VETERANS' JUSTICE PROJECT

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Practice Pointer: Reasonable Accommodation Law in Oregon
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In Oregon, having (or having a record of having had) a "physical or mental impairment" which "substantially limits one or more major life activities of the individual" (for example, an inability "to acquire, rent or maintain property") constitutes a disability.

If one (or one's co-residing family member) has a disability, one is entitled to a "reasonable accommodation" from a landlord or potential landlord to obtain or retain housing. A "reasonable accommodation" should be substantiated by a treatment provider through a "disability verification letter" (attached) and may include the need to possess an animal.

> **Note: Think broadly about the protections to our Participants for "reasonable accommodation." Conditions requiring "reasonable accommodation" under the law could include a bad credit or rental history, criminal convictions, previous evictions, previous less-than-Honorable discharges, or anything else you can get a treating professional to link to any physical or mental condition. See pp. 13-23 of the attached Disability Rights Oregon Fair Housing Handbook for example letters.**

An "Assistance Animal," as defined under Oregon law (as of today, "a dog … that has been individually trained to do work or perform tasks for the benefit of an individual"), is the easiest case. With a disability verification letter, the landlord will almost certainly be obligated to allow the animal in.

The matter of whether a person is entitled to a "Companion Animal," an "Emotional Support Animal," or "Therapy Animal" that does not fit the definition of "Assistance Animal" is an unsettled area of the law in Oregon. Although we will be on much weaker legal ground, if there is a legitimate need we should try.

Regardless of how the animal is characterized, Oregon law prohibits "a pet security deposit for keeping a service animal or companion animal that a tenant with a disability requires as a reasonable accommodation under fair housing laws."

Whether the landlord must allow the animal in the first place, however, is dependent on whether possession of that particular animal is a "reasonable accommodation" to that particular person's specific physical or mental condition. (Thus, it is a case-by-case basis.) It is also prudent to inform and obtain

reasonable accommodation from the landlord before the animal moves in. (However, in cases of actual homelessness or when relocating a Participant, it may be wise to obtain approval of the tenancy before seeking reasonable accommodation.)

If the animal is naughty, Oregon law probably empowers the landlord to "require a person with a disability … to remove an assistance animal or assistance animal trainee if: (A) The animal is not housebroken; or (B) The animal is out of control and effective action is not taken to control the animal." Also, the landlord has the right to require the animal to be in good health, free of internal and external parasites, be fully vaccinated against common diseases, and wear a current rabies tag. Landlords may request that immunization records be provided to them. The animal may be required to wear owner ID tags and must be effectively controlled when outside of their own unit. Anything that actually jeopardizes other people's health and safety will be a no-go.

Lastly, notwithstanding the opinion of a vast majority of disability advocates, it appears that a landlord can require additional insurance for Participants with Assistance Animals as part of a "reasonable accommodation" with the tenant. However, please consider my previous Practice Pointer 20140613 – "Landlord Requiring Liability Insurance?" ORS 90.222(8) prohibits a landlord from requiring a tenant "to obtain or maintain renter's liability insurance if the household income of the tenant is equal to or less than 50 percent of the area median income, adjusted for family size as measured up to a five-person family." Most of our Participants will be under the threshold. If they are not, do not despair. Simply reach out to me, and we'll see what we can do.

The General Rule of Thumb is:

1. **The person (or family member) must have a disability.**
2. **The animal must serve a function directly related to the person's disability.**
3. **The animal must be necessary to allow the person to use and enjoy the housing.**
4. **The request for the assistance animal must be reasonable and not present an "undue burden."**
5. **(Helpful but not absolutely required) The animal should satisfy the definition of an "Assistance Animal" under Oregon law.**

Colleagues,

It is undeniable that animals can play profoundly useful roles in enabling our Participants to live fuller lives. Therefore, we should be aggressive about fighting for Participants' right to possess an animal that is necessary for the Participant's well-being.

Although we want to be aggressive in our advocacy for our Participants, we *never* want to misstate the law or take a position for which we do not have a good-faith basis. Unfortunately, there is a tremendous amount of confusion and misinformation in the public sphere about tenants' rights to possessing animals. For example, Disability Rights Oregon states in their "Fair Housing Handbook" that "[u]nder fair housing law, the terms assistance animal, emotional support animal, and service animal have the identical legal meaning." That statement is wrong.

This Practice Pointer delves (deeply) in the somewhat convoluted state of the law in Oregon concerning animals which provide some sort of support to disabled persons and explains how to obtain a "reasonable accommodation" which will allow the Participant to be healthier and happier. This is an evolving area of the law, and the following discussion is very technical. However, the blurb at the top should be enough to get each of you through the average case. As always, I am available to explore exceptional cases for SSVF Participants whom you assist, to write letters to recalcitrant landlords, and – when appropriate – to solicit assistance from disability rights assets to vindicate our Participants' legitimate needs.

Oregon Law expresses the position of the citizens of Oregon concerning discrimination: "The opportunity to obtain employment or housing or to use and enjoy places of public accommodation without unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability hereby is recognized as and declared to be a civil right." ORS 659A.006.

To examine whether someone can possess an Assistance Animal, either use my blurb above, follow the following reasoning, or simply call me.

First: A person – or a member of their family who will be living in the unit in an authorized capacity – must be "disabled."

ORS 659A.104 defines what constitutes "disability" under Oregon law. It provides that:

> (1) An individual has a disability for the purposes of ORS 659A.103 to 659A.145 if the individual meets any one of the following criteria:
>
> (a) The individual has a physical or mental impairment that substantially limits one or more major life activities of the individual.
>
> (b) The individual has a record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph, an individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) The individual is regarded as having a physical or mental impairment that substantially limits one or more major life activities of the individual. For the purposes of this paragraph:

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 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 of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(2) Activities and functions that are considered major life activities for the purpose of determining if an individual has a disability include but are not limited to:

(a) Caring for oneself;
(b) Performing manual tasks;
(c) Seeing;
(d) Hearing;
(e) Eating;
(f) Sleeping;
(g) Walking;
(h) Standing;
(i) Lifting;
(j) Bending;
(k) Speaking;
(l) Breathing;
(m) Learning;
(n) Reading;
(o) Concentrating;
(p) Thinking;
(q) Communicating;
(r) Working;
(s) Socializing;
(t) Sitting;
(u) Reaching;
(v) Interacting with others;
(w) Employment;
(x) Ambulation;
(y) Transportation;
(z) Operation of a major bodily function…; and
(aa) <u>Ability to acquire, rent or maintain property</u> [emphasis added].

(3) An individual is substantially limited in a major life activity if the individual has an impairment, had an impairment or is perceived as having an impairment that restricts one or more major life activities of the individual as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual. An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(4) When determining whether an impairment substantially limits a major life activity of an individual, the determination shall be made without regard to the ameliorative effects of mitigating measures, including:

(a) Medication;

(b) Medical supplies, equipment or appliances;

(c) Low vision devices or other devices that magnify, enhance or otherwise augment a visual image, except that ordinary eyeglasses or contact lenses or other similar lenses that are intended to fully correct visual acuity or eliminate refractive error may be considered when determining whether an impairment substantially limits a major life activity of an individual;

(d) Prosthetics, including limbs and devices;

(e) Hearing aids, cochlear implants or other implantable hearing devices;

(f) Mobility devices;

(g) Oxygen therapy equipment or supplies;

(h) Assistive technology;

(i) Reasonable accommodations or auxiliary aids or services; or

(j) Learned behavioral or adaptive neurological modifications.

(5) Nothing in subsection (4)(c) of this section authorizes an employer to use qualification standards, employment tests or other selection criteria based on an individual's uncorrected vision unless the standard, test or other selection criteria, as used by the employer, are shown to be job-related for the position in question and is consistent with business necessity.

Whether someone has a "disability" is to be "construed in favor of broad coverage of individuals." ORS 659A.139.

Second: If a person is "disabled" under the law, they have a right to a "reasonable accommodation" of that disability from a landlord or potential landlord. (Although "disabled" for the purposes of Oregon law, a person does not have a right to a reasonable accommodation if their disability is solely a result of ORS 659A.104(1)(c) ("The individual is [only] ***regarded as*** having a physical or mental impairment" [emphasis added]).)

Third: If the desired "reasonable accommodation" is substantiated by a qualified treatment provider, it makes my life easier.

In order to ensure that the requested accommodation is a "reasonable accommodation," the requested accommodation should be substantiated in some way by a treatment provider. Ideally, this would include a letter stating simply that the petitioner is (a) disabled, (b) that the animal "serves a function directly related to the person's disability," and (c) that "the animal is necessary to allow the person to use and enjoy the housing." (Please consult the model letters from pp. 13-23 of the attached Disability Rights Oregon Fair Housing Handbook.) Once substantiated, the landlord cannot make any further inquiries. If not substantiated, then the landlord retains a great deal of latitude in deciding what is "reasonable."

In either case, the measure of whether an accommodation is reasonable is whether it "imposes an undue hardship." ORS 659A.033.

ORS 659A.145 provides the final say in what is permissible concerning "reasonable accommodation":

> (2) A person may not discriminate because of a disability of a purchaser, a disability of an individual residing in or intending to reside in a dwelling after it is sold, rented or made available or a disability of any individual associated with a purchaser by doing any of the following …
>
> (f) Refusing to permit, at the expense of the individual with a disability, reasonable modifications of existing premises occupied or to be occupied by the individual if the modifications may be necessary to afford the individual full enjoyment of the premises. However, in the case of a rental, the landlord may, when it is reasonable to do so, condition permission for a reasonable modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
>
> (g) Refusing to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford the individual with a disability equal opportunity to use and enjoy a dwelling.

Fourth: The reasonable accommodation, once linked to an animal, should be submitted for the landlord's consideration before the animal moves in.

A "reasonable accommodation," in this context, may include the right to possess an "Assistance Animal." Under the law, "'[a]ssistance animal' means a dog or other animal designated by administrative rule that has been individually trained to do work or perform tasks for the benefit of an individual." ORS 659A.143. (Pursuant to ORS 659A.805, the Oregon Bureau of Labor and Industries is responsible for promulgating rules to implement ORS 659A. Those rules are contained in Oregon Administrative Rules (OAR) Chapter 839, Division 006. There have been no additional designations of "assistance animal" under the OAR.)

"Companion Animals," on the other hand, are a more difficult case under Oregon law:

> *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253 (D.Or.1998) is particularly interesting because it is frequently cited by advocates as supporting the notion that any kind of "therapy" animal must be accommodated. Although the *Green* court did rule for the tenant and against the housing authority, the evidence established that the dog in this case had received individual training at home as well as professional training outside the home, all of which enabled it to alert his deaf owner to "knocks at the door, the sounding of the smoke detector, the telephone ringing, and cars coming into the driveway." Indeed, the court noted that the dog met the definition of a service animal under both Oregon and federal law.

> From "The Truth About Companion Animals,"
> http://www.fairhouse.net/library/article.php?id=18 (last confirmed 27 Jun 14).

For those of you who administer HUD VASH vouchers, the rules concerning Companion Animals are a bit more permissive. "While federal and state courts disagree on whether companion animals should be accorded the same status as assistance animals, HUD's administrative law judges have, in the two cases they have decided thus far, upheld a tenant's right to keep companion animals...*HUD v. Riverbay Corporation*, 2 FH-FL Rpt. ¶ 25,080 (HUD Office of ALJs 1994) and *HUD v. Dutra*, 2 FH-FL Rptr. ¶¶ 25, 124 and 26, 058 (HUD Office of ALJs 1997)." *Ibid*.

Bottom Line: What can a landlord require of a properly-certified animal which a treatment provider indicates is necessary?

The answer to this question is that a landlord cannot require an additional pet security deposit for any animal which constitutes a "reasonable accommodation." ORS 90.300. However, as part of a "reasonable accommodation," the landlord can "condition permission for a reasonable modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted." ORS 659A.145(2)(f).

What if the landlord wants to guarantee that the tenant will restore the interior of the premises? Arguably, a landlord could – as part of a reasonable accommodation – reciprocally require a tenant to maintain additional insurance so that any additional modifications or damage can be remedied in the event that additional costs are not unreasonably borne by the landlord. (Note: This is a very unclear area of the law, and we may be able to fight this. However, this is an area you should let me handle with the landlord.)

However, in the case of a demand for insurance coverage, most of our Participants will be able to avail themselves of the protections of ORS 90.220(8), which prohibits a landlord from requiring a tenant "to obtain or maintain renter's liability insurance if the household income of the tenant is equal to or less than 50 percent of the area median income, adjusted for family size as measured up to a five-person family." Using that provision, most of our Participants should generally be protected from any requirement for addition insurance. If they are insufficiently poor, then bring the issue to my attention and I will try to find another tool to persuade the landlord.

Lastly, a landlord does have the right as part of any reasonable accommodation to require the animal to be in good health, free of internal and external parasites, be fully vaccinated against common diseases, and wear a current rabies tag. Landlords may request that immunization records be provided to them. The animal may be required to wear owner ID tags and must be effectively controlled when outside of their own unit. Anything that actually jeopardizes other people's health and safety will be a no-go.