

# Assistance Animals in Housing

## Current Challenges

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# Agenda

- Overview of the fair housing laws protecting the right to reside with an assistance animal
- Current Challenges:
  - Pet screening
  - Pet addendums
  - AB 468

# Obligations Under the Fair Housing Act and Fair Employment and Housing Act

- Both the Fair Housing Act (FHA) and California Fair Employment and Housing Act (FEHA) make it unlawful for a housing provider to refuse to make a reasonable accommodation that a person with a disability may need in order to have equal opportunity to enjoy and use a dwelling.
- One common request housing providers receive is for a reasonable accommodation to providers' pet or no animal policies so that individuals with disabilities are permitted to use assistance animals in housing, including public and common use areas.

42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204

2 CCR § 12185 (b)

# What is an Assistance Animal?

## Fair Housing Act:

- An assistance animal is an animal that **works, provides assistance, or performs tasks** for the benefit of a person with a disability (service animal), or that **provides emotional support** that alleviates one or more identified effects of a person's disability (support animal). 24 C.F.R. § 5.303(a)

## Fair Employment & Housing Act:

- An animal that **works, provides assistance, or performs tasks** for the benefit of an individual with a disability, or **provides emotional, cognitive, or similar support** that alleviates one or more identified symptoms or effects of an individual's disability. 2 CCR § 12005(d)(1)

\*Assistance animals are **not pets**.

## Is Special Training or Certification Required?

- Special training is not required. **However**, there must be a nexus, between the individual's disability and the assistance the animal provides.
- There is no legal requirement that an animal must be "registered" or "certified."
- Businesses that claim to register or certify assistance animals are charging for a service that is unnecessary to establish the necessity of a reasonable accommodation.



# What Kind of Questions Can a Housing Provider Ask?

## Service Animal:

The only permissible questions are:

- “Are you an individual with a disability?” and
- “What is the disability-related task the animal has been trained to perform?”

Can’t ask the individual with a disability to demonstrate the task

Reliable disability-related information can be requested, if the disability and/or the disability-related need for the animal are not apparent.

## Support Animal:

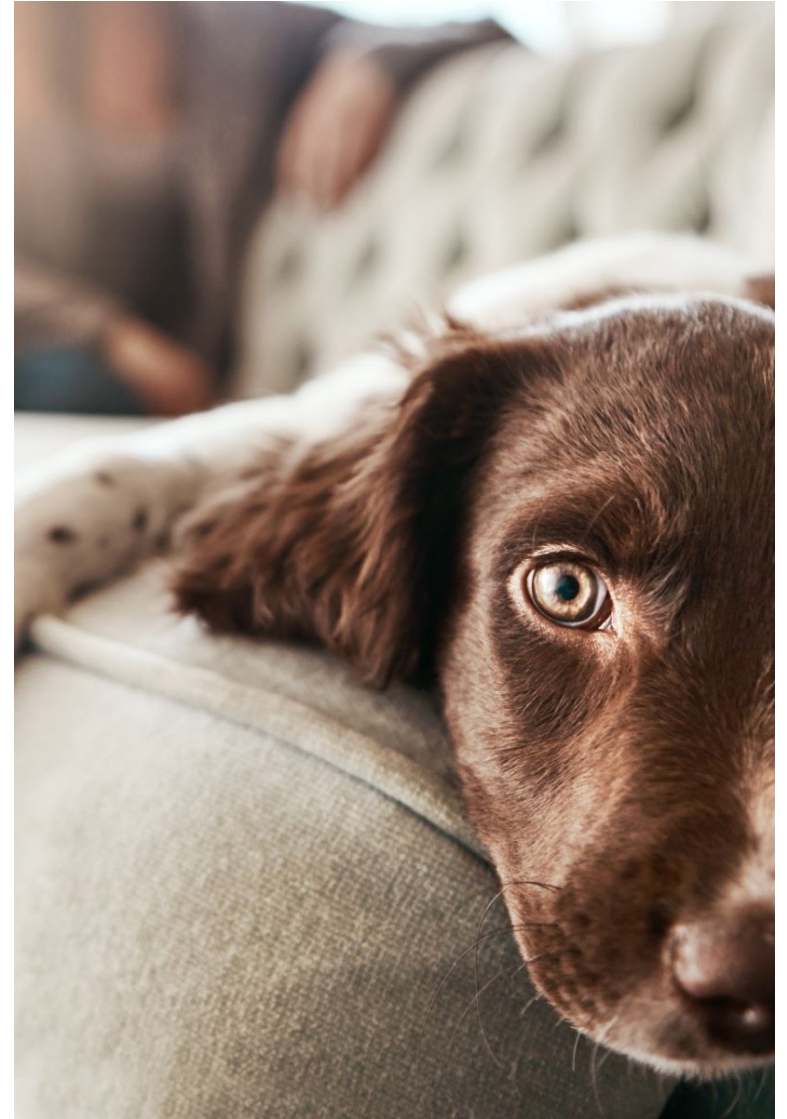
Follow general process for requests for reasonable accommodations

- Disability?
- Necessary? Reasonable? Nexus?
- Note: Animal vests, identification cards, or certificates are not in and of themselves documentation of either disability or the need for a reasonable accommodation

2 CCR § 12178

# Pet Deposits

- Tenant can't be required to pay a pet fee, additional rent, or other additional fee, including additional security deposit or liability insurance.
- A housing provider may not charge a deposit, fee, or surcharge for an assistance animal.
- A housing provider, may charge a tenant for damage an assistance animal causes (above wear and tear) if it is the provider's usual practice.



# Pet Rules or Restrictions



Pet rules do not apply to service animals and support animals.



Housing providers may not limit the breed or size of a dog used as a service animal or support animal.



Housing providers can limit access based on specific issues with the animal's conduct – *i.e.* direct threat or a fundamental alteration.



- An individual may have more than one assistance animal.
- Each animal must be individually determined to meet the requirements for an assistance animal.
- The cumulative impact of having multiple animals in the same dwelling unit may be considered when assessing undue burden or fundamental alteration.

## Number of Assistance Animals

## Interactive Process - FHA

- Before denying a reasonable accommodation request due to lack of information confirming an individual's disability or disability-related need for an animal, the housing provider is encouraged to engage in a good-faith dialogue
  - *Howard v. HMK Holdings, LLC*, 988 F.3d 1185 (9<sup>th</sup> Cir. 2021) - no "standalone" liability
  - *Rodriguez v. Morgan*, No. CV 09-8939-GW CWX, 2012 WL 253867 (C.D. Cal. Jan. 26, 2012) - failure to engage in an interactive process can be considered
  - *HUD / DOJ Joint Statement* – housing provider "should" use interactive process

# Interactive Process: FEHA

- Housing provider must engage with the requestor or their representative.
- Purpose is to exchange information to identify, evaluate, and implement reasonable accommodations / modifications.
- May not insist on specific types of evidence. Medical exam cannot be required.
- If housing provider believes the request cannot be granted, the provider must engage in the interactive process to determine if an alternative is feasible.



## Assistance Dog Exclusions

- Allowing the animal would impose an **undue financial or administrative burden** or would **fundamentally alter** the nature of the housing program or services;
- The specific animal in question poses a **direct threat** to the health and safety of others that cannot be reduced or eliminated by a reasonable accommodation; or
- The specific animal would cause **substantial physical damage** to the property of others that cannot be reduced or eliminated by a reasonable accommodation.

## Undue financial or administrative burden:

- *Factors* : cost, benefit to tenant, financial resources of the provider, availability of equally effective less expensive alternative.
- *Note*: Some cost or financial burden on provider is to be expected.

## Fundamental Alteration:

- Does the request alter the essential nature of the operations?

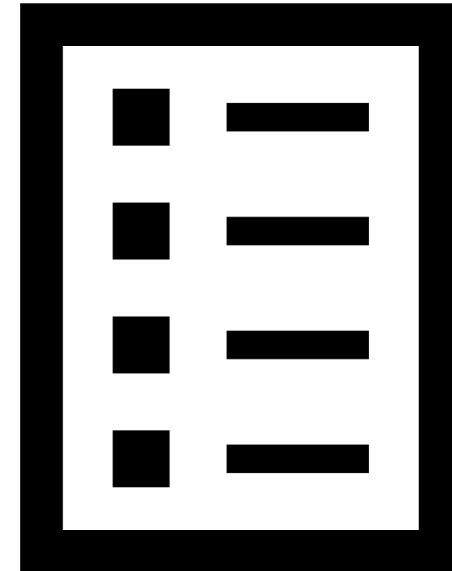
## Direct Threat

- An assistance animal need not be allowed if the animal constitutes a **direct threat** to the health or safety of others (*i.e.*, a significant risk of bodily harm) or would cause substantial physical damage to the property of others, and that harm cannot be sufficiently mitigated or eliminated by a reasonable accommodation.

# Direct Treat: Factors Considered

The assessment of whether an assistance animal poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others must consider:

- The nature, duration, and severity of the risk;
- The likelihood the threat will occur;
- Whether there are any reasonable accommodations that will sufficiently mitigate or eliminate the direct threat.



## Direct Threat: Individualized Assessment Required



A determination that an assistance animal poses a direct threat must be based on an **individualized assessment**.



The assessment must rely on **objective evidence** about the **specific animal's actual conduct**.



The determination cannot be made on evidence that is so old it is **not credible or reliable**, or on **mere speculation or fear**.

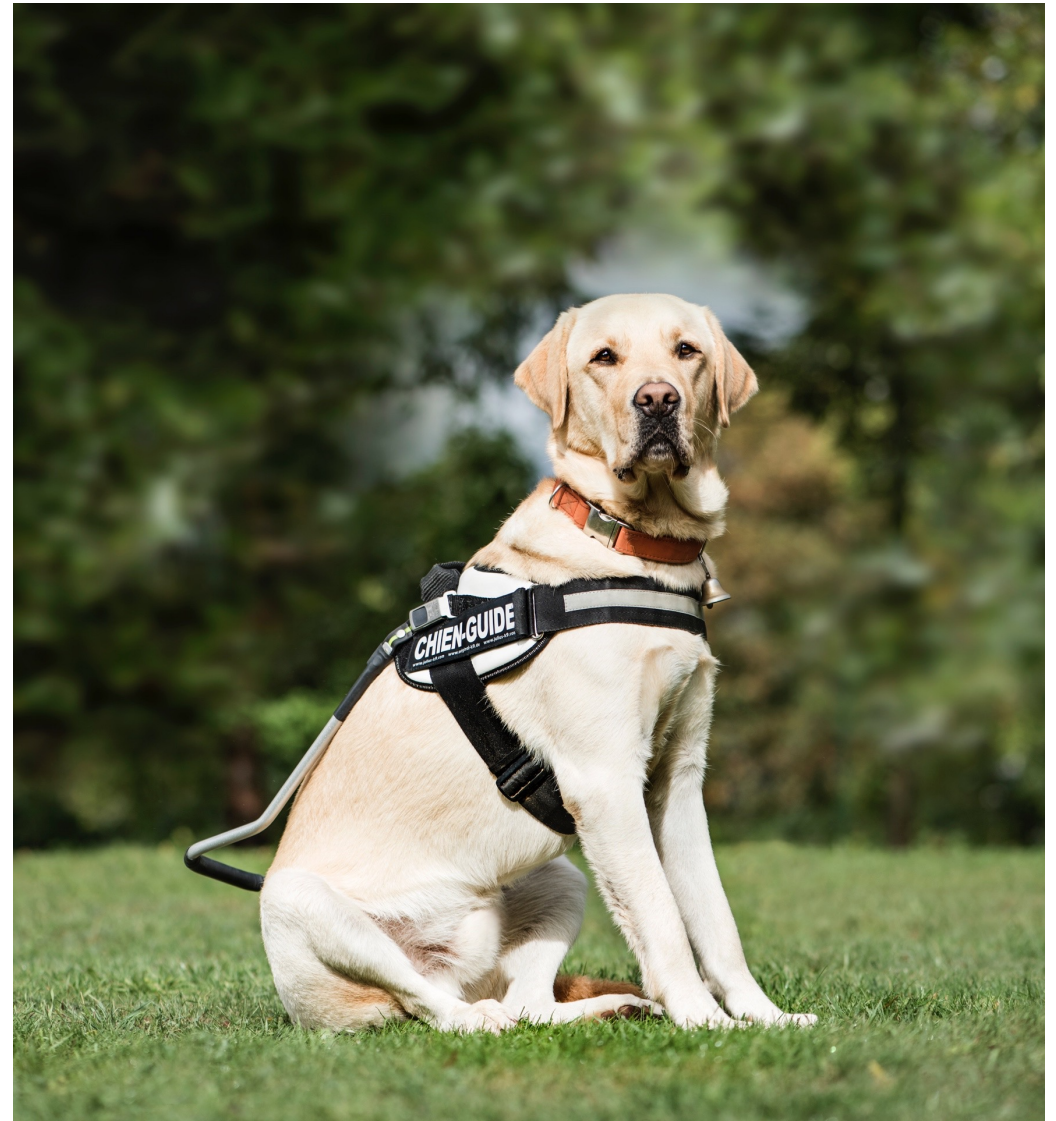




## Assistance Animals: Where Are They Allowed?

Assistance animals are allowed in all areas that tenants are allowed, unless it would create an undue burden or fundamentally alter the provider's services to provide such access.

# Current Challenges



# Pet Screening

What is pet screening?

- A background check on a tenant's pet dog, cat, or other animal.
- A way for landlords to get information about a prospective tenant's pet prior to approving their rental application or prior to an existing tenant getting a new pet.

## What Kinds of Information Is Sought Through Pet Screening?

- The pet's breed, size, weight, gender, and age
- How long the tenant has owned the pet
- Whether the pet is housebroken
- The amount of time the pet will be home alone every day
- The pet's medical history, including vaccinations, health issues, and the name of the pet's veterinarian
- A history of the pet's behavioral problems such as noise complaints, aggression, or biting
- References from other landlords

# How and When Does Pet Screening Happen?

- Many landlords do pet screening themselves by asking tenants questions during the application process or by having tenants fill out pet application forms.
- Common now for landlords to use a third-party pet screening company to do the screening for them.
- Tenants are instructed to create an online profile with the screening company and answer a number of questions before their pet will be approved.

## Can a Landlord Require Pet Screening?

- Landlords cannot require pet screening for assistance animals. People with disabilities who use assistance animals can live with those animals as a “reasonable accommodation” for their disabilities.
- Assistance animals are not pets and are not subject to the same rules and requirements as ordinary pets. Requiring pet screening for assistance animals violates fair housing law.

## How does requiring pet screening for assistance animals violate fair housing law? (1/3)

- Reasonable accommodations cannot be conditioned on the execution of additional documents.
  - See 24 CFR § 100.65(b)(1) and (b)(6).
- Requests for reasonable accommodations need not be made in a particular manner.
  - 2 CCR § 12176(f)(3)
  - *Book v. Hunter*, No. 1:12-CV-00404-CL, 2013 WL 1193865, at \*4 (D. Or. Mar. 21, 2013)
  - HUD/DOJ Joint Statement on Reasonable Accommodations at Questions 12, 13.

## How does requiring pet screening for assistance animals violate fair housing law? (2/3)

- Sometimes pet screening companies require that tenants agree to conditions and terms like a waiver of liability or mandatory arbitration.
- Under fair housing law, a housing provider cannot condition approval of a reasonable accommodation on an agreement to special terms or conditions.
  - See 24 CFR § 100.65(b)(1) , (b)(4), and (b)(6)



## How does requiring pet screening for assistance animals violate fair housing law? (3/3)

- Pet screening companies often ask tenants for information that is not necessary to process a request for an assistance animal.
- They may ask for the tenant's specific diagnosis or for unnecessary medical records.
- They may ask for the animal's breed or size, or for photos, vaccination records and microchip information.
- None of this information is required to process a reasonable accommodation request. In fact, asking for some of this information is unlawful and/or inconsistent with HUD / DOJ Guidance.

# What Can I Do if I'm Asked to Complete Pet Screening?

- Explain to the landlord that the animal is an assistance animal and cannot be subjected to pet screening
- Share Resources:
  - HUD FHEO Notice: Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act  
<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>
  - HUD/DOJ Joint Statement on Reasonable Accommodations  
<https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>
  - CRD - Emotional Support Animals and Fair Housing Law  
[https://www.dfeh.ca.gov/wpcontent/uploads/sites/32/2022/04/EmotionalSupportAnimalsandFairHousingLawFAQ\\_ENG.pdf](https://www.dfeh.ca.gov/wpcontent/uploads/sites/32/2022/04/EmotionalSupportAnimalsandFairHousingLawFAQ_ENG.pdf)
- File a complaint with CRD  
<https://calcivilrights.ca.gov/complaintprocess/>

# Pet Addendums

- California law permits housing providers to establish terms in a lease or rental agreement “that reasonably regulate the presence of guide dogs, signal dogs, or service dogs on the premises of a housing provider”. Cal. Civ. Code § 54.1 (b)(6)(B). Note: Disabled Persons Act
- Arguably, this state law provision is preempted by the Fair Housing Act, which prohibits reasonable accommodations from being conditioned on execution of additional documents and/or agreement to additional terms and conditions.

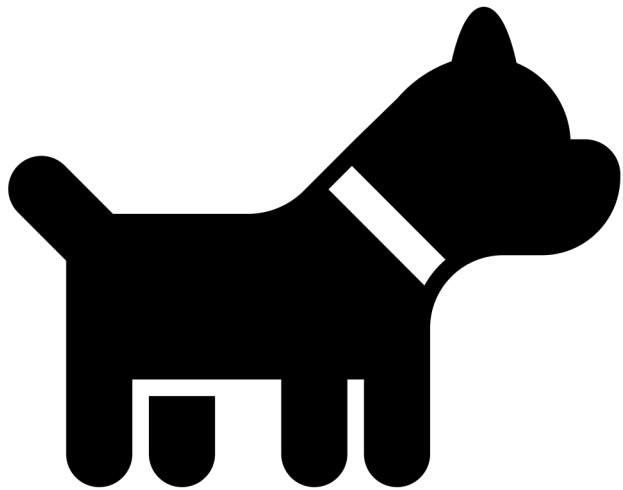
## “Reasonable” Conditions

Reasonable conditions may be imposed on the use of an assistance animal. *E.g.* restrictions on waste disposal and nuisance behavior.

Conditions must not interfere with the normal performance of the animal's duties.

- EXAMPLE: a leash requirement may interfere with the ability of a guide dog, signal dog, or service dog to assist an individual, in which case the animal may be under voice control or otherwise responsive.
- EXAMPLE: a “no noise” requirement may interfere with a dog's job of barking to alert a blind individual to a danger or someone at the door, but incessant barking all night long or when the individual is not at home may violate reasonable restrictions relating to nuisance.

2 CCR § 12185(d)(6)



## Handler Responsibilities

- The person with the disability is responsible for feeding, maintaining, providing veterinary care, and controlling his or her assistance animal.
- The individual may do this on his or her own or with the assistance of family, friends, volunteers, or service providers.
- These responsibilities exist regardless of lease terms

## Problems with Pet Addendums

- Often subject assistance dog users to terms and conditions applied to tenants with pets.
- Often contain unreasonable, unwarranted, and objectionable terms
- May waive rights, including due process and notice rights.

**COMFORT/SERVICE ANIMAL AGREEMENT**  
(ATTACH PHOTO OF ASSISTANCE ANIMAL)

Tenant Name: \_\_\_\_\_ Date: \_\_\_\_\_

Property Address: \_\_\_\_\_

OWNER/AGENT has granted the above named tenant's request for an aid/assistance/companion animal. Tenant understands there is no additional security deposit required but agrees to the following:

1. Only the following described comfort/service animal will reside in the unit:  
\_\_\_\_\_
2. The comfort/service animal must be properly licensed and have the shots/vaccinations required by statute or regulation at all times.
3. No comfort/service animal with a history of aggressive, threatening or violent behavior will be allowed.
4. The comfort/service animal will not be allowed out of my unit except when under my (or, if applicable, my care provider's) direct control and authority.
5. The comfort/service animal will not be chained or tied in any way to the exterior of the building.
6. The comfort/service animal will not be allowed to use any part of the building for depositing waste. Should this occur accidentally, tenant will immediately pick up the waste.
7. The comfort/service animal will not be allowed to make excessive noise or engage in threatening conduct which might disturb the other residents.
8. Any animal waste that may accumulate inside a tray inside the unit will be disposed of properly and promptly.
9. Tenant agrees to immediately notify the Owner/Agent of any personal injury or property damage caused by the animal and further agrees that any damages attributed to the comfort/service animal will be paid promptly by the tenant.
10. Any change of comfort/service animal will require a new agreement.
11. Tenant or any guest or invitee of tenant shall indemnify and hold Owner/Agent, and its employees, harmless from and against any actions, suits, claims and demands, including legal fees, costs and expenses, arising from damage or injury to any person or property of others by any comfort/service animal.
12. Tenant agrees not to leave the animal unattended for more than 24 hours. In the event that the animal is left unattended for more than 24 hours, the landlord may enter the premises of the Tenant, remove such animal and turn it over to the shelter or other appropriate authorities.
13. This agreement shall become an addendum to the original lease agreement between tenant and owner/agent.

By signing below, the above mentioned tenant certifies that the comfort/service animal has no history of aggressive, threatening or violent behavior and agrees to the above provisions. Tenant understands that permission to keep the comfort/service on the premises can be revoked if there is a failure to comply with the rules and regulations above or if tenant permits support animal to become a nuisance. Upon revocation of this notice of this Agreement, the tenant must permanently remove the animal from the premises within seven (7) days from the date of the notice. Failure to do so may result in termination of the lease.

Tenant: \_\_\_\_\_ Date: \_\_\_\_\_

Owner/Agent: \_\_\_\_\_ Date: \_\_\_\_\_



# Service Animal Agreement

Residents/Pet Owner \_\_\_\_\_ Pet Age/Name \_\_\_\_\_ Full Address \_\_\_\_\_

Type Breed \_\_\_\_\_

Pet permit #: \_\_\_\_\_

<input type="checkbox"/> Spay/Neuter and Vet Authorization	<input type="checkbox"/> Attached Photo
<input type="checkbox"/> DRs Note Attached	<input type="checkbox"/> Reasonable Acc. Form

Landlord's agreement is conditioned upon all of the following terms:

1. (int. \_\_\_\_\_) **Conditional Authorization for Service Animal:** Residents are hereby authorized to keep a service animal on the premises, subject to the terms of this agreement. Authorization may be terminated if a resident's right of occupancy is lawfully terminated or if any terms of this agreement are violated in any way by resident or resident's family, guest or invitee.
2. (int. \_\_\_\_\_) Residents agree that the service animal will not disturb the rights, comforts, and convenience of other residents. This applies whether the pet is inside or outside.
3. (int. \_\_\_\_\_) **No limit on Liability:** There is no limit on resident's liability for property damage, cleaning, deodorization, defleaing, replacements and or personal injuries set forth below. Residents shall be liable for the entire amount of all damages caused by such service animal. This applies to carpets, doors, walls, drapes, screens, furniture, appliances, landscaping and any other part of the rental premises. If such items cannot be satisfactorily cleaned or repaired residents must pay for complete replacement by owner. Payment for damages, repairs, cleaning replacements etc., shall be due immediately upon demand.
4. (int. \_\_\_\_\_) Residents shall be strictly liable for the entire amount of injury to any person or their property when caused by residents' service animal. Resident shall indemnify owner of all cost of litigation and attorney's fees resulting from such injury.
5. (int. \_\_\_\_\_) **All service animals are to be kenneled when the Resident is away from their home.** Kenneled in the means of the pet not being allowed to roam freely through the home while the resident is away. Pet may not be kenneled outside or left outside unattended. If the service animal is not kenneled, the resident will be charged a \$100.00 fine per occurrence. Owner or Owner's Representatives will not be held liable for the service animal exiting the home.
6. (int. \_\_\_\_\_) Residents shall not permit the service animal in other apartments, laundry rooms, offices, clubrooms or recreational facilities. **When the service animal is outside of the apartment, it shall be kept on a leash AND under the residents' supervision at all times.** Owner or owner's representative shall have the right to pick up loose animals and/or report them to the proper authorities. Owner may impose reasonable charges for picking up and/or keeping loose animals.
7. (int. \_\_\_\_\_) **Service animal must be house broken.** Tenants are responsible for keeping all areas where pets are housed clean, safe and free of parasite, **including fleas.** Dog owners must immediately pick up and dispose of all dog waste promptly and properly, both inside and outside the premises. A waste removal fee of \$30 per occurrence will be assessed for failure to comply with pet rules on waste removal.
8. (int. \_\_\_\_\_) **No service animal is permitted unless it has been spayed or neutered.**
9. (int. \_\_\_\_\_) Only the above described service animal is authorized to be kept in the resident's home. No substitutions are allowed. No other pets or animals shall be permitted.
10. (int. \_\_\_\_\_) Upon move out of residents, the carpet will be professionally deodorized, and defleaed for the protection of future residents. **Such work and any other extra shampoo treatment will be arranged by the owner and paid for by the resident.**
11. (int. \_\_\_\_\_) **Inspection:** At any time with 48 hours written notice of entry, owner will conduct inspections to insure that occupants are following the rules outlined in the Service Animal Agreement.
12. (int. \_\_\_\_\_) **Violation of Rules:** If, in Owner's sole judgment, any rule or provision of this Service Animal Agreement is violated by Resident(s) or their guests, Resident(s) shall immediately and permanently remove the service animal from the Premises upon 10 days' written notice from Owner. If the resident refuses to remove the animal, eviction procedures will begin at owner's option and at tenant's expense.
13. (int. \_\_\_\_\_) **Other Remedies:** This Service Animal Agreement is an Addendum to the Rental/Lease Agreement between Owner and Resident(s). If any rule or provision of this Service Animal Agreement is violated, Owner shall, in addition to the foregoing, have all rights and remedies set forth in the Rental/Lease Agreement for violations thereof, including, but not limited to, eviction, damages and attorneys' fees.

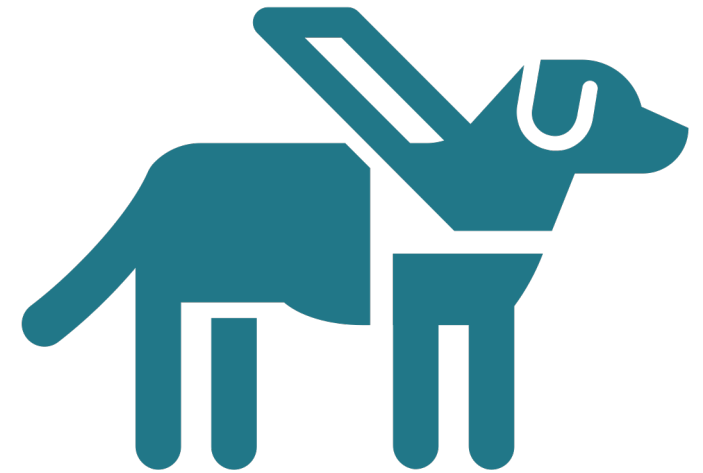
**Additional Rules:** Owner shall have the right to make reasonable changes and additions to the service animal rules if in writing and distributed to all residents who are permitted to have pets or service animals.

Resident: \_\_\_\_\_ Date: \_\_\_\_\_ Resident: \_\_\_\_\_ Date: \_\_\_\_\_

Resident: \_\_\_\_\_ Date: \_\_\_\_\_ Owner/Agent \_\_\_\_\_ Date: \_\_\_\_\_



# California Assembly Bill 468



## What is AB 468?

AB 468 is an Assembly Bill enacted in 2021.

- requires a business selling emotional support dogs and/or ESA vests, tags, or certifications to notify the buyer that an ESA is not specifically trained to be a service dog and is not entitled to the rights and privileges accorded by law to service dogs.
- places conditions on health care practitioners providing documentation relating to an individual's need for an emotional support dog.

*See Cal. H & S Code Section 122317-122318*

## Note!

- Plain language of the statute – limited to emotional support DOGS
- Plain language of the statute – limited to “health care practitioners” – licensed and regulated pursuant to Business and Professions Code 500 *et seq.*

A health care practitioner may not provide documentation relating to an individual's need for an emotional support dog unless they meet all of the following criteria:

1. Possesses a valid, active license.
2. Is licensed to provide professional services within the scope of the license in the jurisdiction in which the documentation is provided.
3. Establishes a client-provider relationship with the individual for at least 30 days prior to providing the documentation (exception for people who are unhoused)
4. Completes a clinical evaluation of the individual

AB 468:  
Provisions on  
Documentation

H & S Code  
Section 122318

## How Does AB 468 Impact Fair Housing Rights?

**It shouldn't.**

AB 468 does not “restrict or change existing federal and state law related to a person’s rights for reasonable accommodation and equal access to housing.” Cal. H & S Code § 122319

## Conflict with State and Federal Fair Housing Law

- The requirement is invalid and preempted for purposes of the FHA, 42 USC 3615 (contrary state law invalid).
- Accordingly, it is invalid under FEHA, 12955.6 (no fewer rights than FHA).

Additionally:

- FEHA regulations do not include or cross-reference Cal. H & S Code § 122318 and are far more reasonable/flexible on what is required to establish the need for an accommodation.
- See 2 CCR § 12178 (confirmation of disability can come from - among other sources - peer support group; non-medical service agency or person; any other reliable third party)

FEHA “invalidates any state law to the extent it purports to require or permit any unlawful housing discrimination, including the denial of reasonable accommodations. **Therefore, housing providers must allow reasonable accommodations for ESAs under the rules described and cited in these FAQs, including the existing rules regarding what type of documentation establishes someone’s disability-related need for a reasonable accommodation to have an ESA.”**

*See Emotional Support Animals and Fair Housing Law* (California Department of Fair Employment & Housing): [https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2022/04/EmotionalSupportAnimalsandFairHousingLawFAQ\\_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2022/04/EmotionalSupportAnimalsandFairHousingLawFAQ_ENG.pdf) at Question 13.

## CRD Position

## Issue Created by AB 468

Despite the fair housing carve out, health care providers have been more reluctant to provide verifications for emotional support dogs.

Advocates are encountering situations where an individual has a legitimate need but has no access to a health care provider that is willing to provide a verification.



# Strategies for Navigating AB 468 Issues

- Educate and advocate with health care practitioners
- Be flexible and creative in gathering documentation. For example:
  - 2 CCR § 12178 (confirmation of disability can come from – among other sources – peer support group; non-medical service agency or person; any other reliable third party)
  - FHEO Notice: information about disability may include determination of disability from a government agency; receipt of disability benefits or services; eligibility for housing assistance / voucher based on disability.
- Legislative or legal challenge?
- Other ideas? Drop in the chat.

Questions?