

From Apartment Manager, April 2002

Q: We have just under a hundred units in our no-pet complex. In the last six months we've had twelve tenants give us notes from doctors saying we have to allow them to have pets in their units. When the law changed, requiring us to allow assistance animals, I expected a few, but now I'm feeling inundated. And several tenants, who don't have pets, have been inquiring: how come we're allowing some residents to have pets and not others. Help!

A: This is a growing problem. The law allows aid animals, but at the same time allows landlords to prohibit pets. It's reasonably easy for you to differentiate between the two, but it isn't for your residents. So when they complain, you have a problem. And, if you're not careful, you can be inundated by aid animals masquerading as pets. What to do?

The easy part is acknowledging that you must accept aid animals. But you don't have to roll over and agree to everything. For instance, I have yet to hear a persuasive case being made that a pit viper can be an aid animal.

Aid animals can be divided into two categories. Service or assistance animals are trained to assist a handicapped person in specific ways. A seeing eye dog is the prototypical example, but other animals can help a person with walking, hearing, balance, self-care, communication, transportation, and the like. Companion animals have no specific training but provide emotional support or companionship for someone with a mental disability. The distinctions won't affect how you deal with an aid animal but are useful to bear in mind.

The most important practice you can adopt is a process for approval of aid animals. While you might have a no-pet policy, under fair housing law you have to be willing to make reasonable accommodations in your rules to afford someone with a disability the opportunity to use and enjoy your housing. That can be anything from a specific type of smoke alarm to an assigned parking space to an aid animal. Oregon Rental Housing Association (in Portland, that's Oregon Apartment Association) and Multifamily Housing Council have specific forms that spell out the request for such an accommodation. Metro doesn't have such a form at this time. The form has the tenant or applicant (1) stating they have a disability, (2) requesting a specific accommodation (in this case, an aid animal), and (3) providing the name and address of a "qualified person" who will verify the existence of a disability, the need for the accommodation, and a tie between the accommodation and the disability.

When someone requests an aid animal, you should say you have a process and have them complete such a form. You then forward the form the "qualified person" for that certification. Using such a form will avoid you having to deal with notes scrawled on prescription pads. Doctors are notoriously casual about scribbling all kinds of advice on prescription pads. The form has them make specific statements and tells them what the law is. They aren't so casual about signing this type of form.

When you get the form, look at who the "qualified person" is. If it's Grandma or the kid's soccer coach or the tenant's masseuse, that doesn't cut it. Typically, it's a doctor, social worker, nurse, mental health worker, or the like. It's supposed to be someone who has specific knowledge of the tenant's disability and training in the pertinent field. It is legitimate to question the credentials of the listed person and the relationship of the qualified individual to the tenant.

You should also look at the requested accommodation. On several occasions, when a tenant has requested a dog as a companion animal, I've successfully suggested a cat might work better.

They're easier to care for. After all, while you're required to go along with an animal, caring for the animal will be the tenant's responsibility; pointing out what that entails (like cleaning up their messes) can get the tenant to think more carefully about what the actual need really is. Here's where the difference between types of aid animals counts. Service animals have specific training and you probably won't be able to affect the type of animal requested. But with companion animals, often many different types of animals can fulfill the role of companionship so some negotiation or suggesting on your part can benefit both of you.

Besides developing a process for handling aid animal requests, you need to develop rules for managing such animals. Your complex is large enough and you have enough aid animals that you should develop written rules. Your rules can't be overly restrictive, but you have a responsibility to protect the integrity of the property and to see that all tenants are able to enjoy the housing they pay for.

Such rules can be simple. The subjects to cover are control of the animal, damage to property, cleaning up after the animal, and disturbing other tenants. Again, you can't be overly restrictive. For example, you can't require the animal to be on a leash at all times when outside the unit, but you can insist that the animal be under the immediate control of the tenant or other responsible person. You can't require that a dog never bark, but you can make continuous barking a rules violation. Finally, you should inspect a month or so after the animal moves in to look for property damage. If there is any, be prompt about charging for it; it might make the tenant more responsible.

This is a field of evolving case law, so be alert to how it changes. And abuses occur: like when a tenant gets a pet, gets attached to it, and when you point out the no-pet rule claims a disability and finds a case worker who will certify. Since the penalties for saying no are so great, we have little choice but to put up with some of it.

There's no simple answer to how best to deal with other tenants who inquire about the presence of what appear to be pets on the property. Disclosing to one tenant that another is disabled is a violation of fair housing law, so you can't simply say that Suzie's cat isn't a pet, it's a companion animal. That says Suzie is disabled. What I say is that, yes, this is a no-pet property but under certain circumstances we make exceptions to our rules and all tenants are encouraged to read the rules to see if they qualify for an exception. My rules then have a paragraph that spells out that we make reasonable accommodations in our rules to enable someone who is handicapped... The tenant may then infer that Suzie is disabled, but I didn't disclose it.

My usual reminder: each circumstance is unique, so your case will be different. Before you act, be certain about what you do. Don't rely solely on this general advice; read the law and consult others as appropriate.