



OurPetPolicy



# What Landlords Need To Know About ESAs In 2023



From airline companions to college dormitory guests, emotional support animals (ESAs) have risen in popularity in recent years. With tenants and clients everywhere more focused on their mental health, now, more than ever, landlords need to be familiar with the ins and outs of these pets and the implications they bring to leases and housing.



There are multiple laws and regulations surrounding **ESAs**, as detailed in the U.S. Department of Housing and Urban Development's (HUD) guidelines on the topic, and it's vital for everyone in charge of managing tenants to have an understanding of how they work. Let's dive into the **top six most important things that every landlord should know about ESAs in 2023**.

This information will help you better understand the laws relating to **ESAs** and better prepare you for any questions your tenants may ask you as they navigate the process of either acquiring an **ESA** or bringing one onto your property.

I WILL RENT

# 01.

## When Can I Deny An ESA?

If your property normally does not allow pets, it may be tempting to deny an **ESA** outright, but there are multiple reasons why this may not be the best course of action. You want to avoid any legal problems that relate to the denial of these animals, so staying informed is essential.





There are several circumstances in which you can legally deny an ESA. These animals are protected by the Fair Housing Act for people with disabilities. That being said, there are certain types of rentals that are not usually covered by the Fair Housing Act, which include: owner-occupied buildings with four or fewer units, single-family housing sold or rented without the use of a broker, and

housing operated by organizations and private clubs that limit occupancy to members. If your property falls under one of these categories, you are legally able to deny an **ESA**.

If your property doesn't fall under one of these categories, there are two circumstances in which an owner may deny an accommodation request, according to HUD. If the **ESA** would either impose a fundamental alteration to the nature of the provider's operations or impose an undue financial and administrative burden on the provider, then the provider can deny the **ESA**.

There is one other instance in which you can deny an ESA, and that is if another tenant who has lived there longer has severe pet allergies. In Iowa, the state's Supreme Court set this precedent.

According to the case, the resident who was first on a floor or first in a building (i.e., the first to sign the lease) is a consideration for when a tenant's accommodation requests are incompatible with each other.

If you do have the right to deny an **ESA**, you should try to accommodate them in another way, if possible. For instance, you could offer a comparable apartment in another building where it would not be an issue.

# 02.

## How Do I Verify An ESA?

When verifying an **ESA**, landlords typically review a letter from a mental health professional that confirms the animal's role in the emotional support of the tenant. Landlords can generally review the letterhead of the letter to see if it is legitimate or look up the license number of the mental health professional in question to see if they are, in fact, a licensed professional that can legally practice in your state.



# SCAM ALERT

There are many sites that have popped up recently that offer to sell **ESA** letters to clients at a low rate after they fill out a questionnaire. The resulting letters may be written by mental health professionals, but they may also, unfortunately, be forged. Oftentimes, these forged letters go uncontested.

If you decide to verify the letter with the mental health professional in question, there are a couple of important things to take into consideration. First, you absolutely cannot ask any questions regarding the specifics of

your tenant's disability. This is a direct violation of HIPAA rules. You will also want to keep a permanent record of all correspondence with the mental health professional, in case you are ever accused of violating HIPAA.

The safest way to verify an **ESA** letter is use a service provider that is used to the ins and outs of **ESA** verification. These providers, **OurPetPolicy** included, will make sure the letter is 100% verified and walk you through any legal steps involved in that process.

# 03.

## What Could Get Me In Trouble?

Oftentimes, the potential losses involved in lawsuits against the denial of **ESAs** outweigh the worries a landlord may have about having pets on their property. Many fraudulent **ESAs** are allowed into rentals for the sake of avoiding hefty legal fines. If you are found violating the Fair Housing Act, your first offense will result in a \$16,000 fine.



The second offense (if issued within a five-year period) will cost you \$37,500, and you'll face \$65,000 for the third offense if the first two occurred within the previous seven years. HIPAA violations can cost up to \$50,000 per violation.

Now, you may be wondering what might qualify as a violation of the Fair Housing Act. There are a few different things that might get you into trouble here, including telling a tenant or potential tenant that you

don't accept **ESAs** or that you charge a fee or a deposit for **ESAs**. You'll also be found in violation of the act if you decline a legitimate **ESA** or if you decline a fraudulent **ESA** without the right reasons or documentation. Lastly, as aforementioned, if you ask the tenant or their mental health professional any questions about their disability or their private medical information, you will be in violation of HIPAA guidelines.



# 04.

## What Types Of Animals Are Considered ESAs?

You may be used to primarily dogs and cats when it comes to **ESAs**, and these are certainly the animals that HUD considers traditional, but a tenant can technically request that any animal serve as their **ESA**.

However, if they have an animal that is not labeled as traditional by HUD, they must provide evidence as to why they need that specific type of animal as their **ESA**. The animal in question still needs to be legal in regard to local or state laws in the area, and the animal cannot be a danger to others or put a financial burden on the landlord of the property in question.

What animals are considered traditional by HUD? Dogs and cats, of course. But the list doesn't stop there. HUD also includes the following animals in their list of traditional **ESAs**:

- Small Birds
- Rabbits
- Hamsters
- Gerbils
- Other Rodents
- Fish
- Turtles

Beyond these, any other small, domesticated animal that is traditionally kept in the home for pleasure, rather than commercial purposes, counts as a traditional **ESA**.

When considering non-traditional **ESAs**, as well as animals that are considered dangerous, you should check with your insurance company to see if allowing an **ESA** as such on your property would raise your insurance costs and place a larger financial burden on you and your property.



# 05.

## What Can I Require Of My Tenants With ESAs?

Even though **ESAs** are generally exempt from standard pet rules, fees, and such, they must still follow local and state animal laws. If your city requires that a certain type of animal be licensed, you can ask for a copy of the licensing associated with the animal.



If the animal will be around other tenants (e.g., using the same hallway, pet relief area, or other common ground), then it is reasonable to request vaccination records for the animal in question. Diseases, such as rabies, that can be prevented by vaccines are a potential health hazard to other tenants.

Beyond this, you can, as noted earlier, ask for **ESA** status verification from a mental health professional (in the form of an **ESA** letter or another equivalent form), as well as a photo of the animal and any other details you'll need to keep in your system.



# 06.

## **How Can I Better Manage Pets On My Property?**

Allowing pets on your property comes with a lot of extra work, documentation, and planning that many landlords simply do not have the time to manage, especially when it comes to unauthorized pets, pet damage, and waste management.



**ESAs** add another layer of complication to this puzzle.

Selecting the right pet policy management platform can help ease some of this burden and free up more time in your schedule. When selecting such a platform, make sure that the one you choose helps manage federal and state compliance regulations and serves as an all-in-one platform for your pet needs, as managing disparate solutions and keeping up with new rules and guidelines will only add to your plate in the long run.



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