

May 2019 Notes from the MAR Legal Hotline

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Q. A tenant is asking permission to have an emotional support animal and the building does not allow pets – can I say no?

A. In many situations you may be required to make an exception to a “no pets” policy for a tenant who requires an assistance animal. Under Fair Housing laws, an assistance animal is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, *or* that provides emotional support that alleviates one or more identified effects of a person’s disability. **An assistance animal is not a pet.**

Housing providers may not refuse to make reasonable accommodations in rules, policies, practices, or services when an accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. An interactive process must take place between the housing provider and the tenant, and the housing provider must make an individualized assessment for each request for a reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal, nor may a housing provider impose an additional financial burden on the tenant for having an assistance animal in the property.

The interactive process is triggered when a request is received by or for a person with a disability. The request must be supported by reliable disability-related information if the need for the assistance animal is not readily apparent. A housing provider may not ask an applicant or tenant to provide access to medical records or medical providers to provide detailed or extensive information or documentation of a person's physical or mental impairments. Additionally, there is no requirement that an assistance animal be specifically trained, certified, or registered.

When a tenant or applicant has provided information demonstrating the need for an assistance animal, there are only very limited circumstances where the request for a reasonable accommodation may be denied:

1. Allowing the animal would impose an undue financial and administrative burden on the Housing Provider;
2. Allowing the animal would fundamentally alter the nature of the housing provider’s services;
3. The specific animal in question poses a direct threat to the health or safety of others and cannot be reduced or eliminated by another reasonable accommodation; or

4. The specific animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation.

A housing provider may require the assistance animal to be up-to-date on appropriate vaccines and to be registered with the city or town, if necessary. The tenant may also be required to clean up after the animal, keep it properly restrained, and keep it under control. The tenant may be financially responsible for the cost of repairing any damage caused by the animal, as well.

It is always recommended to seek legal counsel prior to denying an accommodation request.

Q. We have a signed offer, but no deposit check from the buyer – do we have a contract?

- A.** A contract to purchase real estate is binding if there is a written offer, acceptance, and consideration. “Consideration,” while commonly thought to be the equivalent of money, simply means “something of value,” which may be an act, a forbearance, a material item, or some other form of compensation. In real estate, agreements to purchase property are bilateral contracts in which there is a mutual exchange of promises, whereby the promises themselves act as the consideration necessary to bind the contract – i.e. the buyer has promised to purchase the property for a set price and the seller has accepted this offer by promising to sell. A deposit typically serves to demonstrate good faith and adds a layer of protection for the seller in the event of a buyer’s default.

If the contract to purchase specifically calls for the remittance of a deposit to bind the offer, such as MAR’s Contract to Purchase, failure on the part of the buyer to deliver a deposit as specified in the contract would result in no binding contract being formed. However, if the contract to purchase does not state that a deposit is required to bind the offer, a buyer’s failure to remit a deposit would likely constitute a breach of the contract, but a binding contract would still exist.

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