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as to the nature and severity of an individual's disability. However, in response to a request for a reasonable accommodation, a provider may request *reliable* disability-related information that "(1) is necessary to verify that the person meets the [legal] definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation." See, Reasonable Accommodations Under the Fair Housing Act, Joint Statement of the Department of Housing and Urban Development and the Department of Justice (May 17, 2004).<sup>8</sup>

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. See, *Overlook Mut. Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 856 (S.D.Ohio 2009). Accordingly, persons seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional supporting that the animal provides support that alleviates at least one of the identified symptoms or effects of the disability.<sup>9</sup>

Finally, the Commission has observed lease applications with overly detailed questions concerning medical information reaching far beyond the scope of what is allowable. Similarly, the Commission has observed lease language threatening pet violators with criminal penalties or litigation. This is not only unnecessary, it is discouraged as it gives the appearance of intimidation or coercion, which is unlawful under Ohio law.

➤ **Does the animal have to be trained or certified?**

There are companies, predominantly internet-based, that advertise providing registration and certification of pets as emotional support animals, including vests and tags, for a fee. Housing providers and rental agents cannot require a special certification, identification card or training documentation for the ESA or ask that the animal demonstrate its ability to perform work or a task. Therefore, such companies are irrelevant for purposes of R.C. Chapter 4112.

However, a landlord is entitled to request medical information demonstrating both a qualified physical or mental condition that substantially limits one or more major life activities and proof from a health services professional that the animal improves the effects of the disability. Production of certification via website or internet, without more, will not suffice.

➤ **How many animals are allowed?**

Generally, one ESA is sufficient. However, the number may vary depending upon the number of residents and the type(s) of qualifying medical conditions necessitating the ESA. In all cases, an appropriate health

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<sup>8</sup> *Ajit Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, No. 6:11-CV-1637-ORL, 2012 WL 6562766, at \*6 (M.D. Fla. Dec. 17, 2012) *aff'd sub nom.*, *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F.3d 1277 (11th Cir. 2014); *Overlook Mut. Homes, Inc. v. Spencer*, 415 F. App'x 617, 621-22 (6th Cir. 2011); *Hawn v. Shoreline Towers Phase I Condominium Ass'n, Inc.*, No. 3:07-cv-97/RV/EMT, 2009 WL 691378 at \* 7 (N.D. Fla. 2009), *aff'd* 347 F. App'x 464 (11th Cir. 2009); *Kennedy House, Inc. v. Philadelphia Comm'n. on Human Relations*, 143 A.3d 476, 489-90 (Pa. Commw. Ct.2016).

<sup>9</sup> Pet Ownership for the Elderly and Persons with Disabilities, 73 FR 63834-01.

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services provider must verify the need for each animal for independent purposes (i.e. one animal alerts a child of impending epileptic seizures, while a second animal ameliorates the effects of a mother's high blood pressure). Reasonableness is factored into this standard. For example, the Commission acknowledges it would likely be an undue hardship for a landlord to waive a no pet policy to allow 15 cats in a one-bedroom apartment. Again, the number of animals allowed is best determined on a case-by-case basis.

➤ **What type(s) of animals may qualify as an ESA?**

Unlike a "service animal" under federal law, or "animal assistant," as defined in Ohio law, it is the Commission's position that an emotional support animal is not limited to any particular type of animal, such as a dog or cat, but reason must come into play. Unlike a service animal, an ESA is not specifically trained to perform tasks; however, the animal's presence must provide some sort of therapeutic or other benefit to an individual with a disability. An ESA may be viewed as a "reasonable accommodation" in a housing unit that has a no pets rule or pet fee for residents.<sup>10</sup> Therefore, an ESA may be a cat, a bird, a hamster, a rabbit or some other domesticated animal.

Housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability is a wild animal or a domesticated animal with a *history* of dangerous behavior, the housing provider does not have to allow the animal in the housing unit. Moreover, a housing provider is not required to make a reasonable accommodation if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose a significant undue financial and administrative burden; or (3) fundamentally alter the nature of the housing provider's operations.

Landlords should treat each situation on a case-by-case basis and not deny an ESA simply because of the breed of the animal, such as a pit bull or mixed breed dog.<sup>11</sup> Ohio law was amended to remove breed specific restrictions. If concerns are raised, more exploration can be conducted with the disabled person about the animal. Landlords are encouraged to seek additional legal guidance when necessary.<sup>12</sup> In severe cases where certain breeds are strictly banned (e.g., the Village of Golf Manor Ordinance 505.18 bans pit bull terriers), the Commission may deem the municipality a necessary party to the case to effectuate an appropriate resolution.

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<sup>10</sup> Wisch, Animal Legal and Historical Center, FAQs on Emotional Support Animals (2013) [www.animallaw.info](http://www.animallaw.info). See also HUD, February 17, 2011 Memo, Sandoval, Serv., Therapy, & Emotional Support Animals, Colo. Law. at 70; Ala.Code § 24-8A-3.

<sup>11</sup> The Commission recognizes that several Ohio municipalities still have ordinances on the books declaring certain breeds, such as pit bulls, as "dangerous" or "vicious," despite changes to Ohio law removing them from the definition of "vicious dog." In such cases, the housing provider, upon satisfactory proof the animal is an ESA or service dog, should permit the dog in the unit. The provider should also seek legal guidance concerning compliance with the ordinance, such as requiring the tenant have the requisite amount of liability insurance, until the issue can be resolved.

<sup>12</sup> See, O.R.C. § 955.11; *Russ v. Reynoldsburg*, 2017-Ohio-1471 (Licking App. April 19, 2017) (finding city ordinance banning pit bulls outright conflicts with state law abolishing breed-specific restrictions and unconstitutionally exceeds city's home rule authority). See also, *Warren v. Delvista Towers Condominium Ass'n, Inc.*, 49 F.Supp.3d 1082 (S.D.Fla.2014) (Miami-Dade County breed-restriction ordinance preempted by the FHA).

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➤ **What other factors should be considered?**

An individual with a disability, who keeps an emotional support animal in housing, accepts liability for sanitation and damage to the premises caused by, the animal. Any determination that an emotional support animal poses a threat of harm to others or would damage the property of others must be based on an individualized assessment of the specific animal's actual conduct. The assessment may not be speculative and may not be based on evidence of harm that other animals have caused.<sup>13</sup> If therapy or service animals cause damage, housing providers may certainly seek restitution for the damages caused; however, service and emotional support animals *are not pets*. Therefore, pet fees and deposits must be waived.<sup>14</sup> Conversely, animals that do not meet the criteria and conditions outlined will be considered pets. In such instances, landlords may enforce no pet restrictions or pet fees.

Finally, the Commission acknowledges a housing provider may have legal rights if a person obtains a reasonable housing accommodation by knowingly making a false claim of having a disability that requires the use of an assistance animal or by knowingly providing fraudulent supporting documentation in connection with an ESA. Those remedies are beyond the scope of R.C. Chapter 4112 and may be more appropriately raised under the Ohio Landlord-Tenant Act. In the rare instance of proven abuse, the Commission will take appropriate action to dismiss the case.

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<sup>13</sup> Notice FHEO-2013-01 at 3; *Castellano v. Access Premier Realty, Inc.*, 181 F.Supp.3d 798 (E.D.Cal.2016).

<sup>14</sup> Additionally, absent restrictions or requirements in state statute or vicious breed ordinances as outlined above, unreasonable restrictions or limitations on emotional support or service animals, such as confinement to the housing unit or containment to specified areas is not permissible. For example, forbidding the animal to be in the common areas, or asking a tenant to use the service elevator and service entrance when the animal accompanies the resident, will be considered a violation of R.C. Chapter 4112. Similarly, absent legal requirements, the Commission discourages requiring additional liability insurance, vaccinations or veterinary records for service and emotional support animals.

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