

Assistance Animals



www.nwfairhouse.org 1-800-200-FAIR



- Fair Housing Act
- Sec 504 of the Rehabilitation Act
- Americans with Disabilities Act (ADA)
- WA Law Against Discrimination

WHAT LAW APPLIES?





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

**AMERICANS WITH DISABILITIES ACT
ADA**



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

FAIR HOUSING ACT



Recipients of federal funding

Reasonable accommodations

Equal access

Integrated setting

Sec 504 of the
rehabilitation
act

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.



ADA vs. FHA

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ADA regulations limit definition of "service animal" to **dogs**, and **excludes emotional support animals**.

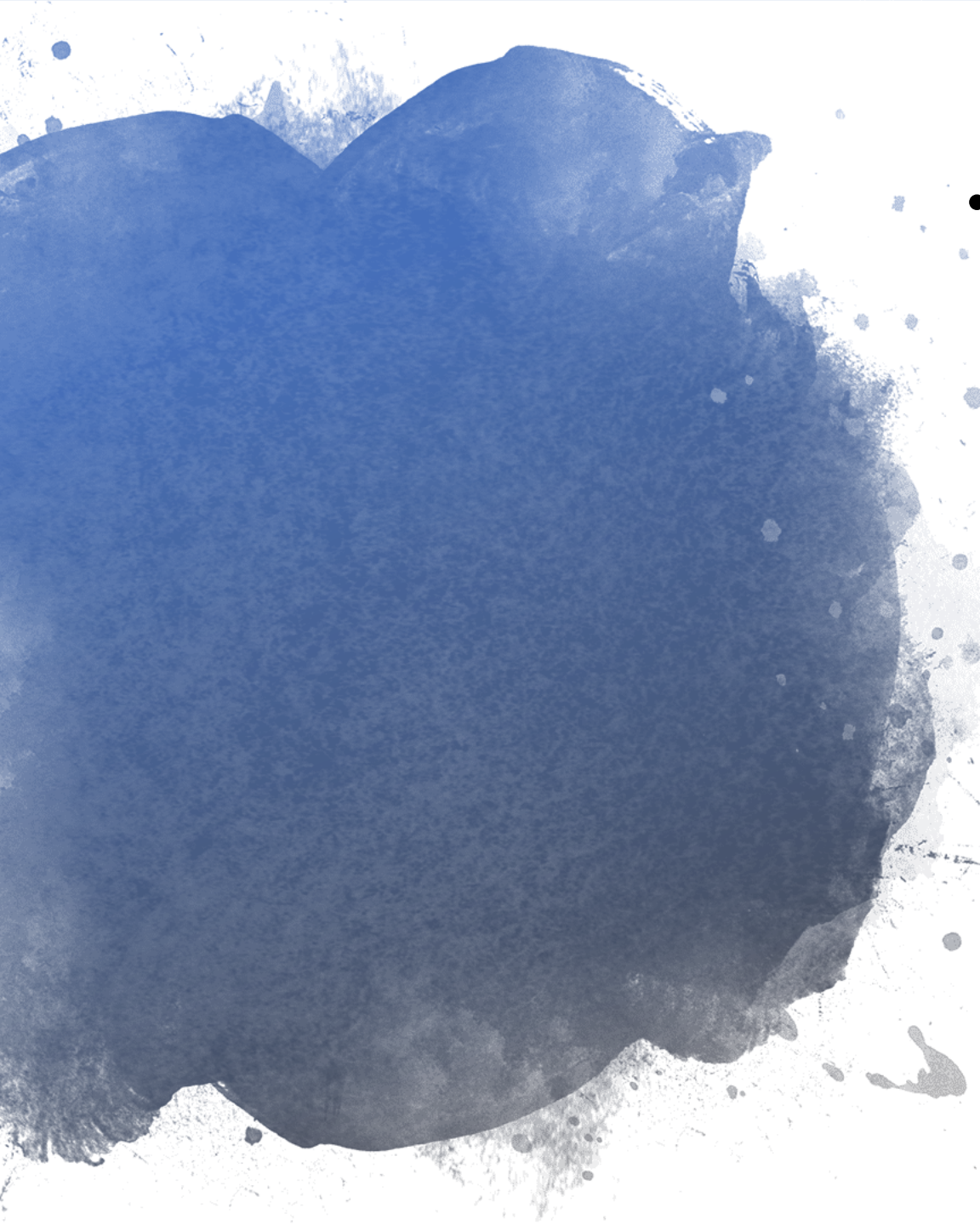


This definition does not limit housing **providers' obligations to make reasonable accommodations for assistance animals** under the FHAct or Section 504

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 Assistance animal do?

A.A.s perform many disability-related functions, including but not limited to,

- guiding individuals who are blind/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?

- Neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.
- Some, “service animals”, are trained by professionals, their owners, or someone else to work or perform tasks for individuals with disabilities.
- Other animals do not require any special training.





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.

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

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

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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]



SUBSTITUTE HOUSE BILL 2822 –
Passed by WA Legislature

Sec. 2. **RCW 49.60.040** and 2009 c 187 s 3 are each reenacted and amended to read as follows: **The definitions in this section apply throughout this ch. unless the context clearly requires otherwise.**


- (24) "**Service animal**" means any dog or miniature horse, as discussed in section 4 of this act, that is **individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability....**
- **This subsection does not apply to RCW 49.60.222 through 39 49.60.227 with respect to housing accommodations or real estate transactions.**



REASONABLE ACCOMMODATIONS

cc: lanaughty1 - <https://www.flickr.com/photos/70405662@N00>

Exceptions to rules, policies, practices, or services, when such accommodations may be necessary to afford ...person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.



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

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Is there a Disability?

Is there a Nexus?

**Is the request
Reasonable?**

FHA Reasonable
Accommodation
Analysis:

A physical or
mental
impairment which
substantially limits
one or more major
life activities

Is there a
disability?

Housing
provider must
consider:

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Is there 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



If no disability or no disability-need, request can be denied.

If a disability and a disability-need, the FHAct requires 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.



VERIFICATION




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 are not
readily apparent:

can request
verification

May ask for reliable
documentation of a
disability and disability-
related need for an
assistance animal.

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Can ask for documentation from a

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

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.

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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 information or
documents 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.





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

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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.

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What rules are permitted
for assistance animals?



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.

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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.



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.



What if the
assistance
animal 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
assistance
animal 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. *Foxpoint*



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

Does
assistance
animal have to
be vaccinated?

Foxpoint



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.



Recent HUD Charges / DOJ Cases

- [https://www.hud.gov/press/press releases media advisories/2017/HUDNo 17-089](https://www.hud.gov/press/press%20releases%20media%20advisories/2017/HUDNo%2017-089)
- <https://www.justice.gov/usao-sdny/press-release/file/942261/download>
- [https://www.hud.gov/press/press releases media advisories/2017/HUDNo 17-016](https://www.hud.gov/press/press%20releases%20media%20advisories/2017/HUDNo%2017-016)
- <https://www.justice.gov/opa/pr/justice-department-obtains-37000-verdict-disability-discrimination-case-against-montana>
- [https://www.hud.gov/press/press releases media advisories/2017/HUDNo 17-044](https://www.hud.gov/press/press%20releases%20media%20advisories/2017/HUDNo%2017-044)
- [https://www.hud.gov/press/press releases media advisories/2017/HUDNo 17-060](https://www.hud.gov/press/press%20releases%20media%20advisories/2017/HUDNo%2017-060)
- [https://www.hud.gov/press/press releases media advisories/2016/HUDNo 16-070](https://www.hud.gov/press/press%20releases%20media%20advisories/2016/HUDNo%2016-070)



Resources

FHEO Notice: FHEO-2013-01,
4/25/13:

http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf

And more at NWFHA's website:
<http://nwfairhouse.org/disability-focus>





Northwest Fair Housing Alliance

"Working to ensure equal opportunity housing for all"

www.nwfairhouse.org 1-800-200-FAIR