

THE ROLE OF ANIMALS & FAIR HOUSING LAWS

FACT SHEET # 5

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Disability (handicap) under the Federal Fair Housing Act is defined as “a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.”¹ Depending on the situation, this may also include temporary disabilities.

Individuals with disabilities may require the use of animals to assist them in coping and/or dealing with their disabilities. Under fair housing laws, an individual who is disabled and can show a “nexus”² between their disability and their need of an animal may ask the housing provider for a reasonable accommodation in “no pets” policies. To deny the accommodation, the landlord must prove that such an accommodation is not reasonable or causes an undue burden to the landlord.

Animals help people overcome the limitations of their disabilities and the barriers in their environment. Depending upon the duties the animal will perform, these animals may be called service, assistive, therapeutic, emotional support or companion animals. Service animals are typically for persons with physical disabilities and typically perform physical tasks. Assistive, therapeutic, emotional support or companion animals are typically for individuals with cognitive, intellectual and/or mental disabilities. They assist people with depression, anxiety, those in need of emotional support or in other capacities.

A service animal as defined by the ADA is “a dog that is individually trained to do work or perform tasks for a person with a disability.” Their service entitles them to access of public places and common areas, as they are working animals and not pets. Though the ADA limits its definition of “service animal” to dogs, the DOJ noted “This definition does not affect or limit the broader definition of “assistance animal” under the Fair Housing Act...”³

The Department of Housing and Urban Development states that “species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the Fair Housing Act and Section 504. In order to qualify for such an accommodation, the assistance animal must be necessary to afford the individual an equal

opportunity to use and enjoy a dwelling or to participate in the housing service or program. Further, there must be a relationship, or nexus, between the individual’s disability and the assistance the animal provides. If these requirements are met, a housing facility, program, or service must permit the assistance animal as an accommodation, unless it can demonstrate that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing program or services.”⁴

Animals which assist people with disabilities may be individually trained to meet the needs of their owner. Some service animals receive certification papers but others do not. Currently, there is no state or national standard which tests whether an animal qualifies as a service, assistive, therapeutic, emotional support or companion animal so “certification” cannot be required. The animal’s owner is responsible for its behavior. The animals must obey applicable laws and be under the control of their handlers. Their behavior should be neither disruptive nor destructive. However, the animals are typically highly trained and work in partnership to increase the independence, safety and mobility of the person with the disability.

WHAT’S THE DIFFERENCES BETWEEN PETS AND ANIMALS NEEDED FOR THOSE WITH DISABILITIES?

Pets are animals that may be owned by people with or without disabilities. Service, assistive, therapeutic, emotional support or companion animals assist individuals with disabilities in their daily living and are working animals and not considered pets. No “pet deposit” may be required of a animal needed for a disability.

A housing provider may make inspections to determine whether unreasonable wear and tear is being caused by a pet or an animal needed for a disability; however, these inspections cannot be any more stringent or often than those inspections of those residents without animals. The inspections should also follow the state’s landlord/tenant law in regard to a landlord’s right of entry and reasonable notice to a tenant.

A housing provider has the right to request an animal (whether a pet or needed for a disability) be removed or

given additional training if it is being noisy or disruptive.

Federal (and most state) laws guarantee the right of service animals for those with physical disabilities to accompany their disabled partners any place open to the public. Other types of animals are typically not entitled to this benefit although state laws may vary.

MOST OFTEN ASKED QUESTIONS

- **How do I know a service animal is safe to be around?** Service animals are carefully screened for temperament and stability before they are trained and placed with persons with disabilities. These professional animals are focused on their human partners and their work.
- **Can a deposit or additional insurance coverage be required for a tenant with a service animal?** No. The law prohibits imposition of additional burdens on the residency of a person with a disability if those tenancy provisions would subject that person to different and/or more adverse treatment than a similarly situated person without a disability.
- **How do I recognize a service animal?** Most wear a tag; vest; harness or backpack identifying the dog as a service dog. If you're not sure, ask the person.
- **May I pet the animal?** No, never without approval from the owner. Petting can be distracting and the animal needs to focus on the instructions and needs of their human partner. Do not call or distract the animal with whistles or sounds, this could endanger their partner.
- **Some people do not look disabled. Why do they need an animal with them?** The partner may have a "hidden disability," for example, cancer, chronic back pain, intellectual disability, seizure disorder or hearing impairment, to name a few.
- **Can I ask the person, "What's wrong with you?"** No. Federal law protects the privacy of people with disabilities. They are not required to explain their

disability nor are they required to explain or demonstrate why they are accompanied by a service animal.

- **Is the animal likely to "make a mess" indoors?**

These animals are carefully selected and trained to have excellent manners.

KEY FAIR HOUSING CASES DEALING WITH ANIMALS FOR THOSE WITH DISABILITIES

- *Green v. Housing Authority of Clackamas County*, 994 F.Supp. 1253 (D. Ore. 1998). Court found housing authority violated the fair housing act by threatening to evict a family after it acquired a "hearing" dog for their deaf child. Court found that the only requirements to be classified as a service animal are that the animal be individually trained and work for the benefit of the disabled person.
- *HUD v. Dutra*, FH-FL Rptr. 25,124 (November 12, 1996). Disabled man threatened with eviction if he did not get rid of his cat which he had kept as a service animal for many years.
- *Secretary, HUD v. Purkett*, HUDALJ 09-89-1495-1 (July 31, 1990). Disabled woman awarded \$60,000 following harassment, charging of a "pet deposit" and threatened eviction by the landlord due to her service animal.
- *Housing Authority of the City of New London v. Toni Tarrant*, No. 12480, 1997 Conn. Super. LEXIS 120 (Conn. Super. Ct. 1-14-97). Tenant could not provide medical or psychological evidence of her son's mental disability and need of a support animal.

REFERENCES

- ¹ Federal Fair Housing Act §100.201.
- ² Joint Statement of HUD and DOJ on Reasonable Accommodations Under the Fair Housing Act, May 17, 2004
- ³ U.S. Department of Justice "Service Animals" http://www.ada.gov/service_animals_2010.html
- ⁴ New ADA Regulations and Assistance Animals as Reasonable Accommodations under the Fair Housing Act and Section 504 or the Rehabilitation Act of 1973," released February 17, 2011

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