

# ASSISTANCE ANIMALS

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# WHAT LAWS APPLY?

- ◉ Fair Housing Act
- ◉ Section 504 of the Rehabilitation Act
- ◉ Americans with Disabilities Act (ADA)
- ◉ Washington Law Against Discrimination (WLAD)

# ASSISTANCE ANIMALS: FHA v. ADA

## The Fair Housing Act

### *Reasonable Accommodation Analysis:*

- **Is there a Disability?**
- **Is there a Nexus?**
- **Is the request Reasonable?**

### **Americans with Disabilities Act (ADA):**

- Applies to Public and common areas
- Limits service animals to trained dogs and miniature horses
- No emotional support animals

### **Fair Housing Act:**

- No definition of service animal
- Applies to dwelling units
- Use Reasonable Accommodation Analysis
- No restriction on species, size, weight, breed, etc.

# WA LAW AGAINST DISCRIMINATION

- ◉ **RCW 49.60.040. Definitions. (24)** "Service animal" means an animal that is **trained** for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability
- ◉ **HUD & WSHRC Memorandum of Understanding (Jan. 12, 2010), Section VIII(A)** [recognizing that **FHA is more protective than the WLAD, and WSHRC must refer service animal-related housing complaints to HUD for processing**]

FHEO NOTICE: FHEO-2013-01

ISSUED: APRIL 25, 2013

- ◉ Subject: *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*
- ◉ Applies to all housing providers covered by the FHAct, Section 504, and/or the ADA.

# WHAT IS AN ASSISTANCE ANIMAL?

- ◉ 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..., HUD uses the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

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⦿ An assistance animal is not a pet.

- It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, **or**
- provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.

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# WHAT DOES AN A.A. DO?

- A.A.s perform many disability-related functions, including but not limited to,
  - guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons w/ disabilities who have a disability-related need for such support

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# IS ANIMAL TRAINING REQUIRED?

- ⦿ No.
- ⦿ Neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.

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# ANIMAL TRAINING NOT REQUIRED

- ◉ Can't deny a request to keep an A.A. because the animal has not received formal training.
- ◉ Some A.A.s, “service animals”, are trained by professionals, their owners, or someone else to work or perform tasks for individuals with disabilities.
- ◉ Other A.A.s do not require any special training.
- ◉ Relevant question: whether the animal performs the assistance or provides the benefit needed by the person with a disability to afford that person an equal opportunity to enjoy living in their dwelling. Foxpoint

# TRAINING NOT REQUIRED FOR EMOTIONAL SUPPORT A.A.

- ◉ For assistance animal that provides emotional support or other assistance that alleviates one or more symptoms or effects of a disability, can't require that the animal be trained as an emotional support animal or have a certification of its efficacy.

US v. Allegro Apts, LLC (E.D. Wis.), 1/8/14 Consent Decree, Attachment A.

WHAT SPECIES ARE  
ALLOWED?

# ADA LIMITED TO DOGS, & NO EMOTIONAL SUPPORT ANIMALS

- ◉ ADA regulations for ADA Titles II and III limit definition of "service animal" to **dogs**, and **excludes emotional support animals**.
- ◉ This definition does not limit housing **providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504**

# FHA PERMITS ANIMALS BESIDES DOGS

- ◎ Persons with disabilities may request a reasonable accommodation for **any assistance animal, including an emotional support animal**, under both the FHAct and Section 504.

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## DOGS, OTHER ANIMALS ALLOWED

- ◉ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

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WHAT ABOUT BREEDS,  
SIZE & WEIGHT?



- ◉ Breed, size, and weight limitations may not be applied to an assistance animal.

WHAT IS THE AA RA  
REQUEST ANALYSIS?

- ◉ Whether a person has a disability-related need for an assistance animal involves an individualized assessment.

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# HOUSING PROVIDER MUST CONSIDER:

- ◉ Does the person have a disability?
- ◉ Does the person have a disability-related need for an assistance animal?
  - does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or
  - provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability

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- ◉ If no to either, RA can be denied.
- ◉ If yes to both, the FHAct requires housing provider to make an exception to a "no pets" rule to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless
  - an undue financial and administrative burden or
  - fundamentally alter the nature of the housing provider's services.

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- ⦿ A response to a reasonable accommodation request may not be unreasonably delayed

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WHEN TO VERIFY A DISABILITY  
OR A DISABILITY-RELATED  
NEED FOR AN A.A.?

## IF DISABILITIES AND NEED ARE READILY APPARENT: NO VERIFICATION NEEDED

- Can't ask for documentation of disability or disability-related need for an animal if the disability or disability-related need is readily apparent or already known
  - Ex: persons who are blind may not be asked to provide documentation of their disability or their disability-related need for a guide dog.

## IF DISABILITY AND NEED NOT READILY APPARENT: CAN REQUEST VERIFICATION

- ◉ may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal.

WHAT VERIFICATION CAN  
BE REQUESTED FOR A.A.  
THAT PERFORMS TASKS OR  
WORK?

# IF NOT READILY APPARENT THAT ANIMAL IS TRAINED:

- ◉ If it is not readily apparent that an animal is trained to aid an individual with a disability, can ask:
  - if the animal is required because of a disability, and
  - what work or tasks the animal has been trained to perform.

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# IF THE A.A. PERFORMS WORK OR TASKS FOR A PERSON WITH DISABILITIES

## ○ Can ask for:

- a statement from a health or social service professional indicating that he/she has a disability; and
- explanation of how
  - the animal has been trained to do work or perform tasks that alleviate one or more symptoms or effects of the disability or,
  - if the animal lacks individual training, how the animal is able to do work or perform tasks that would alleviate one or more symptoms or effects of the disability
- US v. Allegro Apts, LLC (E.D. Wis.), 1/8/14 Consent Decree, Attachment A.



HOW TO VERIFY NEED FOR  
EMOTIONAL SUPPORT A.A.?

○ Can ask for documentation from a

- physician
- psychiatrist
- social worker
- other mental health professional

that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability.

○ documentation is sufficient if it establishes that an individual has a disability and that the animal will provide some type of disability-related assistance or emotional support.

# FOR EMOTIONAL SUPPORT ANIMAL: VERIFICATION OF NEED FROM “HEALTH OR SOCIAL SERVICE PROFESSIONAL”

- ⦿ a person who **provides medical care, therapy or counseling** to persons with disabilities, **including, but not limited to**
  - doctors
  - physician assistants
  - psychiatrists
  - psychologists
  - social workers

US v. Allegro Apts, LLC (E.D. Wis.), 1/8/14 Consent Decree, Attachment A.

# WHAT IF ANIMAL PROVIDES BOTH EMOTIONAL SUPPORT AND WORK?

- ◉ may require compliance with either set of requirements, but not both.

Consent Decree, 5/19/10, U.S. v. Van Raden Properties, Inc.

WHAT QUESTIONS ARE  
NOT PERMITTED?

- Forms should not ask licensed health professional **whether willing to testify in court** regarding a patient's need for an animal

Consent Decree, 5/19/10, U.S. v. Van Raden Properties, Inc.

- Letter does not need to **disclose medical history** or details regarding the disability. Foxpoint

- Cannot ask for access to medical records or medical providers** or provide detailed or extensive information or documentation of a person's physical or mental impairments. FHEO

# WHAT INFO MUST BE KEPT CONFIDENTIAL?

- ◉ must take reasonable measures to protect confidentiality of any info. or docs. disclosed
- ◉ Such measures may include
  - limiting access to info. to persons specifically designated to deal with requests for RAs, who will disclose info. only to extent necessary to determine whether to grant the request, and
  - keeping all written requests and accompanying docs. in secure area to which only those designated persons have access, except as otherwise required by law.

US v. Allegro Apts, LLC (E.D. Wis.), 1/8/14 Consent Decree, Att. A.



WHAT IF A.A. IS DANGEROUS  
OR DESTRUCTIVE?

## A RA REQUEST MAY BE DENIED IF:

the **specific assistance animal**

- **poses a direct threat to the health or safety of others, or**

- **would cause substantial physical damage to the property of others**

that cannot be reduced or eliminated by another reasonable accommodation.

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# WHAT IS PROOF OF A DIRECT THREAT?

- A determination that an A.A. poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on **objective evidence about the specific animal's actual conduct — not on mere speculation or fear** about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.

WHAT RULES ARE  
PERMITTED FOR  
ASSISTANCE ANIMALS?

# NOT PETS

- ◎ Assistance Animals are not pets and will be governed by assistance animal policies not pet policies.

US v. Allegro Apts, LLC (E.D. Wis.), 1/8/14 Consent Decree, Attachment A.

# CAN'T CHARGE PET DEPOSIT

- ⦿ A RA may not be conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets
- ⦿ Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals.
- ⦿ Housing providers may require applicants or residents to pay a pet deposit, **but may not require applicants and residents to pay a deposit for an assistance animal.**

- ⦿ Can't require that the resident obtain any extra insurance that is not required of all other residents

Consent Decree, 5/19/10, U.S. v. Van Raden Properties, Inc.

- ⦿ Can't require that the resident pay any fee, deposit, or other charge for keeping the assistance animal

Consent Decree, 5/19/10, U.S. v. Van Raden Properties, Inc.

US v. Allegro Apts, LLC (E.D. Wis.), 1/8/14 Consent Decree, Attachment A.

## Example:

- ◉ *Intermountain Fair Housing Council v. CVE Falls Park LLC.* (Feb. 2012) US Dist. Court. A jury awarded \$21,000 in damages. The owner of a Post Falls, ID apt. complex told prospective tenants that a damage deposit was required for service animals. A jury found that the defendant had violated the FHA by engaging in discrimination against people with disabilities and had engaged in negligent training and supervision of its employees.



## US V. BARBER (W.D. WASH.), NOV. 2014

- ◉ Court entered a consent decree in a FHA pattern or practice/election case alleging discrimination on the basis of disability.
- ◉ The complaint, filed on 7/1/13 alleged defendants discriminated against the complainant by refusing to waive the pet deposit for her emotional support animal, which ameliorates the symptoms of her PTSD and Major Depressive Disorder.
- ◉ Also alleged that defendants' policy regarding RA requests for service animals and emotional support animals constituted a pattern or practice of discrimination.

- ◉ Consent decree requires defendants to pay \$20,000 to the HUD complainant and \$5,000 to the US, and requires defendants to adopt a RA policy that complies with the FHA, receive training regarding the requirements of the FHA, and report to the department for a period of eighteen months on their compliance with the settlement.

# US V. KATZ AND ALL REAL ESTATE SERVICES IN MONTANA, LLC (D. MONT.)

- On October 6, 2014, the US filed a complaint in an election case referred by HUD.
- Alleges that defendants charged a \$1000 pet deposit for a service animal owned by a tenant w/ traumatic brain injury, despite being requested to waive the deposit as a RA
- Alleges defendant Katz threatened to evict the tenant for seeking the return of the deposit, and to charge her \$100/hr for time spent responding to allegations of discrimination, and that these threats constituted a violation of sec. 818 of the FHA.

# WHAT IF THE A.A. CAUSES DAMAGE?

- ◎ A housing provider may require a tenant to cover **costs of repairs for damage the animal causes** to the tenant's dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider's practice to assess tenants for any damage they cause to the premises.

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# DOES THE A.A. HAVE TO BE LICENSED?

- ◉ Can require assistance animals to be licensed, if required by the applicable governmental authority and if housing provider requires licensing of animals kept as pets.

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# DOES A.A. HAVE TO BE VACCINATED?

- ◉ Can require a current copy of the animal's license and vet record showing vaccinations and inoculations are current.
- ◉ Required vaccinations for dogs can include a vaccination for rabies and any other **vaccinations required by the County.**
- ◉ Can require copies of updated registration or license and vaccination/inoculation records throughout the duration of the A.A.'s stay

# BAD ANIMAL BEHAVIOR

- ◉ If an assistance animal is unruly or disruptive (aggressively jumping, nipping, biting, excessive barking, etc.), the owner of the assistance animal may be required to remove animal from a common area.
- ◉ If animal's behavior continues, resident may not be allowed to bring the animal into a common area until steps taken to mitigate behavior (refresher training). If mitigation not undertaken or not effective, or if animal poses a threat of physical harm to any other resident or visitor, animal may be required to be removed.

MORE RECENT CASES



# HUD V. CASTILLO CONDOMINIUM ASSOC.

- A resident of a San Juan, Puerto Rico Condominium filed a complaint alleging the condo's homeowner assoc. denied his request to keep an emotional support animal, even though he presented documentation from his healthcare provider identifying his disability and his need for the animal.
- As a result of being denied the right to have a support animal, the man experienced depression and anxiety and was forced to sell the home he had lived in for almost 20 years.

# HUD V. CASTILLO CONDOMINIUM ASSOC. CONTINUED

- HUD found the association violated the FHA when it refused to allow a resident with disabilities to keep his emotional support animal.
- Respondent ordered to pay \$20,000 in damages and a \$16,000 civil penalty

# US V. ALLEGRO (E.D. WIS.), JAN. 8 2014

- The complaint alleged that the owners of a 96-unit residential rental property in Racine, Wisconsin violated the FHA on the basis of disability by refusing to rent an apartment to a woman who used an assistance dog.
- The consent decree requires the defendants to adopt a new assistance animal policy, attend fair housing training and pay \$8,500 to the woman and her husband.

# US V. LCW FAMILY LIMITED PARTNERSHIP (D. NEB.)

- On July 30, 2014, the court entered a consent order in a Fair Housing election and pattern or practice case
- Alleged discrimination b/c of disability b/c of defendants refusal to waive a "no pets" policy for assistance animals.
- Consent order requires defendants to adopt a RA and service animal policy, pay \$8,000 to the aggrieved person, and pay \$1,000 in a civil penalty to the US.

# US V. CITY RESCUE MISSION (W.D. PA.), AUG. 20 2014

- ◉ Court entered a consent order, an election referral from HUD.
- ◉ The complaint alleged a pattern or practice of FHA and ADA violations, including that defendants discriminated on the basis of disability by refusing to allow the complainant to stay in the homeless shelter w/ his guide dog.

## US V. CITY RESCUE MISSION (W.D. PA.) CONTINUED

- The consent order requires defendants to obtain civil rights training and to adopt a new RA policy, including allowing occupants w/ assistance animals to reside anywhere in the shelter, and not just in the infirmary. The decree also contains a \$5,000 civil penalty and refers to a separate monetary agreement between the HUD complainant and the defendants

# HUD V. JONG, NOV. 2014

- HUD charged the owners of an apartment complex in San Francisco w/ discrimination for initially refusing to allow a tenant w/ disabilities to keep an emotional support animal, even after the tenant presented medical documentation attesting to her need for the animal.
- As a result of the refusal, the tenant sent the animal to live w/ a friend. The owners ultimately granted the accommodation, but only after the tenant was forced to live w/out her support animal for approx. 5 months, which doctors say caused psychological duress.

# HUD V. TRUMP VILLAGE IV, JAN. 2015

- ◉ HUD charged a 1,144-unit Coney Island coop development and president of its board w/ discrimination for refusing to allow a veteran w/ a psychiatric disability to keep an emotional support animal. Vet had provided medical documentation verifying condition and need for the dog.
- ◉ Alleged retaliated for filing complaint by freezing place on the wait list for parking and removing wife from the co-op's board.
- ◉ Charge of wrongfully denying veteran's request for RA and taking steps to evict him and his wife in retaliation for filing a complaint.



# THANK YOU!

