ASSISTANCE ANIMALS AND SERVICE ANIMALS UNDER THE FHA AND THE ADA
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.
So many names . . . So little time . . .

- Service dogs
- Assistance animals
- Therapy animals
- Companion animals
ASSISTANCE ANIMALS AND SERVICE ANIMALS
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 following persons:

(1) That person.

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

(3) A person associated with that person.
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.
Most common example:
Person with a disability requests a waiver of the “no animal” policy because the person has an assistance animal.
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“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 FHAAct and Section 504.”
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.
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Need a request . . .

REQUEST
Does the person have a disability? (physical or mental impairment that substantially limits one or more major life activities)
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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.
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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.
Other Considerations

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

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)*
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?
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
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.

Iowa Code §216.7
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

II. PUBLIC ACCOMMODATIONS AND SERVICE ANIMALS UNDER THE ADA

- WHAT IS THE DEFINITION OF A SERVICE ANIMAL?
Definition of a “service animal” under the ADA.

1. Dogs.

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

Must be allowed in all areas of the hospital.

And at self-service food lines and communal food preparation areas.
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
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
Why miniature horses?

- Less people are allergic to horses.
- Better for larger people for purposes of pulling/pushing or stability.
- Average service life of a dog is 5 years, whereas it is 27 for a 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
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)
Local breed restrictions CANNOT be used to deny a person with a service animal.

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.
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.

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.
UNDER THE ADA

YES
YES
You’re cute

but . . .

NO
NO

NO
As long as you have . . . THIS