictions or conditions on pets at the

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community. Like all reasonable accommodation requests, the determination of whether an individual has a disability-related need for an assistance animal involves an individualized assessment, according to HUD.

Federal fair housing law broadly defines “disability” to mean physical or mental impairments that substantially limit one or more major life activities. That covers a lot of people since it applies to a wide variety of physical and psychological conditions—many of which aren’t obvious or apparent—as long as the condition is serious enough to substantially limit major life activities, such as seeing, hearing, walking, or caring for oneself.

Under fair housing law, all individuals with disabilities are equally protected—whether the disability is physical or mental, obvious or not—so don’t let outward appearances affect how you treat residents. As far as the law is concerned, all individuals with qualifying disabilities are entitled to reasonable accommodations—including assistance animals—when needed to allow them to use and enjoy their homes.

Assistance animals are not pets under fair housing law. They’re animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability, according to HUD.

Since they provide disability-related services, assistance animals are considered to be more like human aides who provide necessary services, assistance, or support for individuals with disabilities. Just as it would be unlawful to refuse access to an aide who provides needed assistance to a resident with a disability, it’s

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Editor: **Elizabeth Purcell-Gibney, J.D.** Executive Editor: **Heather L. Stone** Director of Marketing: **Peggy Mullaney** Director of Operations: **Michael Koplin**

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unlawful to ban animals that provide the resident with similar assistance. Nor can you charge an extra fee or pet deposit as a condition of granting a reasonable accommodation for an assistance animal.

Don't get confused by the different rules governing the types of animals used by individuals with disabilities in various settings, particularly the Americans with Disabilities Act (ADA), which applies to public places, like restaurants, hotels, and other venues. With one limited exception, the ADA permits only individually trained service dogs—and excludes emotional support animals.

But the FHA, which governs multifamily housing communities, is much broader than that. Fair housing law allows not only service dogs, but also any type of animal that provides assistance or emotional support to an individual with a disability. Breed, size, or weight limitations may not be applied to an assistance animal, according to HUD. Assistance animals don't have to be individually trained or certified—and they all have the same legal standing, regardless of what type of assistance they provide to an individual with a disability.

12 DOS & DON'TS FOR HANDLING REQUESTS FOR ASSISTANCE ANIMALS

✓ Have a Written Policy on Pets

Fair housing law doesn't prevent communities from adopting and enforcing pet policies—as long as they don't use their policies to keep out assistance animals. Some communities ban pets altogether, while others place limits on the number, type, size, or weight of pets and impose conditions such as extra fees, security deposits, or additional rent charges. But whatever your policy or rules on pets, you must make an exception to allow an assistance animal when needed by an individual with a disability to fully use and enjoy the community.

Remember, assistance animals are not pets under fair housing law, so the pet policy doesn't apply. For example, HUD says that a community may require residents to pay a pet deposit, but it can't require a resident to pay a deposit for an assistance animal.

Nevertheless, the reasonable accommodation provisions protect only individuals with disabilities—they don't require communities to make exceptions to no-pet policies for residents who don't have a qualifying disability. Problems often arise because residents don't understand what the law actually says or means—if, for example, a resident has an impairment and considers herself disabled, but she doesn't qualify as an individual with a disability under fair housing law.

✓ Treat Requests for Assistance Animals as Reasonable Accommodation Requests

Anytime you get a request for an assistance animal, treat it as a reasonable accommodation request for an exception to your pet policies. The reasonable accommodation rules kick in anytime anyone says he needs or wants something—including an assistance animal—because of a disability. The law doesn't

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require that a request be made at a particular time or in a particular manner. The person doesn't have to mention fair housing law or use the words "reasonable accommodation."

When you receive a request for an assistance animal, HUD says there are two relevant questions:

1. Does the person seeking to use and live with the animal have a disability—that is, 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 with 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 the answer to both questions is "no," then HUD says that fair housing law doesn't require you to make an exception to your pet policy and the reasonable accommodation request may be denied.

But if the answer to both questions is "yes," then fair housing law requires you to modify or make an exception to your pet policies to permit an individual with a disability to live with and use an assistance animal at the community, unless doing so would impose an undue financial or administrative burden or would fundamentally alter the nature of the community's services.

The request may also be denied if the animal is a direct threat to your property or the health and safety of others. But HUD warns that you can't make that decision based on speculation about the animal's size or breed; you have to look into the specifics of the particular animal involved. It can get complicated, so don't make snap decisions about whether to allow an animal on that basis without reviewing all the facts.

✓ Get Information When Needed to Evaluate Request

Don't deny a request just because you're uncertain about whether the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Though fair housing law generally forbids housing providers from making disability-related inquiries, there's an exception for reasonable accommodation requests when either the disability—or the disability-related need for the requested accommodation—isn't obvious or apparent.

Just remember: You can't ask questions about a resident's disability or disability-related need for an assistance animal if both are known or readily apparent. The classic example is guide dogs used by blind or visually impaired people. Since both the disability and the need for the animal are readily apparent, you can't ask for documentation about the disability or disability-related need for the dog.

On the other hand, you may request information from a resident with a known or obvious disability, but only if his need for the assistance animal isn't readily apparent. As an example, federal guidelines point to a request by a resident who uses a wheelchair to keep a dog as an assistance animal. The resident's disability

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is readily apparent, but the need for the assistance animal isn't obvious. So you can ask the resident to provide information about the disability-related need for the dog—as long as you don't go overboard by asking for too much information.

EXAMPLE: In August 2015, a court refused to dismiss claims against a Florida community, which had a no-pets policy, for refusing to allow a resident with a hearing impairment to keep his hearing dog. After living there with the dog for nine months, the resident said he was threatened with legal action unless he removed the dog. He said he explained that it was a service animal needed because of his hearing impairment, but the community requested additional information, including a prescription from a healthcare provider showing how the animal reasonably accommodated his disability; documentation that the animal had special skills or training; and information about how the animal's special skills set it apart from an ordinary pet.

According to the resident, his healthcare provider verified that he had severe hearing loss that required use of hearing aids and that the dog alerted him to sounds, especially when he was sleeping and therefore not wearing his hearing aids. Despite the documentation, the community allegedly continued to demand additional information and documentation.

The resident sued, but the community asked the court to dismiss the case, arguing that he failed to provide adequate documentation that his animal received any training as a service animal.

The court refused to dismiss the case, ruling that the documentation the resident already provided was adequate and therefore the community wasn't entitled to ask for further information. The FHA doesn't require assistance animals to receive specialized training, and multiple courts have rejected a requirement that hearing dogs must be professionally trained or certified.

The court also rejected the community's claim that it never refused to grant his request for a reasonable accommodation, but was only taking time to perform a meaningful review. The resident accused the community of repeatedly demanding extraneous information not required under the FHA and that by making it a precondition of granting his request, the community effectively and illegally denied him the reasonable accommodation he needed [Smith v. Village Club, Inc., August 2015].

✓ Ask for Verification If Resident Doesn't Appear to Be Disabled

Be careful about how you handle requests for assistance animals from residents who don't appear to be disabled. Fair housing law defines "disability" to include a variety of physical and emotional impairments that may not be obvious or apparent, so you can't reject a request based solely on outward appearances.

If the resident's disability is not readily observable, you may ask for reliable disability-related information that's necessary to verify that the resident has a disability that qualifies under the FHA—that is, a physical or mental impairment that substantially limits one or more major life activities—and has a disability-related need for the animal.

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But be careful: You can't ask the resident for information about what his disability is or what the animal does to assist him—only for confirmation that there is a disability and that the animal is needed because of that disability.

In general, verification may come from a doctor or a medical professional, peer support group, or reliable third party in a position to know about the individual's disability—even the resident himself, under certain circumstances. But you can't ask residents for access to medical records or medical providers—or for detailed or extensive documentation about their physical or mental impairments.

For example, HUD says that communities may ask residents who want a reasonable accommodation for an assistance animal that provides emotional support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support, according to HUD.

✓ Permit Emotional Support Animals

Don't make the mistake of granting reasonable accommodation requests to allow service animals but not other types of assistance animals, particularly emotional support animals.

You might be confusing the FHA rules with the rules under the ADA—which limits service animals to individually trained dogs and specifically excludes emotional support animals. The ADA rules apply in public places, like hotels and restaurants, but they don't trump the broader rules under the FHA, which permits all types of assistance animals in housing. According to HUD, the FHA recognizes that assistance animals may include a wide variety of species—not just dogs—that provide various forms of assistance—including emotional support—with or without specialized training.

EXAMPLE: In May 2015, a Manhattan housing cooperative agreed to pay \$85,000 to settle fair housing claims based on its alleged denial of reasonable accommodations to its residents by prohibiting them from keeping emotional assistance animals.

According to the complaint, the 1,672-unit community had no written or established policies or procedures for making reasonable accommodations for individuals who require service or emotional support animals because of a disability. Three residents allegedly got dogs and asked for permission to keep them as reasonable accommodations of their disabilities. Allegedly, the community either denied the requests or failed to respond, and instead instituted eviction proceedings against each of the residents, who then filed federal and state fair housing complaints.

Even after the Justice Department filed suit, the community allegedly continued to pursue eviction proceedings against two of the residents. Ultimately, the government obtained court orders to halt the evictions until the fair housing case was resolved at trial.

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Under the settlement, the community agreed to adopt a policy for providing reasonable accommodations to residents with disabilities and train its employees and officers to follow the new policy. The community also agreed to pay one resident \$30,000 and a second resident \$55,000, along with other damages, and to let them keep emotional assistance animals in their units. The third resident entered into a separate settlement [U.S. v. East River Housing Corp., May 2015].

✓ **Require Resident to Clean Up After Assistance Animal**

Although you must allow residents with disabilities to have assistance animals if they need them, fair housing law doesn't require you to take care of them or clean up after them.

Residents with disabilities who use assistance animals are responsible for the animal's care and maintenance, according to HUD. In its comments on pet ownership in housing for elderly and disabled individuals, HUD said that communities may establish reasonable rules requiring a person with a disability to pick up after and dispose of his assistance animal's waste.

Although it's the resident's responsibility to care for his assistance animal, he may ask for help in walking or feeding the animal as a reasonable accommodation if, for example, his disability makes performing those tasks difficult. Each request must be considered on a case-by-case basis, but such a request would generally be considered unreasonable because it would fundamentally alter the nature of your business, which is to provide housing services, not animal care. Nevertheless, it's a good idea to talk with the resident about alternative accommodations that would effectively meet his disability-related needs without fundamentally altering the nature of your operations, for example, by referring him to local dog-walking services for help in caring for his assistance animal.

PRACTICAL POINTER: Communities may also enforce state and local health and safety laws related to animals, including assistance animals, which may require animals to be inoculated, or spayed or neutered. Communities may also enforce local leash laws, scooping laws, and noise codes, if applicable.

✗ **Don't Restrict Assistance Animals from Common Areas**

HUD says that residents with disabilities may use assistance animals in all areas of the premises where persons are normally allowed to go unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of your services. That means that you can't require residents with assistance animals to use a back entrance or service elevator instead of the main entrance or passenger elevators that other residents are allowed to use.

Nevertheless, you don't have to tolerate bad behavior by people—or their assistance animals—when they're in common areas. You may expect residents with disabilities to have their assistance animals under their control, for example, by requiring them to be leashed unless doing so would interfere with the animal's ability to perform disability-related tasks. You may establish rules to require res-

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idents with assistance animals to pick up and dispose of the animal's waste and to hold them accountable if the animal becomes disruptive or acts aggressively toward other residents.

Some wonder whether they must allow assistance animals in pools or fitness centers for health and safety reasons. Based on HUD's general rule allowing access to all areas of the premises where people are normally allowed to go, you might be on shaky ground if you prohibit residents with disabilities from bringing their assistance animals into the fitness center.

But it may be a different story with the pool. At least the Justice Department thinks so when it addressed the issue in responses to frequently asked questions about service animals under the ADA in July 2015. When questioned about whether gyms, hotels, or municipalities must allow service animals in the pool with its handler, the Justice Department said no: "The ADA does not override public health rules that prohibit dogs in swimming pools. However, service animals must be allowed on the pool deck and in other areas where the public is allowed to go."

X Don't Drag Your Feet on Reasonable Accommodation Requests

Ensure prompt consideration of requests for reasonable accommodations, including requests by residents for an assistance animal. The law requires an individualized assessment of reasonable accommodation requests, but don't make the process so difficult that it unreasonably delays a decision on a request for an assistance animal. An undue delay in responding to a reasonable accommodation request may be deemed a denial, triggering a fair housing claim.

EXAMPLE: In June 2015, the Justice Department announced that the owner of the largest affordable housing cooperative in New York agreed to pay a \$50,000 civil penalty and dedicate as much as \$600,000 in compensation to resolve allegations that it failed to provide reasonable accommodations to people who required assistance animals. Specifically, the government accused the community of maintaining and using an overly burdensome and intrusive policy governing waivers of its no-pets rule, which deterred and prevented people with disabilities from obtaining reasonable accommodations in violation of fair housing law.

In its complaint, the government alleged that before changing its policy in 2011, the community's application for a reasonable accommodation to its no-pet rule consisted of five forms (including one to be completed only in blue ink and another to be typewritten), prohibited certain breeds of dogs, required animals to be neutered or spayed, imposed annual renewal requirements, and required applicants to provide their medical records. Although the community twice amended its policy, the government claimed that it left in place many provisions from the first policy, including a ban on certain breeds of animals, which could be waived based only on an applicant's "medical need" for that particular breed [U.S. v. Riverbay, June 2015].

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PRACTICAL POINTER: Watch out for potential retaliation claims when handling requests to keep assistance animals by residents with disabilities. It's unlawful to retaliate against residents or any others because they've exercised their fair housing rights by requesting a reasonable accommodation or filing a fair housing complaint against you. Under fair housing law, discrimination and retaliation are separate violations, so you could be liable for retaliation if you take adverse action against a resident solely because he requested a reasonable accommodation for an assistance animal—even if the discrimination claim is ultimately dismissed.

✘ Don't Reject Animals Otherwise Excluded Under Pet Policies

Carefully consider requests for assistance animals, even if the request is for an animal that's generally prohibited under your pet policies.

It's common for communities to allow only certain types of pets or to exclude animals based on their size or breed, but remember, these limits don't apply to assistance animals. That's because assistance animals aren't pets under fair housing law: They're animals that work, provide assistance, or perform tasks for the benefit of a person with a disability—or provide emotional support that alleviates one or more identified symptoms or effects of a disability, according to HUD.

Even if your pet policy restricts the size or type of animals allowed as pets, you can't deny or exclude assistance animals on that basis. HUD says that breed, size, and weight restrictions may not be applied to an assistance animal. Nor can you reject a request simply because it's for an animal other than a dog. Though dogs are the most common type of assistance animal, other animals can also be assistance animals, according to HUD.

And don't refuse a request for an assistance animal until you see proof that the animal has been trained or certified to provide disability-related tasks or services. Fair housing law doesn't require that assistance animals be individually trained or certified, according to HUD.

EXAMPLE: In 2014, a Florida community was ordered to pay \$135,000 in damages and attorney's fees for denying a resident's reasonable accommodation request to keep a dog over the community's pet weight limit as an emotional support animal.

When the resident got the dog over the 25-pound weight limit, the community demanded its removal. The resident submitted two letters from his psychiatrist saying that the dog was an emotional support animal, which helped him cope with his otherwise difficult-to-manage day-to-day psychiatric symptoms.

In response, the community sent the first of three letters requesting additional information, including details about the nature of his disability and how it limited a major life activity, his treatment, the specific training the dog received, and why he needed a dog over 25 pounds for an equal opportunity to use and enjoy his dwelling.

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In a third letter, the psychiatrist explained that the resident had post-traumatic stress disorder (PTSD) related to military trauma, and that it limited his ability to work directly with other people, a major life activity. The doctor said that the resident was able to work at home with the assistance of his emotional support animal; otherwise, his social interactions would be so overwhelming that he would be unable to perform work of any kind.

In response, the community sent two more letters, seeking more details about his disability, treatment, the dog's training, and specifically why he needed an oversized animal for his disabilities. The resident didn't reply—and instead sued the community for violating fair housing law. After a jury trial, the resident was awarded \$5,000 in damages and \$130,000 in attorney's fees.

On appeal, the court affirmed, ruling that the community effectively denied his accommodation request by repeatedly asking for more information than needed to decide whether he was entitled to keep the dog. The resident proved his PTSD was a qualifying disability and that his requested accommodation was necessary. To prove that the dog was necessary, the only question was whether having the dog would enhance his quality of life by ameliorating the effects of his disability. He proved that it would: His doctor said that without the dog, his social interactions would be so overwhelming that he couldn't work at all [Bhogaita v. Altamonte Heights Condominium Assn., August 2014].

✘ Don't Automatically Reject Assistance Animal Based on Breed

You may be faced with some tough questions when it comes to breed restrictions. Many communities have policies restricting certain dog breeds, most notably pit bulls, but HUD says that breed restrictions don't apply to assistance animals. To comply with fair housing law, you must assess whether the particular animal in question poses a direct threat; otherwise, you may be accused of denying a reasonable accommodation by excluding an assistance animal based on its breed.

EXAMPLE: In August 2015, a court refused to dismiss claims against a Texas community for denying a resident's reasonable accommodation to its no-pet policy to keep a mixed-breed pit bull mix for her mentally disabled son. The resident said her son's doctor recommended an emotional support animal, so she adopted the dog as a puppy. According to the resident, the manager told her to remove the dog, but she requested a reasonable accommodation to the no-pet policy.

Allegedly, the manager refused and sent her a notice to vacate, attached to a news article about a death related to a pit bull, and threatened to evict her and to call animal control officers if she didn't remove the dog. She said she provided letters from two doctors, but the manager again denied her request. She said she removed the dog, but the manager filed to evict her for keeping a "potentially dangerous dog," and a judge ruled against her.

The resident said she made a second accommodation request with a letter from a veterinarian stating that the dog showed no sign of aggression. Allegedly, the manager again denied the request, stating "the problem is that she has chosen to get a pit bull" and that "choice of dog was completely unacceptable." A week

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later, she said a canine behaviorist evaluated the dog's temperament and found no sign of aggressiveness and that the dog exhibited very good social skills with people and another dog.

After filing fair housing complaints, the resident brought the dog back, but the manager repeatedly called animal control and tried to raise her rent and assess a pet deposit. Eventually, a court ordered her eviction. She appealed, but moved out and sued for discrimination and retaliation under fair housing law.

The court refused to dismiss the case, rejecting the community's claim that a request to keep a pit bull was not a reasonable accommodation because it was a direct threat to the safety of others. The mere fact that the dog was a mixed-breed pit bull wasn't enough, by itself, to show that the request to keep the dog as a support animal was unreasonable under HUD guidelines. And the resident presented evidence from her vet and the canine behaviorist that the specific animal in question didn't pose a direct threat to others, so further proceedings were needed to determine whether allowing her to keep the dog on the premises was a reasonable accommodation [Chavez v. Aber, August 2015].

In some cases, communities have policies prohibiting certain dog breeds because of restrictions in the community's liability insurance policy. In a 2006 memo, HUD officials specifically addressed insurance policy restrictions as a defense to refusing to grant reasonable accommodation requests involving a breed of dog that the owner's insurance carrier considers dangerous. If the community's insurer would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, then HUD will find that this imposes an undue financial and administrative burden on the housing provider, according to the memo. Nevertheless, the memo warned that investigators will check the owner's claim by verifying with the owner's carrier "and consider whether comparable insurance, without the restriction, is available on the market."

PRACTICAL POINTER: Listen to requests for any assistance animal, whether it's a dog or cat, or something more exotic like a snake or lizard. HUD says that any type of animal may be an assistance animal. Dogs are most common, but miniature horses, capuchin monkeys, ferrets, parrots, snakes, pigs, chickens, goats, cats, hamsters, and rabbits have all been identified as assistance animals, according to the Virginia Fair Housing Office.

✘ Don't Automatically Reject Request for More than One Assistance Animal

Don't automatically reject a request by a resident who says he needs more than one assistance animal. There's nothing in the law to prevent a resident from requesting a reasonable accommodation to keep multiple assistance animals. For example, the resident may say that he needs two or more animals because they perform different disability-related tasks or services—or because one or more provides emotional support to alleviate the effects of an existing disability.

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✘ Don't Answer Questions About Why Resident Has Animal, But Do Investigate Complaints

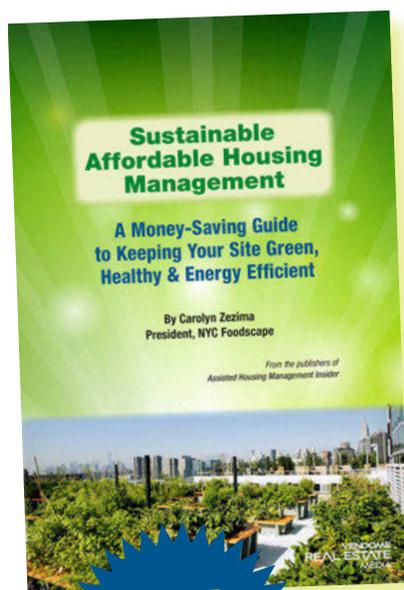
After granting an exception to your pet policies for an assistance animal, be prepared for questions—or complaints—from neighbors asking why they can't have a pet when you've allowed the resident to have one. It could come up if you have a no-pet policy or if a resident's assistance animal exceeds your limits on the size or type of animal allowed. And it's often a problem when it's an emotional support animal: If the resident doesn't have an obvious disability, then neighbors may ask why he's getting special treatment—or why you won't give them the same thing.

Be careful with how you respond to questions about assistance animals. Don't explain that the resident is disabled or that the animal isn't a pet but an assistance animal. Federal guidelines require information about reasonable accommodation requests to be kept confidential and not be shared with anyone except those who need it to evaluate the request. Instead of answering the question directly, you could offer a neutral response, for example, that you respect the privacy of all your residents—just as you wouldn't share information about the neighbor, you can't share information about other residents.

You may have to take a different tack if a neighbor complains about the animal's behavior. Take her complaint seriously—just don't take her word for it. It could simply be sour grapes from a neighbor who doesn't like it that the resident has a dog and claims that dog is barking all the time. Verify that it's really happening before taking any action against the resident. Tell the neighbor to let you know when she hears the dog barking so that you can send someone over to hear it too.

On the other hand, there may be a legitimate problem with an animal's behavior—particularly if several different neighbors are making complaints about the same problem. If you've verified that the animal is causing excessive noise—or that it's responsible for property damage in the unit or common areas, then you have the obligation to address problems caused by the animal. Before taking drastic action, however, fair housing experts advise discussing the problem with the resident to explore potential solutions to stop the offending conduct while effectively addressing his need for the assistance animal. ♦

Create & Implement Sustainability Plans



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- ◆ Get incentives for sustainability initiatives, including major energy-saving improvements and retrofits
- ◆ Improve the health of residents by:
 - Reducing their exposure to toxic paints, pesticides, cleaning products & other chemicals
 - Improving their access to healthy food
 - Creating a community garden
 - Implementing a no-smoking policy

**NEW
eBook!**

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