



Emotional Support Animals

Reasonable Accommodation under Fair Housing Laws

Who is Subject to Fair Housing Laws?

- CalBRE Licensees/REALTORS®
- Property Managers
- Rental Owners
- Lenders
- Public Entities
- Businesses
- Any other person or entity working in the housing industry

Who is Protected from Discrimination?

Under California law, it is illegal to discriminate on the basis of:

A word cloud of protected categories under California law. The words are arranged in a roughly rectangular shape, with varying sizes and colors (dark blue, light blue, purple, and teal). The largest words are 'NATIONAL ORIGIN' and 'MARITAL STATUS'. Other prominent words include 'RACE', 'AGE', 'RELIGION', 'SEX', and 'GENDER'. Smaller words include 'DISABILITY (PHYSICAL OR MENTAL)', 'FAMILIAL STATUS', 'SOURCE OF INCOME', 'GENDER IDENTITY', 'GENETIC INFORMATION', 'SEXUAL ORIENTATION', 'GENDER EXPRESSION', 'GENDER', and 'ANCESTRY'.

DISABILITY (PHYSICAL OR MENTAL)
COLOR
RELIGION
AGE
FAMILIAL STATUS
SOURCE OF INCOME
GENDER IDENTITY
NATIONAL ORIGIN
RACE
GENETIC INFORMATION
SEXUAL ORIENTATION
MARITAL STATUS
GENDER EXPRESSION
SEX
GENDER
ANCESTRY

What Actions are Prohibited?

You may not discriminate by treating a member of a protected class unequally to others or refusing to make reasonable accommodations

Common prohibited discriminatory actions:

Denying sale or rental

Advertising a preference
or restriction based on a
protected status

Inquiring about a
protected status

Refusing to allow a
reasonable modification
to the property

Basis for Emotional Support Animals

Recognized under California law (as a subset of “assistance animals”)

Not specifically defined by statute or regulations

Established in case law - (Auburn Woods I Homeowner’s Association vs FEHC (2004) 121 CalApp.4th 1578)

“Service Animal” is different. Service animals are:

- Recognized under Federal Law
- Only dogs or miniature horses, and
- Must be specifically trained to perform a task for a disabled person

What is an Emotional Support Animal?



May be ANY type of animal



Does not have to be trained in any specific task



An Emotional Support Animal is NOT and may not be treated as a “pet”



Evaluated on a case-by-case basis



An accommodation is not required *per se* for every animal, **BUT** you must look at the facts and (if appropriate) inquire about disability and need



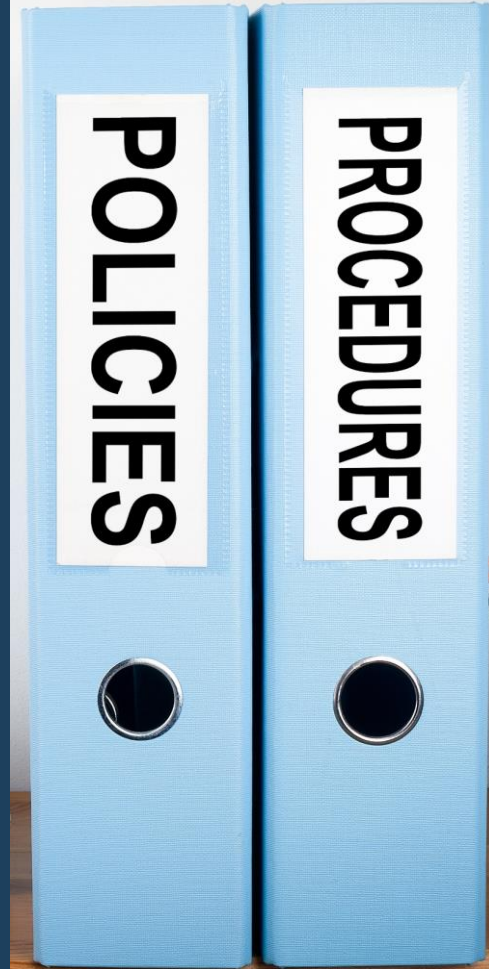
Practice Recommendations

- Have Written Policy
- Follow Written Policy
- Follow Reasonableness Standard
- Obtain Documentation



Written Policy

- Establish written policy and set of procedures for handling reasonable accommodation requests
- Requests should be in writing (or confirmed with written acknowledgement following verbal conversation)
- Obtain documentation
- Respond in a timely and respectful manner
- Keep information confidential



Documentation May be Provided by:

Doctors or medical professionals



Peer support groups (like AA)



Non-medical service agency



Any reliable 3rd party in position to know about individual's disability



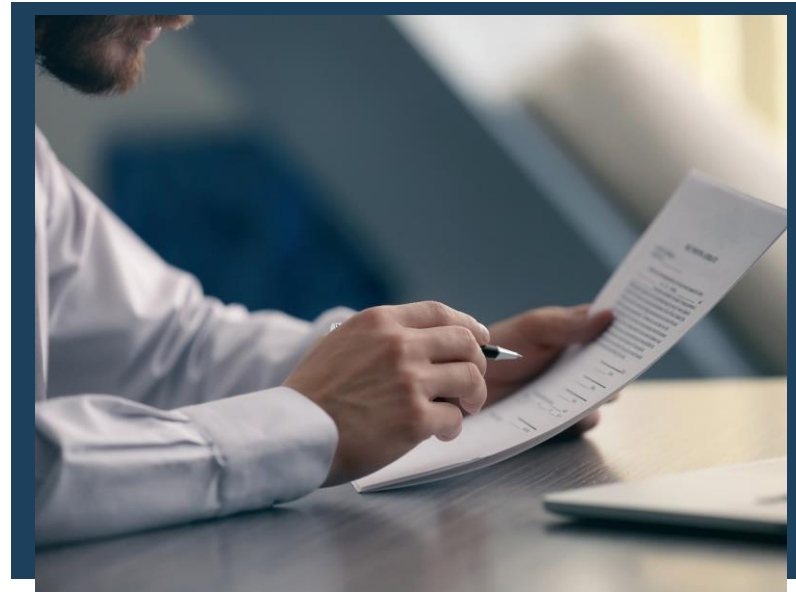
Documentation Requirements



- The person has a disability under California law and
- The animal is necessary to allow them “an equal opportunity to use and enjoy the dwelling”

DO NOT

- Contact provider to inquire further
- Reject without consulting with an attorney



What is “Reasonable” Accommodation?

- Inconvenience doesn't make it unreasonable

EXAMPLE

No undue burden to request zoning waiver, seek alternate insurance policy, or attempt a creative solution if owner or neighbor has a competing disability (such as an allergy)

- Rejection of accommodation may be reasonable if the **SPECIFIC ANIMAL** (*not* just the type or breed) has been known to cause either a direct threat to the health and safety of others or substantial physical damage to the property of others

During Tenancy: Animal Disturbance

- Use C.A.R. Sample Letter, Tenant Failure to Comply with Lease/Rental Agreement (TFCL)
- Use C.A.R. Form, Notice to Perform Covenant Cure or Quit (PCQ)
- C.A.R. Residential Lease or Month to Month Rental Agreement (LR), Tenant (including via animals) shall not:
 - Disturb, annoy, endanger or interfere with other tenants or neighbors; or
 - Violate any law or ordinance; or
 - Commit waste or nuisance

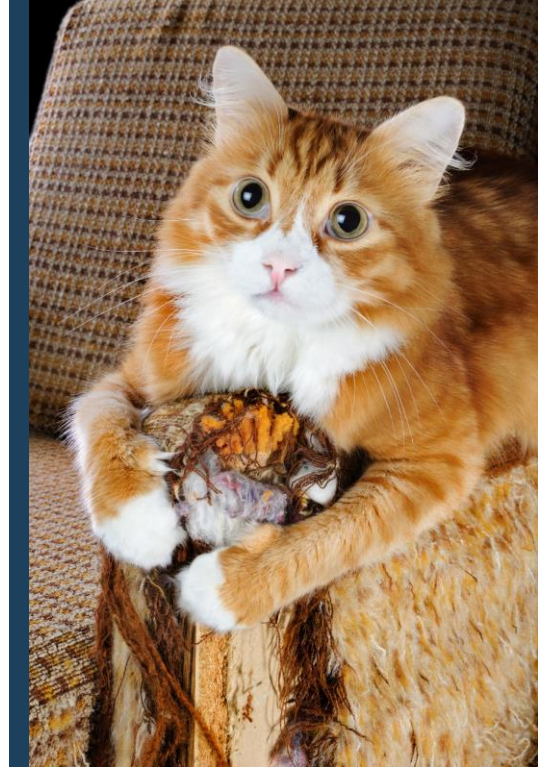


EXAMPLE

Barking dog day and night may be a violation of local noise ordinance and disturb neighbors

During Tenancy: Animal Damage

- Tenant is still liable for any damage caused by the animal beyond normal wear and tear
- Deduct from security deposit
- Use C.A.R. Forms
 - Notice of Right to Inspection of Property Prior to Termination of Tenancy (NRI);
 - Pre-Move Out Inspection (PMOI); and
- Use C.A.R. Sample Letter, Security Deposit Return (SDR)



DO'S AND DON'TS

DO

- Inform requester you are a fair housing provider
- Treat requester in fair, respectful and prompt manner
- Keep information confidential
- Have an interactive/cooperative process
- Use caution when denying accommodations

Don't

- Charge extra pet deposit or rent
- Inquire further into nature of disability after being provided written verification
- Treat disabled person in any inferior way
- Advertise “No Pet(s)”

Potential Consequences for Discrimination

- Victims may easily and at no cost file a complaint and/or lawsuit
- Those who illegally discriminate are subject to:
 - Civil fines
 - Compensatory damages
 - Punitive damages
 - Attorney fees
 - Discipline by CalBRE and/or AOR



Remember, legally, you must treat people equally and fairly!

Additional Resources



Property Management FAQ

<https://www.car.org/riskmanagement/qa/landlord-tenant-folder/property-management-faq>



Pets and Service and Support Animals Legal Q&A

<https://www.car.org/en/riskmanagement/qa/landlord-tenant-folder/PetsAnimals>



Draft FEHA Fair Housing Regulations

<https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2018/03/Attach-D-TxtPropFairHouseReg.pdf>



Quick Guide Emotional Support Animals



Video Emotional Support Animals

