

EMOTIONAL SUPPORT ANIMALS – MAKING REASONABLE ACCOMMODATION

In March 2024, the New Jersey Supreme Court ruled on a suit involving a condominium association and a resident's emotional support dog. The [decision](#) provides an outline of how housing providers should assess reasonable accommodation requests from residents who need an Emotional Support Animal (ESA).

The court decided an ESA should not be considered the same as a pet by the condominium association. Other major provisions of the opinion are as follows:

- The New Jersey Law Against Discrimination (LAD) more broadly defines 'disability' than federal regulations, which defines a disability as "any mental, psychological, or developmental disability (id. at -5(q)) that substantially limits one or more . . . major life activities." 42 U.S.C. § 3602(h).
 - There are two ways to establish a mental, psychological, or developmental disability under N.J.S.A. 10:5-5(q). First, a disability "prevents the typical exercise of any bodily or mental functions". The second ground, a disability that "is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques."
 - In addition to establishing their disability, residents have the initial burden to demonstrate the accommodation they seek is necessary. The question is whether the accommodation will alleviate at least one symptom of the disability, not whether the accommodation will cure or eliminate the disability.
- The LAD prohibits discrimination in housing on account of a person's disability, N.J.S.A. 10:5-12(g)(2).
- The Court explains that a resident of a condominium complex is entitled to request an accommodation to a pet policy in order to keep an emotional support animal.
 - The individual must first demonstrate they have a disability under the LAD.
 - In addition, they must show that the requested accommodation may be necessary to afford them an "equal opportunity to use and enjoy a dwelling." N.J.A.C. 13:13-3.4(f)(2).
- The housing provider then has the burden to prove the requested accommodation is unreasonable. They should evaluate whether allowing an ESA would fundamentally alter the housing provider's operations or impose an undue financial or administrative burden. Factors should not include:
 - Whether the animal has been trained, or level of training, is not a relevant consideration.
 - LAD does not require that an ESA be prescribed by a mental health professional.
 - The resident does not need to establish a specific need for a dog to exceed a housing agency's weight limit.
- The resident and the housing management should engage in a good-faith, interactive dialogue to exchange information, consider alternative options, and attempt to resolve or narrow any issues. If that collaborative effort fails and litigation follows, courts will inevitably need to balance the need for, and benefits of, the requested accommodation against the costs and administrative burdens it presents to determine whether the accommodation is reasonable.

Agencies with public housing to review the ruling and discuss with their attorneys how this may apply to their agency. Read the full opinion [here](#).