

# *Service Animals*

## **in Assisted Living and Residential Care**





### ***What is considered a service animal under the Fair Housing Act?***

The Federal Fair Housing Act does not define what constitutes a "service animal". Instead, the Act recognizes that service animals can be considered necessary for individuals with disabilities. Service animals should be thought of as a healthcare option that many individuals choose to help them overcome the limitations imposed by their disabilities.

"Disability" is broadly 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 (regardless of whether that perception is accurate). This means that a disability must more than minimally affect activities such as walking, talking, seeing, hearing, breathing, performing manual tasks, caring for one's self, learning, and working.

It is not necessary that the disability be physical or an obvious one. The Fair Housing Act protects residents who have "physical or mental impairments." Chronic fatigue syndrome, a learning disability, depression, and mental illness all fit the FHA's definition.



### ***Do I Have to Allow a Service Animal?***

Yes. Allowing a service animal is considered a "reasonable accommodation". Under the Fair Housing Act a reasonable accommodation is considered a change, adaption, or modification to a policy, program or service, which will allow a person with a disability to use and enjoy a dwelling, including public and common use areas.



### ***Do Service Animals Require Training or Certification?***

No. The Fair Housing Act does not distinguish between certified service animals, non-certified animals, animals that provide emotional support, and service animals in training that live with the people with disabilities for whom they will work. In addition, the Fair Housing Act does not have restrictions about who may train an animal, or the type of training provided. Indeed, no training is required at all. Emotional support or companion animals may be a type of service animal.



### ***What if I have a "No Pets" Policy?***

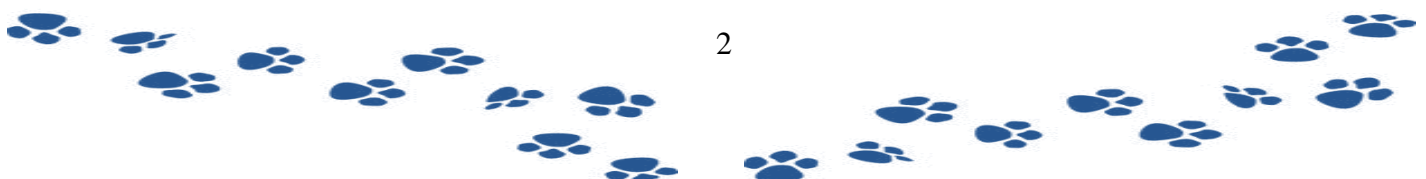
Service animals are not pets. Service Animals are a health care option, and should be thought of more like assistive devices. Service animals, then, cannot be subjected to "pet rules" that may be applied to pets. Housing providers cannot, for example, impose upon service animals the size or weight restrictions of a pet rule, exclusions from areas where people are generally welcome, or access restrictions to only a particular door or elevator. No deposit may be charged for the service animal.



### ***What if the Animal doesn't "do" anything?***

It doesn't matter. "Emotional support" or "companion animals" can be considered "service animals" under the Fair Housing Act if the presence of the animal ameliorates a condition that can be considered a disability.

For example, if a resident suffers from depression, and the presence of the animal lessens the effects of the depression, the animal may qualify as a service animal.





### ***Can I ask why a person requires a service animal?***

Yes, but be careful. In determining whether a service animal is justified, the first step should be to determine whether the “nexus” between the resident’s disability and the need for the service animal is “readily apparent”. If the need for the animal is obvious, there should be no further inquiries made. For example, if a resident who is obviously visually impaired requests the admission of a seeing-eye dog, no questions need be asked.

However, if the need for the animal is less obvious a discreet inquiry into the need for the animal can be made. In some situations, written verification of the need for the service animal can be requested. However, we advise a great deal of caution in making these requests. The verification does not have to come from a doctor. 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.



### ***Who is responsible for caring for the service animal?***

Ordinarily, the resident is responsible for the care and feeding of the service animal and the resident should be in control of the animal at all times.

But, 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. You must work with the resident in determining how the animal will relieve itself, and, identify a mutually agreeable, and accessible, area of the property on which the dog can relieve itself.



### ***What if the service animal is unruly or vicious?***

If the animal is unruly, disruptive, or aggressive the animal can be evicted.

However, as always, caution and patience are required. Under the Fair Housing Act a residence need not be made available to a resident’s service animal if the animal constitutes a “direct threat” to the health and safety of others. But, there must be an actual threat of harm, not a fear of harm based upon stereotypes, fears, or prejudices. This “direct threat exception” is only available after other attempts at “reasonable accommodation” have been exhausted.

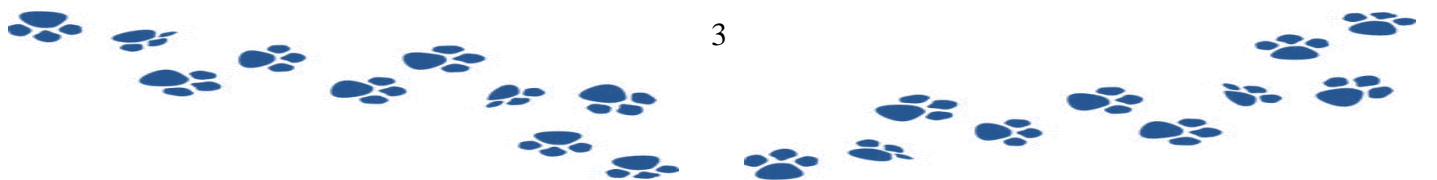
If an animal is repeatedly disruptive, steps should be taken to minimize any danger to others. Consider excluding the animal from certain areas; or in the alternative request that the animal undergo further training. Eviction of the animal should always be a last resort after all other attempts at reasonable accommodation are exhausted.



### ***What about tenants who are afraid or allergic to animals?***

Usually, a fear of a particular animal will not constitute a “disability” that must be accommodated. Accordingly, while you do not have to “accommodate” the complaining resident’s fear, you should work with your residents to minimize any disruption the services animal may cause.

Similarly, if the presence of the animal causes minor discomfort like sneezing a sniffing, this too is not a condition that requires accommodation. However, if the tenant’s allergies are so severe that animal contact could cause severe respiratory problems, the allergic tenant may also request an accommodation.





***My internet research finds that under the ADA regulations service animals can only be dogs, and must be trained. Am I wrong?***

No. But, understand that the requirements of the ADA are very different from the Fair Housing Act. The ADA applies to “place of public accommodation” and employment. It does not apply to residential housing. When addressing issues of service animals in housing, we must take our direction from the Fair Housing Act, not the ADA.



***What can I do if I decide I don’t want to have to deal with any of the issues related to service animals?***

Service animals are a fact of life. Deciding that you do not want to deal with issues related to service animals would be akin to deciding you do not want to deal with walkers or wheelchairs. In other words, it would be interpreted as disability discrimination that could result in fines, penalties, and punitive damages.



### ***Do’s and Don’ts***

#### ***Do:***

- ▶ Have a “service animal” policy.
- ▶ Hold resident responsible for any actual damage caused by the animal
- ▶ Attempt to determine the need for the animal if the need is not obvious. Where appropriate obtain written verification of the need.
- ▶ Require reasonable rules of behavior.
- ▶ Require compliance with local laws regarding inoculation, licensing, and leashes.
- ▶ Require resident to care for and clean up after the service animal.
- ▶ Make resident responsible for animal safety in emergencies.
- ▶ Ensure that animal does not pose a direct threat to others.
- ▶ Provide reasonable access to area for animal exercise and deposit of waste.

#### ***Don’t:***

- ▶ Require “pet” deposits or fees for service animals.
- ▶ Require additional insurance for animal.
- ▶ Limit the size or type of animal (*within reason*).
- ▶ Refuse animal based upon “no pets” policy.
- ▶ Require animal to wear identifying “service animal” vest.
- ▶ Require proof of training.
- ▶ Inform other residents about the person’s need for a service animal.

