Why do we have to allow Comfort Animals?

The “why” centers around three civil rights laws that ensure equal opportunity for people with disabilities.

Civil Rights Laws:

- Americans With Disabilities Act 1990 (ADA)
- § 504 of the Rehabilitation Act of 1973 as Amended 2008
- Fair Housing Act of 1968 as Amended 1988
Disability
The term "disability" means, with respect to an individual:
(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
(B) a record of such an impairment; or
(C) being regarded as having such an impairment.

Major Life Activities
In general, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Regarded as having such an impairment
An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
Service Animals

Applicable laws: Titles II and III of the Americans with Disabilities Act of 1990
§ 504 of the Rehabilitation Act of 1973
Fair Housing Act

Definition: As defined by the Americans with Disabilities Act (ADA), a service animal is any dog that is individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. (In some instances, as set out in the ADA regulations at 28 CFR 35.136(i), a miniature horse may qualify as a service animal.) The work the dog has been trained to do must be directly related to the person’s disability. Examples include, but are not limited to: helping a blind or low-vision person with navigation or other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting a person during a seizure, alerting a person to the presence of allergens, retrieving items such as medicine or a telephone, providing balance and stability support for a person with a mobility impairment, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.
The deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purpose of this definition. In compliance with federal law, service animals are generally allowed in buildings, classrooms, residence halls, dining areas, recreational facilities, and at meetings, activities and events when the animal is accompanied by the individual with a disability.

Service animals may not be allowed when the animal poses a substantial and direct threat to the health or safety of others, or if the presence of the animal fundamentally alters the nature of the program or service in which the person with a disability is participating. Determinations of this kind should be made on a case-by-case basis.

If there is a question of whether or not a dog is a service animal, the following may be asked:

1. Is the dog required because of a disability? (if the disability is not visibly apparent)
2. What work or task has the dog been trained to do?
Comfort/Emotional Support/Therapy/Assistance Animals

Applicable laws: ADA
§ 504 of the Rehabilitation Act of 1973
Fair Housing Act

Definition: As defined by the Fair Housing Act, a comfort/emotional support/therapy assistance animal may provide physical assistance, emotional support, calming, stability, and other kinds of support. The presence of the animal must be necessary in order to provide the resident with a disability the use and enjoyment of the dwelling. There must be an identifiable relationship or nexus between the disability and the assistance or support the animal provides. Emotional support/therapy/assistance animals do not perform work or tasks that qualify them as “Service Animals” under the Americans with Disabilities Act.
Comfort Animals

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) and the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3631)) authorize the owner to verify that an animal qualifies as a reasonable accommodation and qualifies an animal as a reasonable accommodation if:

(1) An individual has a disability, as defined in the Fair Housing Act or Section 504,
(2) the animal is needed to assist with the disability, and
(3) The individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides.

In assessing a tenant's request for emotional support animal as a reasonable accommodation, the landlord is entitled to consider the administrative, financial, or programmatic repercussions of allowing an animal onto the premises, including the potential disturbance to other tenants.

If the requested accommodation is unreasonable, the landlord may propose a substitute accommodation. In so doing, the landlord should give primary consideration to the accommodation requested by the tenant. According to the Department of Justice ADA Technical Assistance Manual, II-7.1100:
It is important to consult with the individual to determine the most appropriate auxiliary aid or service, because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.

In the event that a landlord suggests an alternative accommodation, the tenant can reject it if he or she feels it is inadequate. In *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253, 1256, the federal district court of Oregon rejected defendant housing authority's proposed substitute accommodation of flashing smoke alarm and doorbell for a hearing assistance dog. In granting the tenant's motion for summary judgment, the court found that the dog could alert the tenant to phone calls, cars in the driveway, visitors, and smoke alarms, no matter where he was in the house, and that the strobe lights were only installed in the bedroom and hallway, and were therefore less effective in ameliorating the effects of the tenant's hearing impairment.
Discrimination under the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a disability] an equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). So long as the requested accommodation does not constitute an undue financial or administrative burden for the landlord, or fundamentally alter the nature of the housing, the landlord must provide the accommodation.

Typically, a landlord will have a difficult time establishing that an emotional support animal constitutes a fundamental alteration or undue burden.

In its internal regulations governing federally assisted housing, HUD specifically states that allowing an assistive animal does not constitute an undue burden. See Occupancy Requirements of Subsidized Multifamily Housing Programs, HUD, No. 4350.3, exhibit 2-2 (1998) (explaining that allowing an assistive animal is not a fundamental alteration).

Remember this is a process
When a tenant requests an emotional support or other assistive animal, the landlord should not assume, without justification, that the animal will cause excessive, financially burdensome damage. In the event that a tenant's comfort animal does cause significant damage, that tenant should certainly be held financially liable. However, it would contravene the purpose of the statutory protections afforded people with disabilities to allow a landlord to charge a deposit at the outset, in the absence of any significant damage. Just as it would be inappropriate to charge a tenant who uses a wheelchair a deposit for potential damage to carpeting, it would be similarly imprudent to demand a deposit from a tenant who uses a comfort animal.

If the comfort animal is particularly disruptive, or the tenant fails to take proper measures to ensure that the animal does not bother other tenants, the landlord may be justified in denying the accommodation or ultimately filing for an eviction. See, e.g., Woodside Village v. Hertzmark, FH-FL Rptr. ¶ 18,129 (Conn. Sup. Ct. 1993), in which the court found that a federally assisted housing complex did not violate the Fair Housing Act by evicting a resident with mental illness for failure to walk his dog in designated areas and to use a pooper-scooper.

Consult Your Legal Counsel
Frequent Review of Policies

• If you don’t have a policy or processes in place get them.
• Make sure they reflect the most recent FHA, 504 and ADA regulations.
• Consider how your reasonable accommodation policies might be adapted and determine what stance your complex will take based on its overall mission and philosophy, approach to access and diversity, and risk tolerance.
• Be careful not to make the process to burdensome for the student. (delicate balance)
• Examples of situations to address:
  • “Control” and “Care” by student and animal conduct issues (anchored to the code of conduct)
  • Others’ disabilities: phobias, allergies – not reason to exclude, but something to be aware of, and strategize as needed
  • Who makes decision to exclude animal if warranted
  • Allowing student even if animal is excluded (other reasonable accommodation)
  • Locations of rest areas and relief (toileting) expectations
  • Damage to apartment (“Actual” vs “Assumed”)
  • Documentation of Vaccinations, city licenses, etc…. 
  • Process of receiving, reviewing documentation from Medical or Mental Health professionals
Comfort Animals Policies & Processes

Training

- Designate a “go-to” person or team.
- Identify expectations of front line staff and when to refer to the person or team (published policy versus internal procedures)
- Provide for staff training, including ongoing training for new hires.
- Difference between Service Animal and Comfort Animals

Service Animals (Dog or Miniature Horse)

- No documentation required for the service animal itself
- No proof of training, identification or license required
- The two allowable questions, “Is that a service animal for a disability?” and, if not obvious, “What service does it perform?”
- Work or task examples

Comfort Animals (Any Animal)

- No proof of training, identification or license required (remember No Task performed)
- Documentation required from a licensed medical or mental health professional
- Identifiable relationship or nexus between the disability and the assistance or support the animal provides
**Assistance and Service Animal Policy**

Information regarding this policy is available here: [Gonzaga University Assistance and Service Animal Policy for Students](http://goo.gl/zcC6sB)

Note for students requesting comfort/therapy/emotional support animals: We need a letter from the medical practitioner who diagnosed your condition that shows the need for a comfort animal. The letter should articulate the need for the animal based on your medical condition. This letter should not say (simply): “In my professional opinion, due to [the student's] condition, [the student] needs a comfort/emotional support animal.” Rather it needs to articulate why, based on the diagnosis, a comfort animal would be an accommodation for your condition. For example: “[The student] has been diagnosed with condition X. Condition X causes [the student] to have the following symptoms: A,B,C. We have found that through [some means] having a ‘comfort animal (of type) Y’ in [the student's] living area reduces or alleviates those symptoms.”

See HUD.gov's letter: [http://goo.gl/zcC6sB](http://goo.gl/zcC6sB) concerning support animals (April 25, 2013)
• A person requesting a service or therapy/emotional support animal must provide the University Accessibility Center with appropriate documentation at least 30 days before prospective housing will be needed. The UAC requires a 30-days notice period in order to do its due diligence by gathering and verifying the necessary documentation for the student. This documentation includes, but is not limited to: verification of a disability, the determination of any conflicting disabilities in the immediate vicinity where the animal will be housed, and verification of all vaccinations and the health of the animal including all the necessary licensing. If documentation is immediately available, the time for the approval process may be shortened.

• Documentation of the need for an emotional support animal should include a signed letter, on professional letterhead, from the person's physical or mental healthcare provider or licensed therapist. The provider or therapist should be familiar with the professional literature concerning the assistive and/or therapeutic benefits of assistance animals for people with disabilities.
At a minimum, the letter should include the following items (sample letter is provided on the next slide):

- The provider's diagnosis of the person's condition.
- The provider's opinion that the condition affects a major life activity.
- The provider's opinion that the therapy/emotional support animal has been prescribed for treatment purposes and is necessary to help alleviate symptoms associated with the person's condition and/or to help the person use and enjoy university housing services.
- The provider's description of the assistance/support the animal will provide.
- Any additional rationale or statement the university may reasonably need to understand the basis for the professional opinion.
- The University Accessibility Center staff members will review documentation and, if the UAC determine a qualifying disability exists, they shall arrange a meeting with a university housing representative and the person requesting that a service or therapy/emotional support animal be housed in university housing. This policy will be carefully reviewed with the person at that time and an interactive dialogue will take place to determine whether or not the animal is a reasonable accommodation considering alternative accommodations and the impact of the animal on the university housing program.
Sample Letter from a Service Provider

[date]

Name of Professional (therapist, physician, psychiatrist, rehabilitation counselor)
XXX Road City, State Zip

Dear [Housing Authority/Landlord]:

[Full Name of Tenant] is my patient, and has been under my care since [date]. I am intimately familiar with his/her history and with the functional limitations imposed by his/her disability. He/She meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to mental illness, [first name] has certain limitations regarding [social interaction/coping with stress/anxiety, etc.]. In order to help alleviate these difficulties, and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist [first name] in coping with his/her disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [first name]. Upon request, I will share citations to relevant studies, and would be happy to answer other questions you may have concerning my recommendation that [Full Name of Tenant] have an emotional support animal. Should you have additional questions, please do not hesitate to contact me.

Sincerely,

Name of Professional