



Going the Distance: Part 2
June 27, 2019



Which Law Applies?





Fair Housing Act

- Protected Classes
 - Race
 - Color
 - National Origin
 - Religion
 - Sex
 - Familial Status
 - **Disability**

 **Fair Housing Act**

- Prohibits discrimination:
 - In sale or rental
 - Terms and conditions
 - Advertising
 - Design and construction
 - Failure to allow reasonable modification
 - **Failure to make reasonable accommodation**

 **Section 504 Discrimination**

- Discrimination in the sale or rental housing on the basis of disability
- Discrimination in the terms and conditions of housing on the basis of disability
- **Failure to provide reasonable accommodations**
- Failure to include accessibility features in certain types of multifamily housing

 **Animals**





Which term is correct?



- > Service Animal
- > Assistance Animal
- > Therapy Animal
- > Emotional Support Animal
- > Seeing-eye dog
- > Therapeutic, emotional support, service monkey



Service Animals (Title II and III of the ADA)



Service Animals



- ▶ What is the definition of "service animal" under the ADA?
 - "a **dog** that is individually trained to do work or perform tasks for a person with a disability"
 - "Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA."



Service Animals

- ▶ Two questions:
 - ▶ Is the dog a service animal required because of a disability?
 - ▶ What work or task has the dog been trained to perform?



Service Animals

- ▶ What if the animal is not trained to do a specific work or task?
 - ▶ It is not a "service animal" under Title II or III of the ADA.



Assistance Animals (Fair Housing Act)



Man says emotional support alligator helps his depression.





Example Accommodations

- > Pet policies
 - > No pets
 - > Limit on number of pets
 - > Limit on where tenants may take pets
 - > Limit on weight/breed/size



Reasonable Accommodation Process

- > Identify the request
- > Engage in the interactive process to determine if the accommodation is necessary
- > Evaluate if the requested accommodation is unreasonable
- > Discuss alternatives
- > Make the decision



Fair Housing Act Analysis



- Is the animal necessary for the person with the disability to use and enjoy the housing?
- Is the use and presence of the animal at the housing development reasonable?
 - e.g., Does it result in a fundamental alteration and/or direct threat?



“Obvious” Disability



If the disability and need for the accommodation are obvious, a housing provider cannot request a verification.



Not “Obvious”

If a housing provider has a reasonable question as to whether the applicant/tenant has a disability or need for the accommodation, it may request certification.

 **Mental Impairments**



- Anxiety:
 - Generalized anxiety disorder
 - Post-traumatic stress disorder (PTSD)
 - Obsessive-compulsive disorder (OCD)
 - Panic disorder
 - Social anxiety disorder

 **Mental Impairments**



- Mood Disorders
 - Depression
 - Mania
 - Bipolar disorder
- Psychotic disorders
 - Schizophrenia
- Personality disorders
 - Antisocial personality disorder
 - Paranoid personality disorder

 **Verification**

What do we need to know?

Does the person requesting the accommodation have a "disability"?

Does the person requesting the accommodation need the accommodation because of the disability?



Assistance Animals

- Cannot charge a "pet deposit" or other fee
- Cannot require the animal to have special training or certification
- Cannot require that the animal perform work or tasks
- Cannot limit assistance animals based solely on type, breed, or size
- Cannot require tenant to use a leash if the disability prevents the tenant from using a leash and the tenant can otherwise control the animal
- Cannot limit assistance animal solely because local ordinance bans the specific animal
- Cannot require insurance or indemnification



Assistance Animals

- Can require tenant to ensure animal does not disrupt peace and quite enjoyment of others
- Can require tenant to prove the animal is current on vaccinations, etc.
- Can require tenant to maintain custody and control over animal
 - Clean up waste
 - Animal is not a direct threat to the health and safety of others
 - Animal is not a direct threat to cause substantial property damage



Is the animal's presence "reasonable"?

Even if the person has a disability and the animal is necessary because of his or her disability, the accommodation must be reasonable.



“Reasonable”

Three factors to consider:

- Undue financial and administrative burden
- **Fundamental Alteration**
- **Direct Threat**



“Dangerous Breeds”

- *Trasvina Memo*
 - Breed, size, and weight limitations may not be applied to an assistance animal.”
 - “A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct — not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.”



“Dangerous Breeds”

- *United States v. Brooklyn Park*
 - Tenant filed a complaint after housing provider refused to allow her to have pit bull as assistance animal
 - Agreed to change policies and pay damages under a Consent Order

 **“Dangerous Breeds”**

- > Case Law
 - > *Zatopa v. Lowe*
 - > *Oregon Bureau of Labor and Industries v. Housing Auth. Of Douglas Co.*
 - > *Warren v. Delvista Towers Condo. Assoc., Inc.*

 **Examples**



 **Exercise No. 1**



An applicant asks that you waive your no-pets policy to allow her son to live with his rat. Mother states that the rat is necessary because her son is depressed and caring for the rat ameliorates his depression.



Exercise No. 2



You catch a resident with two cats in violation of your no-pets policy. After receiving notice to evict, the resident brings in a verification from her physician that both cats are necessary for the resident because they alleviate her severe anxiety and depression.



Exercise No. 3

You have granted Ben a reasonable accommodation to live with his dog due to his emotional disability. You have designated a relief area about 200 yards from Ben's unit where he can take his dog for relief. Ben submits another reasonable accommodation request to allow him to take his dog for relief immediately outside of his patio door in a grassy area. Ben says he cannot take his dog to the current relief area because of his physical disability. What if Ben later asks your maintenance staff to walk the dog and pick up the dog's poop?



Exercise No. 4



A resident with seizure disorder asks to keep his six-foot python in his apartment because it warns him of upcoming seizures.



Exercise No. 5



An applicant asks that you waive your no-pets policy to allow her to have her guide dog because she is blind and her cat which is necessary because she suffers from depression and anxiety and the cat ameliorates her anxiety attacks.



Exercise No. 6



A resident with a disability asks for an exception to the 20-pound pet weight limit to keep his 50-pound pit bull who the tenant claims ameliorates his PTSD. Your insurance policy will not cover dangerous breeds, which includes pit bulls.



Exercise No. 7



Gloria, who has an approved cat as an assistance animal for her disability, complains that other residents are saying Gloria is faking her disability, no one likes her cat, and she should just move out.



Questions?



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