

# Housing

Housing issues with a service animal typically fall under one of three federal laws:

Each of these laws apply in different kinds of housing, and not all housing is covered by even one of them. This is a complex area of disability law which will require consultation with a qualified attorney to truly understand how the laws apply in a specific situation. This article is meant as just a general overview of disability housing laws, and not a complete accounting for every possible type or housing or housing issue.

**The Fair Housing Amendments Act of 1988** extended the protections of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) to people with disabilities. This is the law that applies to most forms of housing, including most rental housing and most condominiums. Exceptions to this law include buildings with four or fewer units where the landlord lives in one of the units, and (b) private owners who do not own more than three single family houses, do not use real estate brokers or agents, and do not use discriminatory advertisements.

Protection under the FHAA is contingent upon:

- (1) Tenant has a disability (case law suggests the landlord may be permitted to require proof of disability);
- (2) Landlord/Housing Authority knows about disability;
- (3) Reasonable accommodation may be necessary to afford tenant an equal opportunity to use and enjoy his or her dwelling (again, case law suggests the landlord may be permitted to require proof of need and proof of training for a service dog); and
- (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.

**Section 504 of the Rehabilitation Act of 1973** applies to programs that receive federal assistance, such as public or subsidized housing. Landlords who accept only Section 8 rental assistance are not subject to Section 504.

Protection under Section 504 is contingent upon:

- (1) Tenant has a disability;
- (2) Tenant was excluded from and denied participation in services, programs, and activities;
- (3) Exclusion was because of disability; and
- (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.

**Title II of the Americans with Disabilities Act of 1990** applies to housing owned by state or local government, or its instrumentalities, regardless of federal financial assistance. This would include local housing agencies, such as a public housing authority.

Protection under Title II is contingent upon:

- (1) Tenant has a disability;
- (2) Tenant was excluded from and denied participation in services, programs, and activities;
- (3) Exclusion was because of disability; and
- (4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.

Note that under the ADA, emotional support animals are not generally considered a reasonable accommodation as they are excluded by lack of training from 28 CFR 36.104, the definition of "service animal," under the Americans with Disabilities Act:

"Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair[sic], or fetching dropped items."

### **Some general guidelines on how disability law tends to deal with service animal issues**

(remember to consult a qualified attorney to learn whether these guidelines would apply in any given specific situation)

In general:

1. A landlord cannot require a pet deposit for a service animal. However, the owner of the service animal is liable for any damages caused by the animal above and beyond the normal wear and tear a human tenant might reasonably cause. This includes teeth marks on trim, carpet torn by a dog's digging, and carpet soiled by dog waste or vomit.
2. A landlord might or might not be permitted to require a pet deposit for an emotional support animal.
3. A landlord is permitted to require some sort of proof of disability as a condition of accommodation, and some sort of proof the animal in question is a trained service animal, though generally he cannot require certification *per se*.
4. A landlord is permitted to exclude an animal, including a *bona fide* service animal, if the presence of the animal causes a fundamental alteration of the goods and services offered to other tenants. For example, a dog that nuisance barks keeping neighbors awake at night causes a fundamental alteration and may be banned from the premises, though the landlord should permit the human tenant to remain without the dog if the tenant so chooses.
5. A landlord is permitted to exclude an animal, including a *bona fide* service animal, if the animal poses a direct threat. For example, an animal permitted to deposit fecal material in a common area where that material is not immediately cleaned, poses a health threat to people using that common area, particularly when the common area is where children might play on the ground. If the tenant is not able to clean their dog's waste area themselves, it falls on the tenant, not the landlord, to secure the services of someone to do the cleaning for them.

A tenant's first step in dealing with a housing issue should be to write the landlord a [letter requesting a reasonable accommodation](#). If the landlord fails to respond to the written request or refuses the accommodation, the tenant may choose to pursue the matter by filing a complaint with HUD or the U.S. Department of Justice.

### **Filing a Complaint**

Housing discrimination complaints can be filed with Housing and Urban Development:

[http://portal.hud.gov/portal/page/portal/HUD/topics/housing\\_discrimination](http://portal.hud.gov/portal/page/portal/HUD/topics/housing_discrimination)

Complaints may be filed [online](#), by phone (1 (800) 669-9777), or by mail using a downloaded [form](#).

## **Species Restrictions**

While only dogs are considered service animals under the ADA (and some accommodations may be required for the use of some miniature horses), the Fair Housing Act has no such restriction. While the ADA does not include emotional support animals, the FHA does. Some housing providers will be subject to the ADA, such as government owned housing. Some will be subject to the FHA, such as most landlords with more than four units. Some will be subject to both, and some to neither. Wherever the FHA applies, common domestic species are included as assistance animals, but where the ADA applies, only dogs are. Where both apply the FHA multiple species policy applies.

<http://servicedogcentral.org/content/files/HUD%20FHEO%20Memo%202-17-2011...>

## **Breed Restrictions**

A landlord is permitted to refuse accommodation for a service animal based on breed if allowing the animal would constitute an undue burden. An example might be if the landlord's insurance carrier would drop his coverage if an animal of a restricted breed were kept on the premises.

<http://servicedogcentral.org/content/files/2006-06-12%20HUD%20memo%20on%...>

[< Section 508 of the Workforce Investment of 1998 up Settlement Agreements >](#)

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