



# Assistance Animals In Housing

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# Today's Roadmap

1. Terminology: What is an assistance animal?
2. Federal laws governing assistance animals in housing
3. Distinctions for animals in housing and public settings
4. Case scenarios
5. Q & A



# What is an Assistance Animal and what does it do?

- Must be of the biological kingdom **Animalia!**
- No training or certifications necessary
- Works by providing assistance and performing tasks to alleviate the effect of a physical or mental disability



# What is a service animal and what does it do?

- Any dog individually trained
- Work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability
- Emotional support, well-being, comfort, or companionship not work tasks

# Comparing Assistance and Service Animals

	Assistance Animal Under FHA	Service Animal Under ADA
Species	Any animal	Dog or Miniature Horse
Works for:	Person with disability	Person with disability
Training Required	No	Yes
Alleviates Physical or Mental Disabilities	Yes	Yes
Emotional Support as Work Task	Yes	Not primarily
Accepted in Housing	Likely	Likely/Yes for PHAs
Accepted in Public Accommodations	Permissible but not required	Yes

# HUD's Rule on Animals in Housing

- The Fair Housing Act (“FHA”) permits a resident to keep an assistance animal, whether a service animal or not, as a reasonable accommodation of the resident’s disability.



# Controlling Authority: Adoption of HUD Guidance

**HUD guidance:** Treat requests for assistance animals as requests for reasonable accommodations

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Courts adhere to this guidance

- *Anderson v. City of Blue Ash*, 798 F.3d 338 (6th Cir. 2015)
- *Bronk v. Ineichen*, 54 F.3d 425 (7th Cir. 1995)
- *Meyers v. Condo's. of Edelweiss, Inc.*, 2013 WL 4597973 (N.D. Ill. Aug. 29, 2013)
- *Manzke v. Jefferson Cnty.*, 2018 WL 3998035 (W.D. Wis. Aug. 21, 2018)

## Fair Housing Act

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- Prohibits discrimination in the sale or rental of housing
- An owner may not refuse to sell or rent to someone because of their race, color, religion, sex, familial status, or national origin
- An owner may not refuse to sell or rent to a person because of a “handicap”



## Claims under the FHA

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- Disparate Treatment
- Disparate Impact
- Failure to Accommodate

## What constitutes a handicap?

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- A physical or mental impairment which substantially limits one or more major life activities;
- A record of having such impairment; or
- Being regarded as having such an impairment.

# Controlling Authority: Reasonable Accommodation

## Reasonable Accommodations Under FHA

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Discrimination includes:

- Refusals to permit reasonable modifications of existing premises
- Refusals to make reasonable accommodations in rules, policies, practices, or services

## What is not covered under the FHA?

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- Single family homes sold or rented by an owner
- Buildings with four or fewer units, provided the owner lives in one
- Religious organization limiting occupancy/sale to person of same religion
- Reasonable government restrictions regarding maximum number of occupants

# Reasonable Accommodation Claims

## Reasonable Accommodation (~~prima facie~~ elements)

### ➤ 6th Circuit:

1. The requested accommodation affords a handicapped person an equal opportunity to enjoy the dwelling;
2. The RA is necessary to afford the equal opportunity; and
3. The RA is reasonable.

# Reasonable Accommodation Claims

## Reasonable Accommodation (*prima facie* elements)

### ➤ 7th Circuit:

1. The requested accommodation is reasonable; and
2. Necessary;
3. To afford a handicapped person an equal opportunity to enjoy a dwelling.

# Reasonable Accommodation Claims

## Reasonable Accommodation (*prima facie* elements)

### ➤ 8th Circuit:

1. The requested accommodation is linked to the disability-related needs;
2. Necessary to afford her an equal opportunity to enjoy the dwelling; and
3. Possible to implement.

# Reasonable Accommodation Claims

What happens after plaintiff establishes a *prima facie* case?

➤ 6th Circuit:

*“Plaintiff...must prove both the reasonableness and necessity of the requested modification.”*



# Reasonable Accommodation Claims

What happens after plaintiff establishes a *prima facie* case?

➤ 7<sup>th</sup> Circuit:

*“Once the plaintiffs have made this prima facie showing, the defendant must come forward to demonstrate unreasonableness or undue hardship in the particular circumstances.”*

# Reasonable Accommodation Claims

What happens after plaintiff establishes a *prima facie* case?

➤ 8<sup>th</sup> Circuit:

*“If plaintiff makes such a showing, the burden shifts to [the housing provider] to demonstrate that the requested accommodation is unreasonable.”*

# Unreasonable Requests

## What is unreasonable?

- An accommodation is unreasonable if it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program.



# Exceptions to Duty to Accommodate

Other times a landlord need not accommodate:

- Direct threat; or
- Damage to property

# What should a housing provider consider?

- (1) Does the person seeking to use and live with the animal have a disability?
- (2) Does the person making the request have a disability-related need for an assistance animal?

# What should a housing provider NOT consider?



- Breed
- Size
- Weight
- Gender
- Pet Deposit

# Inquiries about disabilities

- A housing provider can request reliable documentation regarding:
  - Disability; and
  - Disability-related need for an assistance animal



# Assistance Animals in Public Places

- The American With Disabilities Act
  - Requires public entities and places of public accommodation to allow **service animals**, unless:
    - Animal is out of control and handler does not try to control it; or
    - Animal is not housebroken



# Assistance Animals in Public Places

- The American With Disabilities Act
  - Excludes the following as work tasks:
    - Emotional support;
    - Well-being;
    - Comfort; or
    - Companionship

# Entities Covered Under ADA and FHA

- Public housing agencies; rental offices; shelters; residential homes; assisted living facilities housing in places of public education.
- Public services and accommodations “may not use the ADA definition of “service animal” as a justification for reducing their FHAct obligations.”

# FHA Assistance Animal Scenarios

- A tenant recently moved in with her service animal. The apartment complex permits pets but requires tenants pay a \$200 pet deposit, which will be returned in-full to the tenant provided the pet does not cause damage to the apartment. The complex also requires \$25 per month in pet rent.
- The landlord argues all fees must be paid. The tenant responds the FHA provides she need not pay a pet deposit, but she will agree to pay pet rent. Who is right?

# FHA Assistance Animal Scenarios

- A tenant who moved into his apartment six months ago acquired a beagle three weeks ago. The landlord, who maintains a “no pets” policy, spotted the beagle and the tenant walking down a common hallway. When confronted, the tenant reported the beagle provides him emotional support. The tenant has been dishonest to her about rent in the past, so the landlord is skeptical of the tenant’s honesty.
- What can the landlord do?

# FHA Assistance Animal Scenarios

- A tenant signed a lease and moved into her apartment last June. The lease signed by both the landlord and the tenant provides a strict “no pets policy.” The landlord found out she has had a cat with her in the apartment since August. The cat provides emotional support for the tenant.
- Can the landlord evict the tenant for violating the “no pets policy?”

# FHA Assistance Animal Scenarios

- A tenant owns an iguana that serves as an emotional support animal. Upon move-in, the tenant provided the landlord a doctor's letter stating the iguana helps provide emotional support to the tenant. The landlord readily made an exception to his "no pets policy" and has allowed the tenant in the apartment building with "Spike" for the past three years.
- The tenant gave proper notice to terminate the lease and moved out September 30. The landlord notices stains on the wood flooring in the living room. The stains are the same size as the iguana droppings he found in the tenant's carpeted bedroom.
- Shampooing the carpet and refinishing the wood floors will cost \$2,000. Who is responsible for these costs?

# FHA Assistance Animal Scenarios

- A tenant keeps an emotional support hippopotamus in her apartment. The tenant provided the landlord a doctor's letter upon move-in explaining how the hippo provides emotional support and therapy for the tenant.
- Over the past five years, the tenant and hippo lived happily in their apartment. But the once-housebroken hippo is getting older, and has been relieving herself in hallways and other common areas of the apartment building.
- The landlord sends the tenant a letter reminding her of the building's policy on pet waste. The tenant responds that her disability prohibits her from adequately cleaning up after the dog and that the Fair Housing Act does not require her to do something she cannot do because of her disability. The property manager says she must find a way to take care of the animal waste or she and "Blimpy" will be out on the street.
- Who is right?

- Complaint with local human rights office
- HUD Complaint
  - Website:
    - [hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](http://hud.gov/program_offices/fair_housing_equal_opp/online-complaint)
  - Phone:
    - 1-800-669-9777
- Lawsuit





# Questions?



# Thank you!

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