



Assistance Animals Under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Air Carriers Access Act

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Introduction

Numerous federal laws address the rights of individuals with disabilities to be accompanied by their assistance animals, which includes service animals, in public spaces. This document summarizes the legal protections provided individuals with disabilities under the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973, and the Air Carrier Access Act (ACAA). Additional information and resources, including the rights of individuals with disabilities with service animals under the Americans with Disabilities Act (ADA), can be found at <https://adata.org/service-animal-resource-hub>.

Fair Housing Act (FHA) and Section 504

ADA Titles II and III cover some housing situations and in those cases, the regulations applicable to assistance animals, including service animals, are applied.¹ Two other federal laws are also relevant to the rights of individuals with disabilities in housing. First, the federal Fair Housing Act (FHA) prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status and disability in housing.² Many types of housing, including public housing, are covered by FHA. The three exceptions to coverage are 1) rental dwellings of four units or less, if one unit is occupied by the owner; 2) single family homes sold or rented by the owner without a broker; and 3) housing owned by private clubs or religious organizations that restrict housing units to their members.³ Two federal agencies—the Department of Justice (DOJ) and Housing and Urban Development (HUD)—have authority to enforce the FHA. Section 504 of the Rehabilitation Act will also apply to FHA housing if the housing provider has received federal financial assistance that can include funding received by FHA. DOJ also enforces compliance with Section 504 of the Rehabilitation Act of 1973.

There are various protections from discrimination included in the FHA. For individuals with disabilities who want to have their animals, the relevant one is the duty of covered

¹ ADA Title II covers public housing agencies and government provide housing including public postsecondary education housing; Title III applies to public accommodations which may include housing such as assisted living facilities, some shelters, and rental offices.

² 42 U.S.C. §3604.

³ 42 U.S.C. §3603(b), §3607.

entities to provide a reasonable accommodation defined as “a change, exception, or adjustment to a rule, policy, practice, or service.”⁴ If a tenant, or proposed tenant, asks permission to have an animal, and the provider has a “no pets” policy, FHA and Section 504 would both require that this be considered a request for reasonable accommodation. The threshold question is what kind of animal is the tenant requesting. FHA allows both “assistance animals” and “service dogs.”

A request to have an assistance animal, which can include a service animal under the ADA definition, must be evaluated under the reasonable accommodation standard. Two questions are allowed; 1) Does the person have a disability—i.e., a physical or mental impairment that substantially limits one or more major life activities, and 2) Does the person making the request have a disability–related need for an assistance animal?⁵ If the disability is readily apparent or known, the housing provider cannot ask for further information. If the disability and the reason for an assistance animal is not apparent, then the provider can ask for documentation of a disability and the need for an assistance animal. The example given by HUD is that a person who asks to allow an emotional support animal can provide a letter from a psychologist or mental health provider explaining the role of the animal in providing some disability related assistance. Requests for extensive medical records are not allowed.

If answers to both questions outlined above are yes, then the housing provider is obligated under both Section 504 and FHA to modify a “no pets” rule to allow the person to use the animal in all portions of the housing unless it would create an undue financial and administrative burden and/or fundamentally alter the nature of the services. Another reasonable accommodation would be waiving a pet deposit or fee.

The request may be denied if the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a second reasonable accommodation. The request may also be denied if the animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by an additional reasonable accommodation. HUD guidance emphasizes the necessity of individual determination in every request and any concern about dangerousness cannot be based on speculative concern or fear.

⁴ Joint Statement of the Department of Housing and Urban Development and the Department of Justice: [Reasonable Modifications under the FHA. Question 11.](#)

⁵ John Travina, US Dep’t of House. & Urban Dev., [Service animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs.](#)
https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF

HUD has acknowledged that it can be confusing to housing providers covered by FHA, Section 504 and ADA, to comply with all the laws concerning various types of assistance animals.⁶ The agency has given the following advice to housing providers that must apply with all three federal laws:

1. The preambles to DOJ’s 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities “may not use the ADA definition [of “service animal”] as a justification for reducing their FHAct obligations.”⁷
2. Under FHA “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a “reasonable accommodation” that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”⁸
3. In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. If the animal meets that test, the animal must be permitted to accompany the individual with a disability to all areas of the facility unless the ADA exceptions exist.⁹
4. If the animal does not meet the ADA definition of a service animal, then the housing provider should apply the HUD guidance regarding reasonable accommodation.¹⁰

Related Court Case

The Sixth Circuit Court of Appeals heard an interesting appeal in 2015 from a district court decision that addressed the obligations to modify city zoning rules to allow a miniature horse under both FHA and ADA Title II. In *Anderson v. City of Blue Ash*,¹¹ the issue was whether Anderson, the plaintiff, could keep a miniature horse, the assistance animal for her daughter with disabilities. The city, in response to complaints from neighbors regarding the excess waste from the miniature horse and other health concerns, unsuccessfully attempted to remove the animal and eventually passed an ordinance to prohibit farm animals in residences within the city. After receiving numerous fines, Anderson sued the city for violations of both FHA and Title II.

The Sixth Circuit judge goes into great detail regarding the ADA Title II regulations related to miniature horses and the duty of covered entities to make reasonable

⁶ *Id.*

⁷ 75 Fed.Reg. at 56166 and 56240 (Sept. 15, 2010).

⁸ 75 Fed. Reg. at 56194, 56268

⁹ 28 C.F.R. §35.136; 28 C.F.R. §36.302(c).

¹⁰ *Id.* at fn 106

¹¹ 798 F.3d 338 (6thCir. 2015), rehearing and rehearing en banc denied.

modifications in policies, practice or procedures. He then dismissed the city’s argument that the miniature horse was only used “outside” in the yard for a limited amount of time during the day and therefore the daughter could instead receive benefit by participating in a community therapy program. The fact that the horse provided physical support to the daughter so that she could get out of the house and be in the yard independently seemed sufficient to the court to be evidence of performing a task for the individual with a disability as required under ADA. Similarly, the court reviewed the mandate under FHA to provide a reasonable accommodation if necessary to allow the individual an equal opportunity to enjoy the property. The Sixth Circuit reversed the lower court’s award of summary judgment to the city on both the FHA and ADA Title II issues.¹²

There have been numerous complaints, administrative hearings, and court cases regarding the obligation of covered entities under FHA to allow individuals with disabilities to live with their assistance animals. There seems to be no dispute that whatever the animal is “called”—e.g., emotional support animal, or service animal—all must be considered as a reasonable accommodation to the rules or policies of a housing provider.¹³

Air Carrier Access Act (ACAA)

In late January 2018, a passenger tried to board a United Airlines flight from Newark International Airport to Los Angeles with a peacock, her emotional support animal.¹⁴ The airline refused to allow the passenger to board with the peacock based on its weight and size according to the press. Six months earlier, in June of 2017, a passenger on a Delta flight from Atlanta to San Diego was seated next to a man holding his large dog. The dog, identified as an emotional support animal, lunged at the passenger who sustained facial injuries requiring dozens of sutures.¹⁵ Cases such as these have created frustration among airline staff and passengers, leading to increased complaints.

¹² Summary judgment is a motion brought by either party in a lawsuit (or both) asking for a court ruling that no factual issues remain to be tried and therefore one or all of the issues in a complaint can be decided without trial.

¹³ *Id.* at fn. 106.

¹⁴ https://www.washingtonpost.com/news/animalia/wp/2018/01/30/a-woman-tried-to-board-a-plane-with-her-emotional-support-peacock-united-wouldnt-let-it-fly/?utm_term=.76a57bff1651

¹⁵ Times Telegram Feb 3, 2018.

<http://www.timestelegram.com/news/20180203/animals-on-planes-challenge-for-airlines-passengers>.

Because the ADA does not apply to airlines, the relevant law to apply in both the cases above is the 1986 Air Carrier Access Act (ACAA). The ACAA requires that airlines registered in the United States must transport all service animals regardless of species, with a few exceptions. Those exceptions include snakes, reptiles, ferrets, rodents, and spiders. Service animals are defined by the Department of Transportation (DOT) under the ACAA as “any animal that is individually trained to assist a qualified person with a disability or any animal necessary for the emotional well-being of a passenger.”¹⁶ This is clearly a broader definition than a service animal under the ADA and includes emotional support animals and psychiatric service animals.

If the animal is an emotional support or psychiatric service animal, the animal’s owner must provide a letter from a licensed mental health professional stating that the passenger needs the animal. DOT distinguishes between emotional support (no training required) and psychiatric support (training required) animals but both are covered. Only these two categories of assistance animal require some written certification or documentation under the ACAA. In addition, the airlines are permitted to request a 48 hour advanced notification when a passenger wants to travel with either an emotional support or psychiatric service animal.¹⁷ In all other types of animals, the airlines are to rely on “credible verbal assurances” from the passengers. DOT only requires foreign airlines to allow service dogs, although a US airline is responsible if a passenger flying on a foreign code share partner¹⁸ is not allowed to have the animal.¹⁹ Finally, airlines cannot charge for the animal.²⁰

Based on the growing numbers of passengers flying with assistance animals and the increased complaint activity, DOT published an advance notice of proposed rulemaking in 2018 to address the concerns.²¹ DOT states that the intent of new rules is to address the misrepresentation by some passengers as to the role of their animals and ensure the safety of all passengers. Although it is not clear what the revised ACAA regulations will be, it would not be surprising if there were restrictions on the types of animals allowed to board with passengers. Some airlines are not waiting for possibly new ACAA regulations and have passed internal policies regarding assistance animals on their

¹⁶ 14 C.F.R. §382.117(i) and Guidance Concerning Service animals, 73 Fed. Reg. 27614, 27659 (May 13, 2008).

¹⁷ 14 C.F.R. §382.117(e).

¹⁸ Foreign code share partner designates a business arrangement between an American airline and a foreign airline to share the same flight.

¹⁹ 73 Fed. Reg. 27614 (May 13, 2008).

²⁰ 14 C.F.R. §382.31(a).

²¹ <https://www.transportation.gov/individuals/aviation-consumer-protection/advance-notice-proposed-rulemaking-anprm-dot-ost-2018-0068>

planes. For example, United Airlines—the airline involved in the peacock episode—issued new rules soon after that incident. Effective March 1, 2018 United Airlines requires documentation that the emotional support animal is both 1) in good health and 2) is properly trained for public settings.²² Delta has also issued new procedures and a comprehensive support and service animal policy following the emotional support dog incident referenced above.²³

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²² https://www.united.com/web/en-US/content/travel/specialneeds/disabilities/assistive_animals.aspx

²³ <https://news.delta.com/delta-introduces-enhanced-requirements-customers-traveling-service-or-support-animals-effective>; <https://news.delta.com/delta-restricts-emotional-support-animals-flights-over-eight-hours>; <https://www.delta.com/us/en/accessible-travel-services/service-animals>