

# Emotional Support Animals and Fair Housing Law



# FAQ

The Department of Fair Employment and Housing (DFEH) is California's civil rights agency. Among the laws enforced by DFEH are the Fair Employment and Housing Act and its implementing regulations.<sup>1</sup>

These laws protect tenants and residents from discrimination on the basis of disability, as well as require landlords, property management companies, homeowner associations, and other housing providers to reasonably accommodate people with disabilities so that they may use and enjoy a housing opportunity. When a housing provider disallows pets or limits the kind, size, or number of pets that someone can have, California law generally requires the housing provider to provide a reasonable accommodation to a person with a disability in order to allow them to live with an emotional support animal (ESA) that assists that person in managing their disability.

To assist housing providers, tenants, residents, and others understand and comply with California law, DFEH is providing answers to frequently asked questions about ESAs.

## 1 | Is an ESA a pet?

No. An ESA is an animal that provides emotional, cognitive, or other similar support to a person with a disability to assist them in managing the symptoms of their disability. ESAs are also referred to as comfort animals or support animals.<sup>2</sup>

## 2 | Is an ESA a service animal?

No. An ESA is different from a service animal. A service animal refers to an animal trained to perform specific tasks to assist an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. For example, guide dogs are service animals that assist people who are blind or have low vision with navigation, and signal dogs are service animals that alert individuals who are deaf or hard-of-hearing to sounds. An ESA is not a service animal because the ESA is not specifically trained to assist a person with a disability.<sup>3</sup> For the rules applicable to service animals, which are not covered by these FAQs, review California Code of Regulations, title 2, section 12185.

<sup>1</sup> Gov. Code § 12900 et seq.; Cal Code Regs., tit. 2, § 11000 et seq.

<sup>2</sup> Cal. Code Regs., tit. 2, § 12005(d).

<sup>3</sup> Cal. Code Regs., tit. 2, § 12005(d).

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### 3 | Can housing providers prohibit a tenant or resident from having an ESA?

Housing providers are allowed to have rules regarding pets, including prohibiting pets; prohibiting certain types of pets, such as large or wild animals; or prohibiting nuisance activity caused by pets, such as incessant barking.<sup>4</sup> However, if a tenant or resident has a disability-related need for an ESA, the housing provider must allow the person to have the animal as a reasonable accommodation, unless the housing provider can show that an exception applies.<sup>5</sup>

### 4 | What is a reasonable accommodation?

A reasonable accommodation is a necessary change to a housing provider's rules or policies that enables a person with a disability to have an equal opportunity to use and enjoy housing. When a housing provider has rules limiting the kind, size, or number of pets and a tenant or resident requests a reasonable accommodation to have an ESA, the housing provider must either permit the ESA or promptly engage in what is known as the "interactive process" with the tenant or resident to determine whether to permit the ESA.<sup>6</sup>

### 5 | If someone requests a reasonable accommodation to have an ESA, what kind of documentation can the housing provider request?

If the tenant's or resident's disability (or the need for the reasonable accommodation) is not obvious or readily apparent, a housing provider may (but is not required to) ask for documentation to support the person's request for a reasonable accommodation to have an ESA. However, the tenant or resident is not required to disclose their disability; instead, they need only disclose enough information to document their disability-related need for an ESA.<sup>7</sup> Reliable documentation of an individual's disability and/or their need of a reasonable accommodation to have an ESA can include an individual's own credible statement or documentation of receipt of disability benefits. In addition, documentation can come from any reliable third party who is in a position to know about the individual's disability or the disability-related need for the ESA, such as a health care provider, therapist, social worker, non-medical service provider, member of a peer support group, parent, child, or other relative.<sup>8</sup> The determination of whether a third party is reliable is determined on a case-by-case basis and may take into account how the third party is familiar with the individual's disability and/or the disability-related need for an ESA.<sup>9</sup>

### 6 | Must an ESA be registered to qualify for a reasonable accommodation?

No. There is no legal requirement that an animal must be "registered" or "certified" in order for it to serve as an ESA. Businesses that claim to register or certify ESAs are charging for a service that is unnecessary to establish the necessity of a reasonable accommodation.

4 Several laws protect individuals' ability to have pets in certain types of housing. For example, the California Pet Friendly Housing Act (Health & Safety Code § 50466) requires properties financed by the California Department of Housing and Community Development in 2018 or later to generally allow residents to have pets. Similarly, federal law generally allows residents to have pets in low-income "public" housing (42 U.S.C. § 1437z-3) and in federally-subsidized rental housing for the elderly or people with disabilities (12 U.S.C. § 1701r-1 and 24 C.F.R. § 5.300 et seq.).

5 Cal. Code Regs., tit. 2, §§ 12176 – 12180.

6 Cal. Code Regs., tit. 2, §§ 12176 – 12180.

7 Cal. Code Regs., tit. 2, § 12178.

8 Cal. Code Regs., tit. 2, § 12178(a)-(e).

9 Cal. Code Regs., tit. 2, § 12178(f)-(g).

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### 7 | **Do online certifications or ID cards, or tags or vests worn by an animal, reliably establish someone’s disability-related need for an ESA?**

As explained more fully in FAQ #5, when someone’s disability or their need for a reasonable accommodation to have an ESA is not obvious or readily apparent, a housing provider may ask for documentation to support the person’s request. Reliable documentation of an individual’s disability and/or their need of a reasonable accommodation to have an ESA can include documentation from any reliable third party who is in a position to know about the individual’s disability or the disability-related need for the ESA. Generally, a vest or tag worn by the animal, an ESA identification card, or a certificate that identifies an animal to be an ESA does not, by itself, reliably establish either a disability or the need for a reasonable accommodation. However, there are many legitimate, licensed health care professionals who deliver services over the internet. Documentation from an online service that is based on an “individualized assessment” conducted by a licensed health care professional may reliably establish either a disability or a need for a reasonable accommodation. For this purpose, an “individualized assessment” means an assessment based on information that demonstrates that the individual has a disability, describes the needed accommodation (including the species of animal), and describes the relationship between the individual’s disability and how the requested accommodation is necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling or housing opportunity.

If someone requesting an ESA produces a certification or other item that insufficiently documents their disability or need for an ESA or that was not based on an individualized assessment, the housing provider cannot simply deny the reasonable accommodation request; instead, the individual must be allowed to provide other reliable information.<sup>10</sup>

### 8 | **When may a housing provider deny a request for an ESA that helps someone manage their disability?**

After a tenant or resident has shown that they have a disability-related need for an ESA, the housing provider may deny the request only in the following, limited circumstances: (a) when permitting the ESA would cause an undue financial and administrative burden for the housing provider, (b) when permitting the ESA would constitute a fundamental alteration to the housing provider’s business, or (c) when 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 reduced or eliminated by a reasonable accommodation. This determination must be done on a case-by-case basis and must be based on credible and objective evidence, not stereotypes or assumptions.<sup>11</sup>

<sup>10</sup> Cal. Code Regs., tit. 2, § 12185(c).

<sup>11</sup> Cal. Code Regs., tit. 2, § 12185(c).

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### 9 | Can someone have more than one ESA?

Yes. When a tenant or resident requests a reasonable accommodation to have more than one ESA, housing providers should generally follow the guidance in FAQs #3 - #8. If the need for multiple ESAs is not apparent, the housing provider may request documentation verifying a disability-related need for multiple animals, or additional animals when an individual already has one. However, the housing provider may consider whether the total impact of multiple animals in the same housing unit amounts to an undue burden or fundamental alteration of the housing program. For more information, please review the FAQ #8 “When may a housing provider deny a request for the ESA that helps someone manage their disability?”

### 10 | Can a housing provider charge a fee or rent to have an ESA?

No. Housing providers may not charge someone with an ESA a “pet deposit,” “pet rent,” or any other fee or rent because of the ESA, even if they charge other tenants such additional fees, deposits, or rent. In addition, a housing provider may not require someone with an ESA to obtain liability insurance covering the animal. However, an individual with an ESA may be required to cover the costs of repairs for damage the animal causes to the premises, excluding ordinary wear and tear.<sup>12</sup>

### 11 | May a housing provider limit the breed, size, or weight of ESAs?

No. Restrictions on the breed, size, or weight of ESAs are prohibited, including those imposed by insurance companies. However, on a case-by-case basis, housing providers may deny a request for an ESA that constitutes a direct threat to the health or safety of others or would cause substantial physical damage to the property of others.<sup>13</sup> For example, a policy banning tenants from having pit bulls would be unlawful; however, if a particular pit bull regularly growled at or tried to bite other tenants on the property and the risk of the dog biting someone could not be sufficiently reduced by another reasonable accommodation, the housing provider may be justified in denying a reasonable accommodation for the tenant to keep that particular dog as an ESA. For more information, review the FAQ #8 “When may a housing provider deny a request for the ESA that helps someone manage their disability?”

### 12 | If someone has an ESA as a reasonable accommodation, what kind of rules can the housing provider impose on the animal?

Reasonable conditions may be imposed on the use of an ESA to ensure it is under the control of the individual with a disability or an individual who may be assisting the individual with a disability, such as restrictions on waste disposal and animal behavior that may constitute a nuisance, so long as the conditions do not interfere with the normal performance of the animal’s duties. For example, incessant barking by an emotional support dog may violate reasonable restrictions relating to nuisance. Any such conditions may not be more restrictive than those imposed upon other animals on the property.

<sup>12</sup> Cal. Code Regs., tit. 2, § 12185(d).

<sup>13</sup> Cal. Code Regs., tit. 2, § 12185(d).

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### 13 | Did Assembly Bill 468 change California fair housing law regarding ESAs?

No. In 2021, California enacted Assembly Bill 468, which, among other things, 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. (For more information about service animals, such as guide dogs and signal dogs, review the FAQ #2 “Is an ESA a service animal?”) AB 468 also places some conditions on health care practitioners providing documentation relating to an individual’s need for an emotional support dog. Importantly, AB 468 expressly does not “restrict or change existing federal and state law related to a person’s rights for reasonable accommodation and equal access to housing,”<sup>14</sup> and the Fair Employment and Housing Act invalidates any state law to the extent it purports to require or permit any unlawful housing discrimination, including the denial of reasonable accommodations.<sup>15</sup> 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.

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**If you think you have been a victim of discrimination, please contact DFEH.**

### **TO FILE A COMPLAINT**

#### **Department of Fair Employment and Housing**

dfeh.ca.gov

Toll Free: 800.884.1684

TTY: 800.700.2320

If you have a disability that requires a reasonable accommodation, DFEH can assist you with your complaint. Contact us through any method above or, for individuals who are deaf or hard of hearing or have speech disabilities, through the California Relay Service (711).

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<sup>14</sup> Health & Safety Code § 122319(b).

<sup>15</sup> Gov. Code § 12955.6.