

## Reasonable Accommodations And "Comfort Pets" - What Should You Do When You Receive The Request?

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A comfort pet is an animal that provides a medical benefit to an individual who has a disability, different than the benefits that a service animal, such as a seeing eye dog, provides.

Many Co-ops and Condominiums have house rules prohibiting pets. However, federal, state and New York City laws require a housing provider to permit a person, who demonstrates a medical necessity, to harbor a comfort pet as a "reasonable accommodation."

A reasonable accommodation is a *change to a present house rule, practice, policy or service* necessary to allow a person to enjoy the benefits of the housing, which he/she would otherwise be unable to do.

A comfort pet may be statutorily required even when a resident acknowledged a "no-pet" house rule before moving in or even if he/she initially lied about the pet's presence (e.g.: the dog is visiting).

The existing laws prohibit discrimination in housing based upon many factors, including disability, and require that reasonable accommodations be made in order to afford an individual with a disability an equal opportunity to use and enjoy a dwelling.

In order to qualify for the reasonable accommodation, the person requesting a comfort pet must have a protected disability. For example, allergies are not a disability. Similarly, current illegal drug use is not a protected disability under the various laws. If there is no protected disability, there is no requirement to permit the pet.

Next, there must be a nexus (relationship) between the need for the accommodation and the disability. A health care professional must indicate that the pet is medically necessary for the individual's disability.

If the need for a comfort pet is not obvious, information may be requested which: (i) evidences the person is disabled; (ii) describes the needed accommodation; and (iii) evidences the nexus between the requested accommodation and the functional limitations imposed by the disability. The information should come from a licensed health care professional who can provide the required nexus. "Licensed health care professionals" (including doctors, psychiatrists, psychologists, or social workers) are persons licensed by a public regulatory authority to provide medical care, therapy or counseling to individuals with mental or emotional disabilities.

Information obtained in connection with determining whether an accommodation is reasonable should be kept confidential. In most instances, it is not advisable to "second guess" a licensed health care professional if he/she properly describes the nexus.

You cannot charge a fee for a reasonable accommodation. However, reasonable restrictions can be imposed, such as requiring that dogs must not bark excessively, harass other residents or cause damage to the building. Requests for animals with vicious propensities, which will increase the rate of insurance for the housing provider, can be rejected. Accommodations can be subsequently rescinded if the animal attacks other residents.

**Time is of the Essence!** - Requests for reasonable accommodations must be acted on expeditiously! Failure to timely act can be deemed a denial of the request. Dealing with an accommodation must be an interactive process. In that regard, a housing provider is required to continue to work with the requesting individual until a resolution is reached or the requestor abandons the process.

As soon as an aggrieved person appears to threaten a claim of discrimination, the housing provider must notify its insurance carrier.

If a comfort pet request is denied, an aggrieved person may file a complaint with HUD, the NYS Division of Human Rights ("DHR") or the NYC Commission on Human Rights ("CHR") (or may go straight to federal or state court). Usually, an aggrieved person will go to HUD, the DHR or the CHR as there is no cost to the complainant.

Ultimately, HUD, DHR or CHR renders a finding of "no probable cause" or "probable cause" to believe that an act of discrimination occurred. Depending on the agency, the parties may elect to go to court or opt for an agency administrative hearing.

If housing providers and/or Board members are found to have violated the laws, they can be assessed compensatory, punitive and/or civil damages. If a court or agency determines that there was discrimination, and even if the housing provider is successful in defending the claim, there are legal costs and potential insurance premium increases that are likely to occur as a result of an impending legal dispute.

While many Boards do not like permitting comfort pets, extreme caution should be exercised when deciding to deny such request, as the proof required in support is fairly small and the damages and/or legal costs for not granting such request can be large.

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