



Service Animals in Housing

Provided by the Disability Law Resource Project
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Landlords, tenants, and owners in multifamily housing, housing management associations, and realtors often have questions about service animals in housing that traditionally has had no-pet policies. In many areas, despite federal and some state laws that protect people with disabilities to have service animals in housing, confusion about rights and obligations persist. This can lead to discrimination. The federal Fair Housing Amendments Act is the law that most often helps to provide the guidance necessary to answer the questions that arise about service animals in housing. This article is not legal advice, but is informal technical assistance to help answer some of the most frequently asked housing questions. Advice about individual circumstances and about the legal interpretation of the Fair Housing Act can be obtained from the local Housing and Urban Development (HUD) office.

History of the Fair Housing Amendments Act

The Fair Housing Act is a civil rights law that protects the rights of individuals with disabilities in housing. Originally, the Civil Rights Act of 1968 prohibited discrimination on the basis of race, color, religion, sex, or national origin in the sale, rental and financing of dwellings. Subsequently, the Fair Housing Amendments Act (commonly referred to as the Fair Housing Act) of 1989 was enacted to further address inequities in housing. It broadened the definition of "protected class" to include, among others, individuals with disabilities. It prohibits discrimination because of disability in the sale, rental, or advertising of dwellings. The law requires public and private housing providers to modify policies and practices that deprive individuals with disabilities of their rights to enjoy and use their dwellings.

How the Fair Housing Act Protects Individuals with Disabilities with Regard to Service Animals

Service animals are a healthcare option that many individuals choose to help them overcome the limitations imposed by disabilities. The Fair Housing Act protects individuals who have disabilities as defined by the Act. In order to be protected by the Fair Housing Act with regard to service animals, *3 tests must be met*:

1. The person must have a disability (see Disability Defined, following).
2. The animal must serve a function directly related to the person's disability.
3. The request to have the service animal must be reasonable.



The provisions that protect the rights of individuals with disabilities to be accompanied by service animals are just one way that the Fair Housing Act protects people with disabilities.

With regard to service animals, the Fair Housing Act does not protect individuals who do not have disabilities, or situations in which individuals train animals for use by people other than themselves.

Disability Defined

The Fair Housing Act defines a person with a disability as an individual who has a physical or mental impairment that substantially limits one or more major life activities, or has a record of an impairment, or is regarded as having an impairment (regardless of whether that perception is accurate). It is not necessary that the disability be an obvious one.

Disability is defined broadly and has been found to include such conditions as alcoholism and drug addiction but excludes individuals with current, illegal use of or addiction to a controlled substance. Other specific exemptions, such as transvestitism, are listed in the Act.

Types of Housing Covered and Exempted

The Fair Housing Act covers most housing types, with limited exceptions. The Act generally does not cover single family residences sold or rented by a private, individual owner provided that:

- the individual owner does not own any interest in, or have owned by someone else on his/her behalf, more than 3 such single-family houses at any one time.
- the private individual owner has not sold more than one non-owner occupied single-family house within a 24-month period.
- with regards to the sale or rental of a dwelling, it is sold or rented without advertising or the assistance of a person or entity that is in the business of selling or renting dwellings.
- the owner occupies and maintains one of no more than 4 rooms or units in dwellings containing living quarters occupied or intended for occupation by no more than 4 families living independently of each other.
- the housing owned by religious organizations and private clubs for other than commercial purposes limit occupancy to their members.

Dwelling Defined

Dwelling is defined in the Fair Housing Act as any building, structure, or part thereof which is intended for occupancy as a residence by one or more families. The terms "dwelling" and "dwelling units" have been broadly interpreted. Types of facilities recognized as dwellings include:

- nursing homes.
- group homes for recovering addicts and alcoholics.
- seasonal facilities (i.e. for migrant workers).
- residential facilities.
- mobile homes.
- trailer parks.

Condominiums and cooperatives are also considered dwellings and are subject to the prohibitions against discrimination except when a particular unit is sold by an individual owner who is accorded exempt status. In such cases the Fair Housing Act may not apply to the individual unit owner, but would still apply to the condominium or cooperative association. So, with regard to access by individuals with service animals, the result is the same: restrictive policies must be modified to allow a person with a disability to be accompanied by his or her service animal.

Lodging for transient guests such as hotels and motels are not dwellings under the Fair Housing Act. However, hotels, motels, inns, shelters for people who are homeless and similar places of lodging are considered to be public accommodations under the Americans with Disability Act (ADA) and likewise may not discriminate against people on the basis of disability.

Required Conduct

The Fair Housing Act makes it unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny housing, to individuals because of their disabilities. The law covers not only the named buyer/renter but also all individuals who reside in the dwelling or are associated with the buyer or renter.

For the purpose of sale or rental, the Fair Housing Act prohibits housing providers (landlords, property managers, owners, etc.) from asking whether an individual has a disability or about the nature or severity of that disability. In addition, housing providers may not request or require medical records or documentation

of disability. However, limited exception is made and questions specific to disability may be asked in certain circumstances, such as:

- to determine whether an individual qualifies for residency in dwellings that are designated for, and made available only to, persons with disabilities.
- when particular units are set aside for priority occupancy by individuals with disabilities.
- when a person with a disability requests a reasonable accommodation, such as having a service animal in otherwise "no-pets" housing (see definition, following).

It is legal for housing providers to inquire about any individual's ability to meet the requirements of ownership or tenancy when the same inquiries are made of all applicants, whether or not they have disabilities. A provider may consider an applicant's ability to pay, past rental history, and violations of rules and laws. Further, an application for tenancy or ownership may be rejected when it can be demonstrated by concrete and credible evidence that an individual would be a direct threat to the safety, or cause substantial damage to the property, of others. An individual with a disability will be held to the same standards of behavior and obligations as any other individual.

Reasonable Accommodation

Reasonable accommodations are modifications that are practical and feasible. The Fair Housing Act requires that owners and landlords provide reasonable accommodation (that is, a change in rules and policies) when necessary to permit an individual with a disability equal opportunity to use and enjoy a dwelling. It is the responsibility of the person with the disability to request any necessary reasonable accommodations necessary for tenancy.

An example of reasonable accommodation is modifying no-pet policies and practices to support the right of a person with a disability to have a service animal in a publicly or privately owned dwelling. Refusal to permit an exception to a no-pets rule may constitute a discriminatory practice when an individual with a disability is unable to use and enjoy a dwelling, including entertaining guests with disabilities who require the use of service animals.

Although inquiries into the existence, nature and extent of disabilities are prohibited by the Fair Housing Act when application is made for housing, an individual with a disability who requests a reasonable accommodation may be asked to provide some reliable professional documentation (but medical records may not be required) confirming that he or she has a disability and the accommodation is necessary for the person to reside in the housing. To support a discrimination claim, the person with the disability might be required to further demonstrate that the requested reasonable accommodation is necessary for his or her equal use and enjoyment of their dwelling. In investigating complaints brought under the Act, HUD considers whether there is evidence that supports a finding of disability, whether the service animal performs a function directly related to the individual's disability, and whether the requested accommodation is reasonable.

Service Animal Categorized

The Fair Housing Act does not define "service animal" per se, and does not make a distinction among certified service animals, non-certified animals, animals that provide psychological support, and service animals in training that live with the people with disabilities for whom they will work. The Act does not have restrictions about who may train the animal. However, the Act recognizes that service animals are necessary for the individuals with disabilities who have them, and as such does not categorize service animals as "pets." Service animals, then, cannot be subjected to "pet rules" that may be applied by housing providers to companion (non service) animals. Housing providers cannot, for example, impose upon service animals the size or weight restrictions of a pet rule, exclusions from areas where people are generally welcome, or access restrictions to only a particular door or elevator. Further, special tags, equipment, "certification or special identification of service animals cannot be required. Judith Keeler, Director, U.S. Dept. of HUD, Northwest Alaska Area Fair, Housing Enforcement Center, states that it is HUD's position that no deposit may be charged for the service animal.

The Act does not specifically limit the number of service animals an individual with a disability may have. Requests for multiple service animals may be reviewed on a case-by-case basis. It is possible that housing

providers may impose limitations if it can be demonstrated that an individual's request for reasonable accommodation exceeds what is necessary for that person to have full use and enjoyment of the premises.

Individuals with disabilities may request other reasonable accommodations regarding their service animals. For example, a person with mobility impairment may find it difficult to walk a service dog. He and the landlord might work together to identify a mutually agreeable, and accessible, area of the property on which the dog can relieve itself.

Rights of Housing Providers

Individuals with disabilities are solely responsible for the conduct of their service animals, and housing providers may have recourse available if the tenant fails to satisfy this obligation. For example, a housing provider may require payment for damages (such as chewed carpeting), or insist that a service animal be prevented from repeated barking that disturbs neighbors. However, a housing provider may first be obligated to attempt resolution of the problem before eviction proceedings are initiated. Complaints about a service animal must be substantiated and not based on speculation.

Service animals that are a direct threat to others (biting, etc.) *or otherwise violate animal control laws* can be reported to the agency that enforces animal control laws. Often the agency is the animal control department, or the local police. Some local and state laws exempt service animals from some animal control laws (see Other Federal Laws, following).

Responding to Discriminatory Conduct

If an individual feels he or she is being discriminated against because of a disability, and efforts to resolve the matter through discussion with housing management fail, a complaint may be filed with the Secretary of Housing and Urban Development (HUD) within one year of the alleged discriminatory conduct. HUD provides complaint forms and instructions for filing a complaint.

In addition, if the resident's state or locality has laws pertaining to nondiscrimination in housing, a complaint may be sent to the agency that administers those laws (usually the state Human Rights Commission or office of the state attorney general). The deadlines for filing may be different than that of Fair Housing Act. Complaints are investigated by the enforcement agencies that administer the law(s) in question. If the complaints are found to have merit (a basis for complaint), the agencies will attempt resolution through conciliation (informal resolution, not a law suit). If these attempts fail, the case will proceed to an administrative hearing, or if requested by either party, will proceed to litigation (law suit) in federal district court. Private lawsuits may also be filed in federal court, at the individual's own expense, within 2 years following the discriminatory act.

In addition, there may be certain state and local laws that protect the rights of people with disabilities in housing. However, federal law will supersede any state or local law that is more restrictive and provides less protection for the individual with the disability.

Other Federal Laws

In addition to the Fair Housing Act, there are other federal laws which forbid discrimination based on disability.

- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in all programs and activities that are either conducted by the federal government or receive federal financial assistance. The concept of reasonable accommodation in this Act served as the model for the Fair Housing Act.
- HUD's "Pets in Elderly Housing" regulation, often referred to as the "Pet Rule," was enacted in 1986, revised in 1996 and again in 1999. It applies to federally assisted rental housing designated exclusively for residency by those 62 years of age or older or people with disabilities. It not only protects the rights of individuals with disabilities to have service animals, but also allows all residents of most federally funded housing to have pets (companion or non-service animals). Landlords may have "reasonable" pet policies, which might include size restrictions, for these pets. One of the types of housing that this rule does not cover is Section 8 housing, which is covered by the Fair Housing Act. Section 8 housing has no requirements for landlords to permit pets (non-service animals).

- The Americans with Disability Act (ADA) prohibits state and local governments from discriminating against individuals with disabilities in places of public accommodation. The ADA covers certain types of nontraditional housing, such as temporary shelters.

Other Resources and Educational Sources

Too often, housing discrimination results from a lack of understanding about the needs of individuals with disabilities and the requirements imposed by law. Education and communication are key to reducing this discriminatory conduct. Additional information about service animals in housing can be obtained from:

- the Department of Housing and Urban Development (HUD).
- the U.S. Department of Justice Housing Enforcement Division.
- the state Attorney General.
- an attorney of choice.
- Delta Society's [National Service Dog Center](#). Delta Society does not provide legal services, but its web site is a resource for education.

Note:

Service animal costs might be applicable as medical costs toward "spend downs" used to calculate rent in subsidized housing. For more information, refer to individual subsidization program guidelines or consult the local HUD office.

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