

FAIR HOUSING CENTER OF THE LEGAL AID SOCIETY OF SAN DIEGO, INC.



FAIR HOUSING NEWSLETTER

Insurance Policies Excluding Coverage for “Dangerous” Dog Breeds without Exceptions for Emotional Assistance Animals

The situation: A tenant is considered a disabled person under the Fair Housing Act. The tenant has a doctor’s letter recommending an emotional assistance animal. The housing provider recognizes the fact that the tenant needs the emotional assistance animal and would otherwise grant the tenant to have the dog live in the residence. There is one problem: the dog is a pit bull and is considered a “dangerous” breed by the housing provider’s insurance carrier. The insurance carrier tells the housing provider that if the pit bull lives in the residence, the insurance coverage will be cancelled or the premium drastically increased. What is the housing provider required to do?

This is a unique situation because the housing provider is willing to accommodate the tenant, except that the housing provider has to reconcile the demands of the insurance carrier and the tenant, which are in direct conflict. The Department of Housing and Urban Development (HUD) has issued two memoranda that offer some guidance.



The first memorandum was issued on June 12, 2006, with the subject: *Insurance Policy Restrictions as a Defense for Refusals to Make a Reasonable Accommodation*.¹ The 2006 memorandum reiterates that a housing provider can deny a reasonable accommodation if it imposes an undue financial and administrative burden. It also explains that if a “housing provider’s insurance carrier would cancel, substantially increase the costs of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or a certain animal, HUD will find that this imposes an undue financial and administrative burden on the housing provider.”

The 2006 memorandum then goes on to state that: “However, the investigator must substantiate the housing provider’s claim regarding the potential loss of or adverse change to the insurance coverage, by verifying such a claim with the insurance company directly and considering whether comparable insurance, without the restriction, is available in the market.”

Now, the memorandum does not specifically state that the housing provider must shop around for insurance coverage. But it does state that the housing provider will have to show the HUD investigator whether the housing provider would be able to obtain insurance from another carrier at or around a similar cost, but would allow the dog to stay.

Another level of analysis is added to this courtesy of a HUD memorandum dated April 25, 2013, with the subject *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*.² The 2013 memorandum reiterates that a housing provider is required to “modify or provide an exception to a ‘no pets’ rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises . . .” and then states “[b]reed, size, and weight limitations may not be applied to an assistance animal.”

How does this affect the duties of the housing provider? If housing providers deny a reasonable accommodation because of the dog’s breed, they are restricting what kind of dog can be an assistance animal. But, they are only denying the accommodation because the insurance carrier does not allow the dog breed.

There is not much law on this topic because it is a newer problem, but the tenant could request that the housing provider shop around for a different insurance carrier and provide evidence of the steps taken by the housing provider. It would also be possible for the tenant to go directly to the insurance carrier and request a reasonable accommodation to the insurance policy because the insurance carrier falls under the Fair Housing Act. There is an ongoing case in Oregon dealing with this subject.³

For More Information please call:

The Legal Aid Society of San Diego, Inc.
(844) 449-3500
711 TTY
www.lasds.org

The Legal Aid Society of San Diego Inc. offices are accessible to persons with disabilities.

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¹ The 2006 memorandum can be found at <http://www.fairhousing.com/include/media/pdf/insuranceguidance.pdf>.

² The 2013 memorandum can be found at https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf.

³ *Fair Housing Council of Oregon v. Traveler’s Casualty and Surety Company, et al.* Case No.: 3:15-cv00925-SB (Oregon)