

"Everything you want to know about Assistance
Animals, but were afraid to ask"

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"To steal the ideas of one individual is
plagiarism. To steal the ideas of many is
called research. The following information
is research" - WLW

** For the past several years, discrimination
against people with disabilities has made
up the majority of fair housing complaints

** In 2014, disability-based housing 52% of
all complaints

The U.S. is Getting Older

The number of Americans ages 65 and older
is projected to more than double from 46
million today to over 98 million by 2060, and
the 65 and older age group's share of the
total population will rise to nearly 24 percent
from 15 percent

38% of people 65 and over have disabilities

Assistance Animals/Service Animals

There is a sufficiency in the world for man's need
but not for man's greed (Mahatma Gandhi)

There is no official tally of emotional support animals, which don't have to go through special training or have any certifications; most are simply recommended by a doctor or therapist. Nevertheless, the number of companies that say they provide those certifications is growing and with that, businesses say, the ranks of people trying to pass their pets off as support animals for illegitimate reasons are increasing as well. (Chicago Tribune February 9, 2018)

The increase in Assistance Animals in multi-family housing is off the charts. Unfortunately, the apartment industry has no way of tracking this phenomenon

Air Carrier Access Act
(49 U.S. 41705 and 14 C.F.R. 382)

Federal laws that require airlines to permit passengers with disabilities to travel with service and emotional support animals in the cabin



Delta Air Lines

"The airline says the number of service animals on its flights has increased nearly 150% since 2015. Delta says it carries more than 250,000 service and support animals a year. Those pets fly free of charge"

United Air Lines

"United carried 76,000 emotional support animals in 2017, up nearly 77% from 2016, and noted a significant increase in incidents involving the animals on board its aircraft"

Apartment Industry

“Sham services are allowing people to obtain phony dog service certifications deeming that an “emotional support pet”, a designation that not only exempts tenants from pet fees but grants the animal access to rentals that are not pet friendly”

The Certa Pet Syndrome

- Not necessary that medical professional possesses license in State

JOINT STATEMENT DOJ/HUD May 2004

- Request reliable disability-related information
- “Credible statement by the individual. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual’s disability may also provide verification of a disability”

FHEO-2013-01 April 25, 2013

“Documentation from a physician, social worker, or other mental health professional”

HUD HANDBOOK 4350.3 November 2013

“Physician, psychiatrist, social worker, or other mental health professional”

Columbus FHEO Center/Regional Director – November 2015

“Expect the medical professional to have knowledge of the requesters disability through the process of an examination, or possess knowledge of the requester’s disability through a professional association with the tenant where knowledge of the requester’s disability is derived, as an acceptable document. Therefore, the diagnosis of the disability is based on substantive evidence”

MANDATORY READING

- HUD FHEO Notice on Assistance Animals
- FHEO – 2013 – 01
- Understand and Appreciate difference between an Assistance Animal and a Service Animal

Do not confuse the ADA's definition of a Service Animal

"Individually trained" to do work or perform tasks for the benefit of an individual with a disability"

UNDER THE ADA

- Limited to dogs and miniature horses
- Generally, most permit "service animals" to accompany people with disabilities (PWD) in all areas where members of the public are allowed to go
- Generally, service animals must be harnessed/leashed. Must be under PWD's control

UNDER THE ADA (continued)

- PWD cannot be asked to remove animal unless:
 - (1) animal is out of control and PWD does not take effective action to control, or
 - (2) animal is not housebroken. If legitimate reason to ask for removal, staff must offer the PWD the opportunity to obtain good/services without the animal's presence

UNDER THE ADA

- Staff may only ask two questions:
 - (1) is the animal a service animal because of a disability, and
 - (2) what work or service has the animal been trained to perform

UNDER THE ADA

- Staff cannot ask about the person's disability
- Require medial documentation
- Require special identification
- Require PWD to demonstrate the work or task

UNDER FHA or 504

HUD Regulations do not use or define terms such as:

- Service Animal
- Support Animal
- Therapy Animal
- Companion Animal
- Emotional Support Animal

UNDER FHA and 504

Use the term "Assistance Animal"

UNDER FHA and 504

FEDERAL STATUTES AND REGULATIONS DO NOT ATTEMPT TO DEFINE THE ANIMALS THAT CAN BE USED AS ASSISTANCE ANIMALS

- Monkeys, horses, birds, goats, chickens and pot bellied pigs
- "Animal works for the benefit of the disabled person by aiding him to cope with his disability"

- There are no Federal or State "credentials" for assistance animals
- Federal and Ohio laws do not define the animals that can be used as an assistance animal
- Assistance animals do not necessarily need to be trained: animal may relieve depression and anxiety
- You can not prohibit "Aggressive Breed" for assistance animals

Generally, Assistance Animals are only permitted in an individual's dwelling. However, requests for Reasonable Accommodation must be considered on case-by-case basis beyond the individuals dwelling unit

Many Local Municipalities have enacted their own Breed-Specific Legislation and Breed Bans (BSL)

If your Insurance Carrier would cancel, substantially increase the cost of the insurance policy, or adversely change the policy terms because of the presence of a certain breed of dog or certain animal, HUD has found that this is not an undue financial and administrative burden on the housing provider

A person with a disability who uses an assistance animal is responsible for the animal's care and maintenance. A housing provider may establish reasonable rules in lease provisions requiring a person with a disability to pick up and dispose of his or her assistance animal's waste, not disrupting neighboring residents and complying with state and local laws

QUESTION...

A resident asks permission to have an assistance animal. You agree to allow it as a reasonable accommodation. But the dog the prospect chooses weighs 50 pounds, and the community rules only allow dogs that weigh 25 pounds or less. What should you do?

Please make your selection...

- A Say the resident must find a smaller assistance animal.
- B Say the resident can keep the dog if she gets a note from her veterinarian saying it won't pose a threat.
- C Change the rules to allow dogs of any size.
- D Don't enforce the 25-pound rule against this resident, and let her keep the dog.

- The correct answer is: D
- The resident proved that she needed a service animal for her disability. At this point, you must overlook your weight limit as a reasonable accommodation and let the resident have her 50-pound service animal.

QUESTION...

Your community allows pets but charges every pet owner a pet deposit of \$25 a month to cover clean up costs. Should you charge a pet deposit if you allow a disabled resident keep a service animal as a reasonable accommodation?

Please make your selection...

- A Yes, because if you offer one resident special treatment, you'll have to offer it to everyone
- B Yes, because owners and managers aren't responsible for personal items like cleanup services for service animals
- C No, as part of the reasonable accommodation, you should waive the resident's payment of the pet deposit
- D None of the above



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•The correct answer is: C

•As a general rule, part of accommodating a resident with a disability is to waive any pet fees or deposits you have with regard to service animals.

A housing provider may not require an applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep assistance animal. However, if a tenant's assistance animal causes damage to the unit or the common areas of the dwelling, the housing provider may charge the tenant for the cost of repairing the damage

If the emotional assistance animal is particularly disruptive, or the tenant fails to take proper measures to ensure that the animal does not bother other tenants, the landlord may be justified in denying the accommodation or ultimately filing for an eviction

In *Woodside Village v. Hertzmark*, (Conn Sup. Ct. 1993), the Court found that a federally assisted housing complex did not violate the Fair Housing Act by evicting a resident with a mental illness for failure to walk his dog in designated areas and to use a pooper-scooper

A housing provider may only refuse an assistance animal where specific facts exist:

- There is reliable evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation;
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others;
- The presence of the assistance animal would pose an undue financial and administrative burden to the provider; or
- The presence of the assistance animal would fundamentally alter the nature of the provider's services

WHAT IS REASONABLE?

- Applicant / Tenant must have a disability as defined by the Fair Housing Act
- Accommodation must be related to the disability and necessary to allow tenant/applicant an equal opportunity to use and enjoy the unit
- Owner has the right to verify the existence of the disability (although not to the type or severity) and the need for the accommodation

Whether a requested accommodation is required by law is "highly fact-specific, requiring a case-by-case determination"

Bazon Center for Mental Health
www.bazon.org

- Resources for Advocates
- Excellent Fair Housing Fact Sheets

- #2 Structural Modifications in Public and Section 8 Housing
- #4 Using Reasonable Accommodation to Prevent Eviction
- #6 Right to Emotional Support Animals in "No Pet" Housing
- #8 Tenant posing a "Direct Threat" to others

DEFINITION OF DISABILITY

- Fair Housing Act protects an "individual with a handicap"
 - Any person who has a physical or mental impairment that substantially limits one or more major life activity; has a record of such an impairment; or is regarded as having such an impairment

MAJOR LIFE ACTIVITIES

- Functions such as caring for one's self performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working
- "Record of" means person has a history of a covered impairment, even if not currently impaired

- Overlook Mutual Homes, Inc. v. Spencer et al, No. 3:2007cv00398 – United States District Court for the Southern District of Ohio
- United States Court of Appeals for the Sixth Circuit
– File Name 11a0061N.06-09-4036

Sixth Circuit	Seventh Circuit
Kentucky	Wisconsin
Michigan	Illinois
Ohio	Indiana
Tennessee	

- Plaintiff must prove all of the following elements:
- (1) that the plaintiff or his associate is handicapped within the meaning of 42 USC § 3602(h);
 - (2) that the defendant knew or should reasonably be expected to know of the handicap
 - (3) that accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling;
 - (4) that the accommodation is reasonable;
 - (5) that defendant refused to make requested accommodation

The Sixth Circuit, however, has held that an accommodation must be **necessary**. See Howard v. City of Beavercreek, 276 F.3d 802, 806 (6th Cir. 2002) (noting that “the concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects the disability”) (quoting Bronk v. Ineichen, 54 F.3d. 425, 429 [7th Cir.]). Thus, the third above quoted element has been effectively modified by the Sixth Circuit to replace the “may be” with “is”

- BRONK CASE**
- The accommodation must facilitate the disabled persons’ ability to function
- Vs
- The accommodation must survive a cost-benefit balancing that takes both parties’ needs into account

- Bronk v. Ineichen – 42 USC § 3604 (f)(2)
- Two adjectives, “reasonable”, “necessary” figure prominently in this definition, modifying both the term “accommodations” and [Landlord’s] obligations under the law.
(Balancing-Test)

Does your company/organization utilize a verification that asks the medical nexus question?

GETTING BACK TO CERTA PET

- FAKE Certification / Registration / ID
- Certification does not mean the animal is a service animal or assistance animal

Can a person have more than one service or emotional support animal?

While there do not seem to be any cases dealing with the issue of multiple emotional support animals, the basic requirements for this reasonable accommodation would still be the same. In other words, if a person were claiming the need for multiple emotional support animals, then he or she would need documentation supporting this need from his or her physical or medical professional. The practitioner would need to provide documentation that each support animal alleviated some symptom of the disability.

What about the assistance animals of my guests?

HUD does not cover this issue specifically in its notice to housing providers. However, the underlying purpose of the FHA is to provide an equal opportunity to use and enjoy housing regardless of disability. If a tenant cannot have a particular guest over who uses a service or assistance animal, then the tenant may be deprived of the ability to use and enjoy his or her dwelling based on the presence of a disability. There do not yet appear to be any published legal cases that have reviewed this issue.

In 2011, the United States District Court for the District of Nevada entered a consent decree (a settlement of a lawsuit where a party agrees to take an action without admitting liability) on this issue. The complaint in the underlying case alleged that the defendants declined to allow a friend of their tenants who uses a service animal to visit the tenants' apartment. The defendants then evicted the tenants based on the service animal's presence in the apartment. As plaintiff, the United States alleged that this denied the tenants the "full enjoyment of their apartment at Defendants' apartment building." See *U.S. v. DeAngelis*, Case No 3:11-cv-00796-RCJ-WGC (July 8, 2013), available at http://www.justice.gov/sites/default/files/crt/legacy/2013/10/30/dean_gelissettle.pdf. As part of the agreement, the defendants had to agree to comply with the Fair Housing Act, create a policy for assistance animals in their apartment building, undergo education and training on the issue, and abide by other requirements of the consent decree.

Additional Good Resources

- Michigan State University College of Law Animal Legal & Historical Center FAQ's on Emotional Support Animals
-- Author: Rebecca F. Wisch, 2015
- US Dept of Justice
Civil Rights Division/Disability Rights Section
Commonly Asked Questions about Service Animals in Places of Business