

Guidance: Disability Accommodations in Housing



*Related to Emotional
Support Animals*

Background

Housing discrimination is prohibited under the Maryland Fair Housing Act, Annotated Code of Maryland, State Government Article (“SGA”) Title 20, subtitle 7. Among other things, the Maryland Fair Housing Act requires housing providers to make reasonable accommodations to rules, policies, practices, or services when the accommodations are necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling. One potential reasonable accommodation is the presence of an emotional support animal in the residence.

Purpose

The purpose of this guidance¹ is to provide information on how the Maryland Commission on Civil Rights (“MCCR”; “Commission”) analyzes claims of housing discrimination arising from denials of disability accommodations involving emotional support animals. This guidance aims to inform tenants, housing providers, real estate professionals, and the public about how to navigate requests for disability accommodations involving animals, and the Commission’s analysis of the same.²

1. What is the difference between a service animal and an emotional support animal?

There are two main kinds of assistance animals: service animals and emotional support animals (“ESAs”). Service animals are individually trained to do work or perform tasks directly related to a disability. Examples of service animals include guide animals for individuals with vision-related disabilities, or dogs trained to detect the onset of seizures and help an individual with a seizure disorder remain safe during the seizure.

By contrast, ESAs provide individuals with disabilities emotional support, comfort, or companionship. ESAs can be any species or breed, and do not require any individualized training. **However, there must be a nexus between the individual’s disability and the emotional support provided**, as Maryland law requires that an accommodation be “necessary” for an individual with a disability to use and enjoy their dwelling. *See* Md. Code Ann., SGA § 20-706(4).

¹ The information contained herein is provided as a public service and must not be considered legal advice.

² This guidance is solely intended to provide stakeholders with general information related to the Commission’s treatment of accommodation requests for emotional support animals made under the Annotated Code of Maryland, State Government Article Title 20, subtitle 7. This guidance does not purport to provide information about any other federal or state law, including, but not limited to, the Americans with Disabilities Act, or Maryland law related to accommodations in employment or public accommodations. This guidance is intended to provide a broad overview of the topic only, and specific questions may require individualized legal analysis.

2. How can a housing provider verify that an animal is an ESA?

When a person requests the accommodation of an ESA, a housing provider can require that the requester supply documentation from a medical provider which attests that (1) the individual has a disability, and (2) that there is a therapeutic benefit conferred by the animal which ameliorates the symptoms or effects of the individual's disability. If a person declines to provide such documentation upon request, a housing provider's denial of the ESA request will likely be permissible. Items such as collars, vests, or tags intended to be worn by the animal in question, without more, will generally not be sufficient to demonstrate that an animal is an ESA.

3. Is documentation from the internet sufficient to show that a person requires an ESA?

Sometimes. The Commission is aware of the existence of companies which provide "rubber stamp" approval of essentially any animal as an ESA, and denial of a requested accommodation supported *only* by such documentation is generally reasonable. Housing providers are advised to verify the source of any ESA documentation to determine that it (1) was issued by a healthcare provider with a bona fide relationship with the person making the request; and (2) affirms that the ESA offers a legitimate therapeutic benefit related to the requester's disability. However, the fact that the documentation was generated over the internet or is the result of telemedicine does not inherently render the documentation unreliable.

4. Does a housing provider always have to accept an ESA?

No. If a given ESA would cause undue financial or administrative hardship, or if the accommodation would change the housing program or unit in some fundamental way, the requested accommodation will generally be unreasonable and may be limited, altered or denied. However, a blanket rejection of an ESA, without any individualized inquiry process, will very often be a violation of the law.

5. What constitutes an undue burden on a housing provider?

It depends. What constitutes an undue burden is a fact-specific question. When evaluating whether an accommodation request is reasonable, the anticipated burden of granting an individual's accommodation must be genuine and substantial when evaluated against the housing provider's resources. The supposed burden may not be hypothetical or subjective, and the possibility that multiple people might request the same or similar accommodation is not a basis for rejecting an individual reasonable accommodation request.

6. Can a housing provider charge an additional fee because a person requires an ESA?

No. Housing providers may not impose fees, deposits, or other financial charges due to the presence of an ESA, including any such fees imposed due to processing the request for accommodation. Even if a housing provider customarily charges fees or deposits for pets, such fees cannot be charged for ESAs.

7. If a housing provider rejects an ESA request as unreasonable, are they required to take any additional actions?

Yes. Even if a housing provider determines that granting the request to allow an ESA would constitute an undue hardship, the housing provider must still attempt to work with the requesting party to identify a solution which meets the needs of the person with the disability, without unreasonably burdening the housing provider. This process need not be successful in reaching a mutually agreeable solution, but a good faith attempt to engage in an interactive process must be made.

8. Can housing providers ban ESAs that are certain breeds or species of animals?

No. Housing providers must always conduct an individualized review of the requested accommodation. Rejection of an ESA based solely on the species or breed of the animal will generally be evidence of unlawful discrimination.

9. Can housing providers ask about the requester's disability?

Housing providers may not inquire into the diagnosis or severity of a disability. Nor can a housing provider require a person making an accommodation request disclosure of their medical records or undergo a medical examination. However, the housing provider may ask questions about the specific nature of the animal itself.

10. Can housing providers ask specific questions about the animal?

Yes. Housing providers are always advised to conduct an individualized inquiry into the specific animal that has been requested as an ESA, and this includes an inquiry into the specific characteristics, identity, and training of the animal at issue. Permissible questions include, but are not limited to, requests for information concerning: (1) if the animal is housetrained; (2) the size, weight, breed, and species of the animal; (3) if the animal can safely be around people and other animals; (4) if the animal has any known history of causing injury to property or people; (5) if the requesting individual is personally able to care for the animal's needs, such as exercise and hygiene; and (6) if the requesting individual is capable of physically controlling the animal in shared spaces.

11. Does a person need to make a request for an ESA at the time they submit the rental or lease application?

No. The request for an ESA can be made at any time, including after the requester has already been living in the housing unit.

12. Can a housing provider reject an ESA request if the animal is dangerous to others?

Yes. Where a specific animal poses a direct threat to the health and safety of others, the request for that animal to serve as an ESA could be unreasonable. However, a 'direct threat' must always be based on the individualized characteristics of the specific animal. Speculative or

generalized harm, or stereotypes about specific species or breeds cannot serve as evidence of a legitimate direct threat. In general, the permissible denial of an ESA accommodation due to the animal posing a ‘direct threat’ is rare.

13. Can a person request multiple ESAs?

Yes. While a request for multiple ESAs could potentially be unreasonable, there are circumstances where a person might require multiple ESAs or assistance animals, or where multiple people living together might each require a separate ESA. Requests for multiple ESAs are presumptively neither reasonable nor unreasonable; rather, each accommodation request should be evaluated on its merits.

14. Are housing providers responsible for property damage or injury caused by ESAs?

Generally, no. Maryland law provides that the owner of an animal will in most cases be liable for any injury to people or property caused by their animal, including ESAs. If an ESA causes damage to a property, a housing provider can properly charge for that damage or deduct it from a security deposit in accordance with the housing provider’s usual policy for damage. In so doing, a housing provider cannot treat the owner of an ESA differently from a non-disabled individual.

15. Can a housing provider deny an ESA because their insurance doesn’t typically cover animals?

Generally, no. Absent a specific showing of undue burden, the failure to supply insurance to a dwelling with an ESA, or the failure to rent to an individual with a disability due to a lack of insurance coverage applicable to animals, will generally be an improper denial of an accommodation request. The Commission’s position is that both insurers and housing providers have a duty to accommodate reasonable requests to have an ESA, even if the baseline insurance policy for the housing unit does not include pets.