

## Emotional Support Animals in Cooperative Apartment and Condo Communities: What Every Association and Owner Should Know

17 Apr 2017

[David A. Rahn](#)

*Please note: This article has been updated and can be found [here](#).*

An emotional support animal (commonly referred to as an “ESA”) is a companion animal (typically a dog or cat) that provides therapeutic benefit to an individual with a mental or psychiatric disability. An ESA is not the same thing as a “pet”. Rather, for a resident of a Coop or Condo who is living with a mental or psychiatric disability, an ESA may provide him or her with the opportunity to live independently.

Residents of Coops and Condos who are not familiar with ESAs may express concern when one of their neighbors requests approval to own an ESA, particularly in buildings with a longstanding “No Pets” or “Service Animals Only” policy in place. Likewise, Boards are often unsure how to react to ESA requests, particularly in light of the various concerns expressed by residents. ESAs are becoming more common and the purpose of this article is to clarify the rights and responsibilities that may be triggered by an ESA request within the Condo and Coop environment.

Note that, unlike “Service Animals”, ESAs are not required to receive any special training. Service animals are dogs that are specially trained to perform tasks for people with disabilities (e.g., guiding a person who is visually impaired). Under the Americans with Disabilities Act (ADA), service animals are granted special access to places of public accommodation, such as government buildings and public transit. However, courts have consistently refused to hold that only certified animals may be reasonable accommodations. Instead, determining the reasonable accommodation requires a fact-specific analysis of whether the animal lessens the effects of the specific person's disability. See *Bronk v. Ineichen*, 54 F.3d 425 (7th Cir. 1995) and *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253 (Or. 1998).

### Building's Governing Documents

Whenever a resident requests an ESA, as an initial matter, the Board should review the community's governing documents, including all applicable Rules and Regulations. Typically, these Rules will include a short statement addressing animals, such as: “Except for Service Animals, no animals of any kind are to be kept in apartments or brought into the building by any person.” Unfortunately, the typical animal clause does little to address the possibility of ESAs. Therefore, Condos and Coops must commonly turn to applicable case law and statutory authorities to provide guidance in handling ESA requests.

### Guidance from Statutes and Cases

If a Condo or Coop resident seeking an ESA has a verifiable disability, the ESA will generally be viewed as a “reasonable accommodation” under the Federal Fair Housing Amendments Act of 1988 (“FHAA”). In such case, the ESA will be permitted even though the community has a “no pets” rule. The FHAA generally states that if a reasonable accommodation will enable a disabled person to equally enjoy the use of his or her apartment or the common areas, the building owner must provide the accommodation as long as doing so will not constitute an undue financial or

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administrative burden for the landlord, or fundamentally alter the nature of the housing. See 42 U.S.C. § 3604(f)(3)(B).

Determining whether the ESA constitutes a reasonable accommodation requires a multipart analysis. The elements of a reasonable accommodation claim are that (1) the plaintiff is disabled, (2) the defendant knew or should have known of this disability, (3) the plaintiff made a request for a reasonable accommodation that may be necessary to give the plaintiff an equal opportunity to use and enjoy the dwelling, and (4) this request was denied by the defendant. See, e.g., *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997).

As part of this reasonable accommodation analysis, an ESA applicant would need to show that he or she suffers from a mental or physical impairment that substantially impacts a major life activity. The impairment prong of this test is broad and has been interpreted to include psychiatric disorders such as depression, anxiety disorders, post-traumatic stress disorder, and bi-polar disorder. Courts have held that sleeping, eating, concentrating, and interacting with others are major life activities in addition to those specifically listed in the HUD regulations. See 24 C.F.R.100.201 (listing working and caring for one's self in addition to others). From a practical standpoint, this requirement can be satisfied if the resident obtains a note from a physician or other medical professional indicating that he or she has a disability and that the reasonable accommodation (the ESA) alleviates or mitigates some of the symptoms of that disability. The burden is on the resident to initially request the reasonable accommodation of an ESA. However, the individual is not obligated to actually disclose the specific form of his or her disability.

Likewise, the "necessity" aspect of the reasonable accommodation analysis does not require strict necessity. The applicable standard is that the ESA, at a minimum, "affirmatively enhance a disabled [person's] quality of life by ameliorating the effects of the disability." See, e.g., *Bronk*, 54 F.3d at 429 (7th Cir. 1995). Therefore, if a resident suffers from an anxiety disorder and the ESA makes the disorder more manageable for the individual that may very well satisfy the reasonable accommodation test.

Nevertheless, courts have held that it is still necessary to establish some "nexus" between the animal and the disability. In *Nason v. Stone Hill Realty Association* (an early decision on ESAs), a disabled tenant took in her mother's cat after her mother died. The manager of the apartment told her to remove the cat. Nason, who had multiple sclerosis, submitted a letter from physician that "suggested that there would be serious negative consequences for her health if she was compelled to remove the cat." The court found that Nason did not show "a substantial likelihood that maintaining possession of the cat [was] necessary due to her handicap." Specifically, although the affidavit provided by Nason's doctor indicated that removal of the cat would result in "increased symptoms of depression, weakness, spasticity and fatigue," it "[did] not demonstrate that such symptoms [were] treatable solely by maintaining the cat or whether another more reasonable accommodation [was] available to address Nason's symptoms." See *Nason v. Stone Hill Realty Assn.*, 1996 WL 1186942 at \*1 (Mass. Super. May 6, 1996).

In addition, the federal statutes may be interpreted to mean that building owners are not required to modify a "no pets" policy if a resident's ESA would pose a significant risk to the safety or property of others. 24 C.F.R. §100.202(d) states as follows: "Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." However, mere speculation of a safety threat will not suffice for purposes of denying a Condo or Coop resident the use of an ESA.

## Conclusions and Recommendations

An emotional support animal, in many cases, will constitute a reasonable accommodation under the FHAA. ESAs can provide therapeutic benefit to an individual with a mental or psychiatric disability. However, the right to maintain an ESA is not wholly unchecked. The Condo or Coop resident must request the reasonable accommodation of an ESA and

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demonstrate disability. In addition, there needs to be a relationship or nexus between the animal and amelioration of the effects of the resident's disability. Finally, animals that pose a significant risk to the safety or property of others in the community may not qualify for treatment as ESAs. In all instances, Condo and Coop Boards should review their governing documents to determine how pets, service animals and ESAs are handled. If the existing governing documents do not adequately address these issues, the community should consider updating its governing documents in compliance with the applicable laws.

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**TAGGED:** [Emotional support animals](#), [coops](#), [condos](#)