

**ASSISTANCE ANIMALS
AND SERVICE ANIMALS
UNDER THE FHA
AND THE ADA**

**Iowa Civil
Rights
Commission
April 2017**

OBJECTIVES

- To know law and background of the FHA and assistance animals.
- To know law and background of the ADA provisions of public accommodations and service animals.
- To understand and apply the ADA and FHA to situations where both laws may be applicable.

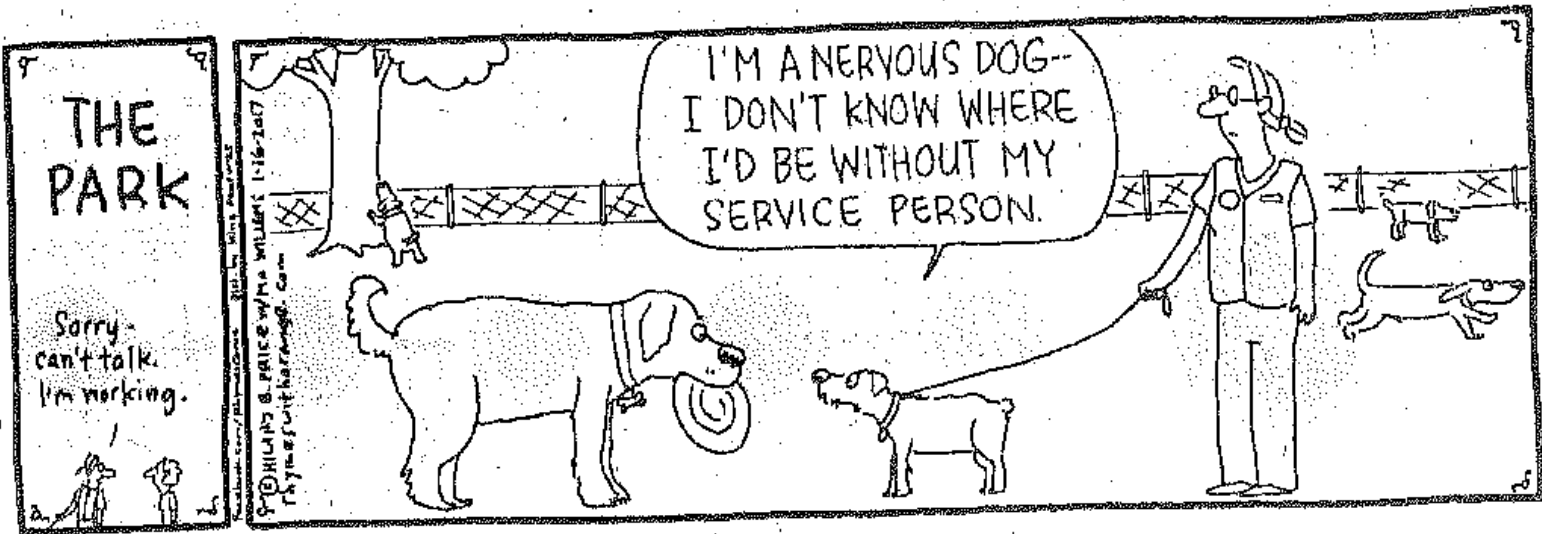
OBJECTIVES – RESTATED

So many names . . . So little time . . .

- Service dogs
- Assistance animals
- Therapy animals
- Companion animals

ASSISTANCE ANIMALS AND SERVICE ANIMALS

Rhymes With Orange



I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

**Discrimination based on disability
is prohibited in housing:**

- **Terms, conditions, or privileges**
 - **Of sale or rental of a dwelling**
- **Or provision of services or facilities . . .**

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

... Because of the disability of any of the of the following persons:

(1) That person.

(2) A person residing in or intending to reside in the dwelling.

(3) A person associated with that person.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

What is reasonable accommodation?

**Changes or waiver of
rules, policies, practices or services
when the accommodation is necessary
to afford the person
the equal opportunity to use and enjoy a
dwelling.**

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Most common example:

**Person with a disability requests a waiver
of the “no animal” policy because the
person has an assistance animal.**

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

“Assistance animals are sometimes referred to as ‘service animals,’ ‘assistive animals,’ ‘support animals,’ or ‘therapy animals.’ To avoid confusion with the revised ADA ‘service animal’ definition . . . or any other standard, we use the term ‘assistance animal’ to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.”

Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO-2013-01, April 25, 2013, footnote 4.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Definition of Assistance Animals

- Works, provides assistance or performs tasks for the benefit of a person with a disability
- Provides emotional support that alleviates symptom or effect of disability

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

**Not a dog?
Not a miniature
horse?
Not a problem!**



II. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

An assistance animal is

- Not a pet
- Does not require special training
 - Does not have to be a dog or miniature horse

Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO-2013-01, April 25, 2013.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

EXAMPLES



I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Examples

- Guiding individual who is blind.
- Alerting individual who is deaf.
- Providing companionship to person with depression.
- Alerting person to impending seizures.
- Providing emotional support to PTSD survivor.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Need a request . . .

REQUEST

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Does the person have a disability?

(physical or mental impairment
that substantially limits
one or more major life activities)

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

**Does the person have a
disability-related need
for the assistance animal?**

**(afford a person with disabilities an equal
opportunity to use or enjoy the dwelling)**

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Disability-related need?

- If a person's need is obvious, then no more information can be requested.
- If disability is known, but the disability-related need not apparent, can ask only for information necessary to evaluate.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Statements from medical providers

- Doctors
- Physician assistants
- Psychiatrists
- Psychologists
- Social workers



I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Exceptions/Affirmative Defenses

- Would impose an undue financial and administrative burden
- Fundamentally alter the essential nature of the housing provider's services
- Poses a direct threat to health or safety of others

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Undue financial and administrative burden

- **Cost of the requested accommodation**
 - **Financial resources of provider**
 - **Benefits of the accommodation**
- **Availability of alternative accommodations.**

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

**Fundamentally alter
the essential nature
of the housing provider's services**

**Example: Asking the landlord to walk the
tenant's assistance animal**

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Poses a direct threat to health or safety of others

- Does **specific assistance animal** pose a direct threat?
- Would **the specific assistance animal** cause substantial damage to property of others?

Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, FHEO Notice: FHEO-2013-01, April 25, 2013.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Other Considerations

- Individualized assessment based on objective evidence about specific animal
- No breed, size, or weight limitations.
- No requirement for insignia.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

What about tenant rules and regulations?

- **Tenant has to follow rules of complex.**
- **Tenant is responsible for damage to property.**

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

**PET DEPOSITS or PET FEES
are NOT allowed.**



I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

“[H]ousing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.”

Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under The Fair Housing Act*, May 17, 2004.at 9.

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

“[T]he history of the FHAA [Fair Housing Amendments Act] clearly establishes that Congress anticipated that landlords would have to shoulder certain costs involved, so long as they are not unduly burdensome.”

United States v. California Mobile Home Park Mgmt. Co. 29 F.3d 1413,1416 (9th Cir. 1993)

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

“[The] Joint Statement of HUD and the DOJ on reasonable accommodations under the FHA makes clear that housing providers cannot impose additional fees as a condition to granting an accommodation, including accommodations for assistance animals.”

Fair Housing of the Dakotas, Inc. v. Goldmark Property Mgmt. 778 F.Supp.2d 1028, 1040 (D. N.D. 2011)

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Hypothetical 1

A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway.

Q: How does the housing provider respond?

I. ASSISTANCE ANIMALS UNDER THE FAIR HOUSING ACT

Hypothetical 2

A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider.

Q: Can the housing provider ask the applicant to provide information about the disability-related need for the dog?

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Definition of public accommodation

ICRA: Iowa Code §216.2(13)

ADA: 42 U.S.C. §12181(7)

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA



II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

What is DISCRIMINATION based on disability in public accommodation?

Generally to refuse or deny any person the accommodations, advantages, facilities, services, or privileges of the public accommodation or the furnishing of such accommodations based on any of protected characteristics.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- Generally a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. *28 C.F.R. § 36.302(c)(1).*
 - Congress’s intent was to take steps to ensure individuals are “**not separated** from their service animals” and
 - “**broadest feasible access** be provided to service animals.” *28 C.F.R. pt. 36 app. B, at 623.*

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- WHAT IS THE DEFINITION OF A SERVICE ANIMAL?



II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- Definition of a “service animal” under the ADA.

1. Dogs.



2. Miniature Horses.



II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA



II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Required to be:

- Individually trained
- To do work or perform tasks
- For persons with disabilities
- Tasks must be directly related to the disability

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

EXAMPLES

- Guiding people who are blind**
- Alerting people who are deaf**
- Pulling a wheelchair**
- Protecting a person who is having a seizure**
- Reminding a person with mental illness to take medications**

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

The crime deterrent effects of an animal's presence **do not** constitute work or tasks for the purposes of this definition. 28 C.F.R. § 36.104



II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- Not required to use a professional service dog training program.
- Service-animals-in training are not considered service animals for purposes of the ADA.
- Psychiatric service animal is **not** an emotional support animal.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

PSYCHIATRIC SERVICE ANIMAL

- The process must have two steps for it to be qualified as a service animal: **Recognition and Response**.
- If the animal **recognizes** that a person is about to have a psychiatric episode and is trained to **respond** by nudging, barking, or removing the individual to a safe location, as opposed to **merely sensing** the event, it is service animal.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- What questions can you ask?
 - Is the animal required because of a disability?
 - What work or task has the animal been trained to perform?
- And **ONLY** when is not readily apparent.

28 C.F.R. §36.302(6)

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Service animal certifications sold
on-line convey

NO RIGHTS UNDER THE ADA

and

the DOJ does **NOT** recognize them.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Can documentation be requested?

NO! No medical documents,
dog documents,
demonstrations.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

What about a fee?

NO! But if normally charge for damage by pet, can be charged for any damage done by service animal.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Guests cannot be restricted to “pet-friendly” rooms. Must be provided same opportunity to reserve any available room as other guests.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- Service animals are subject to local licensing, registration, and vaccination requirements.



- **Mandatory** registration of animals as service animals is **not** permissible under the ADA.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA



Must be allowed in all areas of the hospital.



Service animals are **not** required to wear a vest.



And at self-service food lines and communal food preparation areas.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Miniature Horses

- The ADA regulations have a separate provision about the use of miniature horses as a service animal.
- Miniature horses are generally between 24 to 34 inches, measured to the shoulders, and weight between 70 and 100 pounds.

ADA: 2010 Revised Requirements, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, July 2011.

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA



II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Assessment – Miniature Horses

- (1)** Housebroken?
- (2)** Under the owner's control?
- (3)** Accommodate the miniature horse's type, size, and weight?
- (4)** Affect safety requirements?

ADA: 2010 Revised Requirements, U.S. Department of Justice, Civil Rights Division, Disability Rights Section, July 2011

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Why miniature horses?

- **Less people are allergic to horses.**
- **Better for larger people for purposes of pulling/pushing or stability.**
- **Average service life dog is 5 years, is 27 for miniature horse.**

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Exceptions/Affirmative Defenses

- **Fundamentally Alters**
- **Out of Control Animal**
- **Direct Threat**

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

FUNDAMENTALLY ALTERS

- **Change in physical structure or change in policy.**
 - **Change in college program for blind student not fundamental alteration, just inconvenience**
 - **Allowing disabled golfer to use cart only exception to “peripheral rule”**
 - **Only “blanket prohibition” allowed is areas that employ infection control measures**
 - *Tamara v. El Camino Hosp.*, 364 F. Sup.2d 1077, 1084 (N.D. Cal. 2013).

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

OUT OF CONTROL ANIMAL

- Is animal under control of handler?
 - Generally if have harness, leash or tether.

- Is animal housebroken?



28 C.F.R. 36.302(c)(2),(4)

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- If properly excluded because out of control, must still give individual opportunity to obtain all goods/service without service animal.
- Must be permitted to be accompanied by service animal to all areas where the public or patrons are allowed to go.

28 C.F.R. 36.306(c)(3), (7)

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

Local breed restrictions **CANNOT** be used to deny a person with a service animal.



See Sak v. City of Aurelia, Iowa, 832 F. Supp.2d 1026,2047 (N.D. Iowa 2011).

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

DIRECT THREAT

- **Individualized assessment** that animal poses a substantial and direct threat to health or safety of others.
 - Based on **actual** risks, duration, severity, probability.
 - To determine what modifications, if any, are plausible to mitigate that risk.
 - Generally allergies or generalized fear of dogs are not valid threats.

Tamara, 946 F. Sup.2d at 1085-86.

III.APPLYING ADA, FHA,AND SECTION 504 TOGETHER

**ADA: state and local government services,
public accommodations, and commercial
facilities**

FHA: housing services and facilities

**HUD's Section 504: all recipients of HUD-
funds.**

*New ADA Regulations and Assistance Animals as Reasonable Accommodations
under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, U.S.
Department of Housing and Urban Development Memo, February 17, 2011.*

III.APPLYING ADA, FHA,AND SECTION 504 TOGETHER

Entities who are subject to ADA, FHA,
and/or Section 504:

- Public housing agencies
- Rental offices
- Shelters
- Assisted living facilities
- Housing at places of education.

Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs, Fair Housing and Equal Opportunity Notice, FHEO-2013-01, April 25, 2013, at 5.

REVIEW

UNDER THE ADA

YES



YES



You're cute

but . . .

NO



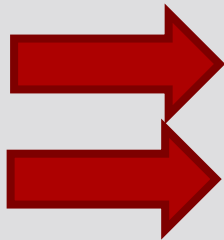
NO



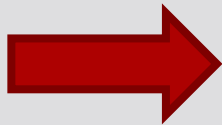
REVIEW

UNDER THE FHA

YES
YES



As long as you
have . . .
THIS

A white prescription form with a faint caduceus watermark. It has fields for "Patient Name:", "Prescription:", and "MD:". The word "123RF" is printed in the prescription area.