

## Don't Get "Bitten" by the ADA: Practical Advice Concerning Guide, Service and Companion Dogs



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We all know that our community rules and regulations encompass pet issues. Typically, these rules will address issues pertaining to: limiting the number of pets a resident(s) can own, limiting the size of the pet; prohibiting certain types of pets from residing in a community; and setting forth rules to govern pet and pet owner behavior.

Recently, there have been myriad inquiries from managers trying to enforce pet rules in situations where residents are invoking their rights under the Americans with Disabilities Act (ADA). Most of these situations involve dogs.

Residents with certain needs may have guide/service dogs living with them. These dogs are required to adhere to management's pet rules, with the exception of being able to accompany their owners, when necessary, in common area buildings.

In these cases, management needs to abide by the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and other Fair Housing laws.

### The Americans with Disabilities Act

First, let us understand the ADA. If a resident has a disability and requests a reasonable accommodation/modification from management, a response to that request must be given in a reasonable and timely manner. This can be achieved by engaging in an interactive process - a "let's find a solution" discussion session - to arrive at an appropriate solution. Solutions can take two forms: (1) physical modifications of facilities; or (2) exceptions to rules or policies to assist the resident (these are called "ac-

commodations"). Examples of modifications could include: adding an automatic door opener to assist wheelchair bound residents when entering the clubhouse; installing grab bars in rest rooms, or cutting a ramp through a curb to enable wheelchair access from the parking lot to the sidewalk. Examples of accommodations could include: allowing a disabled person to use guest parking on a constant basis if their van did not fit in their driveway, or personally collecting rent from a housebound resident. While management must provide reasonable modifications/accommodations when requested to do so, they are not required to provide modifications that are deemed to be unreasonable, overly disruptive to other residents, or expensive. When a request falls into this category, it is best to be reviewed on a case-by-case basis.

### Service Animals

Second, let's define "service, signal and guide dogs." According to the California Civil Code, Sections 54.1 and 54.2: A **guide dog** for a blind or visually impaired person must be trained by a licensed person. A **signal dog** is defined as "any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds." A **service dog** is defined as "any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items." There are also highly specialized service animals who play a key role in protecting persons with unusual hidden disabilities like epilepsy. These "**seizure-response/alert**" animals have



a special sense which enables them to alert humans who are about to suffer from an epileptic seizure.

Finally, we now have a new dog on the block - the **companion dog**, any type of dog that acts as a companion to a disabled person and thereby improves that person's ability to function. For example, easing a cancer victim's pain.

### Notes from the Department of Justice's Website

The Civil Rights Division/Disability Rights Section of the U.S. Department of Justice has published a guidance memo entitled *Commonly Asked Questions About Service Animals in Places of Business* on its website: <http://www.ada.gov/qasrvc.htm>. (A copy of that memo follows at the end of this article.)

In response to the question "what is a service animal?," the Department provides this definition:

*"The ADA defines a "service animal" as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government. Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. "Guide dogs" are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons*

*with other kinds of disabilities in their day-to-day activities. Some examples include:*

- *Alerting persons with hearing impairments to sounds;*
- *Pulling wheelchairs or carrying and picking up things for persons with mobility impairments; and*
- *Assisting persons with mobility impairments with balance.*

*A service animal is not a pet."*

Furthermore, the Department notes that "some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a disability. However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability."

In terms of what you may ask a person about his or her service animal, the Department and a federal court have stated that: "asking whether [a] particular animal, not visually identified as service animal, was in fact [a] service animal by asking [a] 'task or function' question did not violate [the ADA] . . . because it could be answered without divulging individual's disability . . ." *Grill v Costco Wholesale Corp.* (2004, WD Wash) 312 F Supp 2d 1349.

Thus, when confronted with a business situation where a person has an animal which they ascertain is a service animal, you may respectfully ask whether the animal is required because of a disability, and what task or function the animal performs in that regard.

Recently, the Department of Justice released new ADA regulations relating to the responsibilities of state and local governments: Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 Code of Federal Regulations Part 35. These may be reviewed at: [http://www.ada.gov/reg2010/titleII\\_2010/reg2\\_2010.html](http://www.ada.gov/reg2010/titleII_2010/reg2_2010.html).

Under these new regulations, a service animal is defined as: "any dog 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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."

These new regulations seem to suggest that use of "companion" dogs as service dogs may be limited in the future. The regulations further provide: "In the final rule, the Department has retained its position on the exclusion of emotional support animals from

the definition of "service animal." The definition states that "[t]he provision of emotional support, well-being, comfort, or companionship, \* \* \* do[es] not constitute work or tasks for the purposes of this definition." The Department notes, however, that the exclusion of emotional support animals from coverage in the final rule does not mean that individuals with psychiatric or mental disabilities cannot use service animals that meet the regulatory definition. The final rule defines service animal as follows: "[s]ervice animal means any dog 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 language simply clarifies the Department's long-standing position.

During the last year, we have noted that issues involving disabilities and service dogs have arisen with increasing frequency in our manufactured housing communities. Below are some examples of the more interesting scenarios we have encountered. (*Names have been changed to hide the resident's actual identities*):

**1. The Attack Dog:** Although this community allowed dogs, it did not allow certain breeds (e.g., pit bulls, doberman pinchers and german shepherds). A resident, Mr. Jones, had cancer and needed a caregiver. One day the caregiver arrived at the community with a german shepherd in tow.

When asked about the dog's presence, the caregiver indicated that Mr. Jones needed the dog, as a companion dog, as petting it soothed him, making it easier for him to cope with the pain of cancer.

The caregiver then started bringing the german shepherd with her when providing caregiver services to other residents in the community. Many other residents started complaining about the dog being allowed on the property, and referred to the community's rule banning german shepherds from the community. In addition, on several occasions, it lunged and growled menac-

ingly at other residents, including the manager. The caregiver also brought the dog to the clubhouse and swimming pool area when taking Mr. Jones to those areas, and this frightened other residents using those facilities. The caregiver let the dog off leash on the homesites of patients she was visiting.

*What can be done about these issues?*

- The Mobilehome Residency Law states that a resident can have a caregiver, so the caregiver is OK.
- Under the ADA, management must provide reasonable accommodations to persons with disabilities when requested to do so. We must engage in an "interactive process" to determine what is a reasonable accommodation for the disability under the unique circumstances presented, and try to work with the disabled person to come up with a solution. We are not required to make unreasonable or overly burdensome accommodations.
- Mr. Jones has cancer and that makes him disabled so we need to work with him to accommodate his disability.
- Based on the new regulations, the park may be able to preclude this "companion" dog as companion dogs are not considered "service" dogs. If the dog were considered a service dog, and as long as the caregiver and the german shepherd do not otherwise violate the rules, Mr. Jones' request for an accommodation—modification of our rules so as to allow the prohibited breed as a companion dog—is probably reasonable and we should allow it.
- We should obtain Mr. Jones' request for the accommodation in writing so that the circumstances are documented. (See discussion of request form later in this article.)
- The residents being assisted by the caregiver are still responsible for the caregiver as their guest, and they and the guest must comply with our rules, including our pet

rules. Therefore, rule enforcement actions can be taken for the dog's lunging/growling at other residents and for the dog being off leash in the common areas of the community. However, because the dog may qualify as a service animal, it is OK for the dog to accompany Mr. Jones to the swimming pool area even though the community rules do not allow pets in that area.

**2. The Pit Bull:** This community had a typical pet rule as to dogs and allowed up to two dogs per homesite. Again, certain breeds, like pit bulls, were prohibited by the rules. Ms. Pacheco had two dogs which complied with the pet rules. She was later seen walking a pit bull in the community. Of course, neighboring residents complained. The manager immediately asked Ms. Pacheco to have the pit bull removed from the community because (a) it is a prohibited breed and (b) Ms. Pacheco already had two dogs. In response, Ms. Pacheco sent the manager a bunch of legal documents indicating that the pit bull was her companion animal and that she needed the companion animal for emotional support to help her deal with her disability. The manager had never been told that Ms. Pacheco had a disability and no disability was apparent from Ms. Pacheco's appearance, mobility, etc.

*Can the manager give Ms. Pacheco a 7-day notice to get rid of the pit bull?*

- Perhaps, based on the new Department of Justice regulations, the "companion" dog would not be considered a service dog for use with a disability.

**3. The More the Terrier:** Ms. Simpson had a male and a female terrier that complied with the pet rules. Later her two dogs had puppies. Ms. Simpson was able to give all of the puppies away, except for one which had a deformity. At the same time, Ms. Simpson decided to get married to Mr. Rangels. Shortly thereafter, the manager observed her walking four small terriers. When the manager confronted her about the two extra dogs, Ms. Simpson provided a letter from

a health care professional who stated that she had a mental disability and that the terrier puppy was needed as a companion dog, so that Ms. Simpson could cope with the disability. As to the fourth dog, Ms. Simpson—now Mrs. Rangels—explained that her new husband had just moved in with her. She went on to say that he also had a disability (lots of headaches) and that the fourth terrier was the husband's companion dog to help him deal with this disability.

Mrs. Levinson lives three homesites away. Last month, management required Mrs. Levinson to get rid of a third dog she had acquired from the pound. Mrs. Levinson thinks it is unfair that the Rangels can have four dogs when management made her get rid of her third dog.

*What can we do about the third dog, the terrier puppy, and the new fourth terrier brought in by Mr. Rangels?*

- Based on the new regulations, we might be able to preclude the “companion” dog as it is not a service dog. Ms. Simpson would have to prove to the park that the dog has been trained for some special service required by her disability.
- If the dog is determined to be a service dog, it would not matter that Ms. Simpson already has two dogs. Under the ADA, we must accommodate her request for an exception to the two pet rule. Remember also that a companion dog is not considered a “pet” under the ADA.
- While not easy, we can explain to Mrs. Levinson that we have agreed to a request for a “reasonable accommodation” from Ms. Simpson (and possibly Mr. Rangels) in allowing the extra dogs. We cannot provide any other details about Ms. Simpson's and Mr. Rangels' disabilities or the letters we have received from their health care professionals. Those matters must be kept confidential.
- If Mrs. Levinson had a disability and had made a request for a reasonable accommodation, then we

would need to enter into an interactive process with her to reach an appropriate decision regarding her third dog. However, she made no such request.

**4. The “Guest” Dog:** Mrs. Doheny had three dogs before the new two pet rule went into effect. The managers told her that they would look the other way about the three dogs—more or less “grandfathering in” the third dog—but that she would not be able to replace the third dog once one of her dogs died. Mrs. Doheny agreed to this resolution.

About a year later, one of Mrs. Doheny's dogs died. Mrs. Doheny confided to the manager that she was devastated by the loss of the dog. Sometime later, the manager observed her walking three dogs once again. When the manager inquired, Mrs. Doheny stated that the third dog was her son's dog and she was merely baby sitting this dog while her son traveled. When it later appeared that the third dog was at Mrs. Doheny's home all the time, the response was that the son was traveling “a lot.” Management finally put its foot down and insisted that the third dog go back to live with the son. It disappeared for awhile, but then management got a letter from Mrs. Doheny confessing that the third dog really was her dog and that she was going to keep it.

*What can management do?*

- Mrs. Doheny basically lied to management about the situation. The new third dog was not her son's dog...that was just a ploy to keep the dog. She just wanted to have three dogs again.
  - Mrs. Doheny has not made a request for a reasonable accommodation so the ADA is not in play.
  - Mrs. Doheny is in violation of the two pet rule and can be made to get rid of one of the dogs.
- 5. The Dog with No Tags:** Mr. Wilson has walked into the office with a pit bull. He states that the pit bull is a service dog and that he requires a service dog to deal with his disability. The pit bull has no collar or tags.

*Can management request that Mr. Wilson show you some type of paperwork certifying that the dog is actually a real service dog?*

- No. Under current law, when a resident asserts that a dog is a service animal, the only questions that can be asked are: Is this a service dog? And, what tasks or functions has the animal been trained to perform?
- Management cannot request any special paperwork on the service animal.
- However, management could request a letter from a health care professional stating that Mr. Wilson has a disability, and that he requires the services of a service animal. Management could probably also inquire as to if Mr. Wilson specifically requires a pit bull as his service dog.
- If the task or function the service animal performs do not necessarily require that it be a pit bull, can management request that Mr. Wilson trade in his pit bull for a Labrador service dog? This question has yet to be resolved or litigated. However, the Department's commentary on the new ADA regulations for state and local governments states: “*Conversely, if an individual uses a breed of dog that is perceived to be aggressive because of breed reputation, stereotype, or the history or experience the observer may have with other dogs, but the dog is under the control of the individual with a disability and does not exhibit aggressive behavior, the [government] entity cannot exclude the individual or the animal from a State or local government program, service, or facility. The animal can only be removed if it engages in the behaviors mentioned in § 35.136(b) (as revised in the final rule) or if the presence of the animal constitutes a fundamental alteration to the nature of the service, program, or activity of the [government] entity.*” If we extend this to private busi-

nesses, it would appear that we cannot object to a pit bull service dog, just because of the breed.

## Documentation May Help the Interactive Process

To avoid any misunderstandings, it is helpful to document any request for a reasonable accommodation or modification, including those related to guide, service, signal and companion animals. For this reason, we have designed a form for a requesting resident to complete and provide to management. While a disabled person is not legally required to fill out management forms in order to request an accommodation or modification, most people will be happy to complete this simple form. (Note: This form can be used to respond to any type of request, not just those involving pets.)

Documenting the request and the interactive process may help avoid future misunderstandings. It may also provide you with a process that could help you avoid legal liability when responding to requests for modifications/accommodations under the ADA.

## Summary

With regard to dogs and disabled persons, the law has swung very far in favor of allowing disabled persons to have dogs in many instances. This requires that parkowners be very flexible and accommodate the disabled in almost every case. Unfortunately, there will always be a few individuals who have learned how to “game the system” and who may feign disabilities and inappropriately claim an animal as a companion pet just to get around our rules and regulations. The law currently allows us few tools to investigate these gamers while the penalties for asking improper questions of legitimately disabled persons or denying a reasonable accommodation/modification remain severe. Thus, parkowners need to proceed very carefully when dealing with these issues of accommodation/modification and “companion” or “service” animals. While the above examples may seem

frustrating, and while it is difficult to explain exceptions to the other residents of your community, we need to comply with the ADA. It would be a natural reaction to grumble about those who you suspect are cheating the system and approach accommodation requests with skepticism. But that is looking at the “glass half empty.” It is good public policy to require that the disabled have assistance so that they can better deal with their disabilities and be happier and more productive. We should look at every request for accommodation under our rules as a chance to fulfill the true purpose of the ADA and improve the life of someone who struggles with a physical/mental disability whether seen or unseen. We should be happy to be able to be a part of that improvement.

As always, if you have a difficult situation, then discuss it with your legal counsel. Whatever you do, don’t ignore a person’s request for a reasonable modification/accommodation under the ADA.

## Request for Modification/ Accommodation under the Fair Housing Act

Our community seeks to comply with all applicable laws and regulations including the Fair Housing Act. Our community does not discriminate on the basis of race, color, religion, national origin, sex, disability, sexual preference or familial status.

We will be happy to consider any reasonable request for a reasonable modification or reasonable accommodation so that any individual with a disability may fully use and enjoy the housing opportunities provided by this community. In many cases, requests can be responded to in an informal manner to the satisfaction of all concerned. In other cases, it may be necessary to engage in an interactive process (meeting, telephone conference, negotiation) in order to arrive at a solution. In some cases, it may be impossible for us to grant a request because it is not reasonable or not feasible from a financial or operational

standpoint. We will, however, try to respond favorably to any reasonable request.

In order to assist us in responding to your request, please fill out this form. If you need any assistance in filling out the form, please let us know.

\_\_\_\_\_ Request for Reasonable Modification. “Modification” typically means that you want something physically changed at your homesite or in the common areas of the facility. A typical request might be to add a ramp to your homesite or enlarge your driveway for ease in handicap access to a van. Or, you might request that a curb be cut and a ramp installed so that a scooter can easily leave the street and access a sidewalk. In the space below, please write down your request for a reasonable modification:

\_\_\_\_\_ Request for Reasonable Accommodation. “Accommodation” typically means that you want an exception from one of the community’s rules or policies. A typical request might be to allow you to park a handicapped accessible van in nearby guest parking because the van is too wide to fit in your driveway. In the space below, please write down your request for a reasonable accommodation:

\_\_\_\_\_ Check here if you would like to meet with us to discuss your request.





Your Name: \_\_\_\_\_  
 Homesite #: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 For Community Office Use Only  
 Date request received by Management:  
 \_\_\_\_\_

Note: Contact VCM's Director of Operations to discuss every request before taking action.

\_\_\_\_\_ Request Granted  
 \_\_\_\_\_ Request Granted in part. Describe what was granted: \_\_\_\_\_  
 \_\_\_\_\_ Request Denied

Reason(s) for Denial: \_\_\_\_\_

\_\_\_\_\_ Cost of granting the Request Too High. Cost was \$ \_\_\_\_\_

\_\_\_\_\_ Request would disrupt operations because \_\_\_\_\_

\_\_\_\_\_ Request was unreasonable because \_\_\_\_\_

Date decision to grant/deny request was made and communicated to resident: \_\_\_\_\_

Name of Person Completing this Form:  
 \_\_\_\_\_  
 \_\_\_\_\_

**U.S. Department of Justice  
 Civil Rights Division  
 Disability Rights Section**

**COMMONLY ASKED QUESTIONS  
 ABOUT SERVICE ANIMALS IN  
 PLACES OF BUSINESS**

**Q: What are the laws that apply to my business?**

A: Under the Americans with Disabilities Act (ADA), privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities, are prohibited from discriminating against individuals with disabilities. The ADA requires these businesses to allow people with disabilities to bring their service animals onto business premises in whatever areas customers are generally allowed.

**Q: What is a service animal?**

A: The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If they meet this definition, animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government.

Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. Guide dogs are one type of service animal, used by some individuals who are blind. This is the type of service animal with which most people are familiar. But there are service animals that assist persons with other kinds of disabilities in their day-to-day activities. Some examples include:

- Alerting persons with hearing impairments to sounds.
- Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- Assisting persons with mobility impairments with balance.

A service animal is not a pet.

**Q: How can I tell if an animal is really a service animal and not just a pet?**

A: Some, but not all, service animals wear special collars and harnesses. Some, but not all, are licensed or certified and have identification papers. If you are not certain that an animal is a service animal, you may ask the person who has the animal if it is a service animal required because of a dis-

ability. However, an individual who is going to a restaurant or theater is not likely to be carrying documentation of his or her medical condition or disability. Therefore, such documentation generally may not be required as a condition for providing service to an individual accompanied by a service animal. Although a number of states have programs to certify service animals, you may not insist on proof of state certification before permitting the service animal to accompany the person with a disability.

**Q: What must I do when an individual with a service animal comes to my business?**

A: The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go. An individual with a service animal may not be segregated from other customers.

**Q: I have always had a clearly posted "no pets" policy at my establishment. Do I still have to allow service animals in?**

A: Yes. A service animal is not a pet. The ADA requires you to modify your "no pets" policy to allow the use of a service animal by a person with a disability. This does not mean you must abandon your "no pets" policy altogether but simply that you must make an exception to your general rule for service animals.

**Q: My county health department has told me that only a guide dog has to be admitted. If I follow those regulations, am I violating the ADA?**

A: Yes, if you refuse to admit any other type of service animal on the basis of local health department regulations or other state or local laws. The ADA provides greater protection for individuals with disabilities and so it takes priority over the local or state laws or regulations.

**Q: Can I charge a maintenance or cleaning fee for customers who bring service animals into my business?**

A: No. Neither a deposit nor a surcharge may be imposed on an individual with a disability as a condition

to allowing a service animal to accompany the individual with a disability, even if deposits are routinely required for pets. However, a public accommodation may charge its customers with disabilities if a service animal causes damage so long as it is the regular practice of the entity to charge non-disabled customers for the same types of damages. For example, a hotel can charge a guest with a disability for the cost of repairing or cleaning furniture damaged by a service animal if it is the hotel's policy to charge when non-disabled guests cause such damage.

**Q: I operate a private taxicab and I don't want animals in my taxi; they smell, shed hair and sometimes have "accidents." Am I violating the ADA if I refuse to pick up someone with a service animal?**

A: Yes. Taxicab companies may not refuse to provide services to individuals with disabilities. Private taxicab companies are also prohibited from charging higher fares or fees for transporting individuals with disabilities and their service animals than they charge to other persons for the same or equivalent service.

**Q: Am I responsible for the animal while the person with a disability is in my business?**

A: No. The care or supervision of a service animal is solely the responsibility of his or her owner. You are not required to provide care or food or a special location for the animal.



**Q: What if a service animal barks or growls at other people, or otherwise acts out of control?**

A: You may exclude any animal, including a service animal, from your facility when that animal's behavior poses a direct threat to the health or safety of others. For example, any service animal that displays vicious behavior towards other guests or customers may be excluded. You may not make assumptions, however, about how a particular animal is likely to behave based on your past experience with other animals. Each situation must be considered individually.

Although a public accommodation may exclude any service animal that is out of control, it should give the individual with a disability who uses the service animal the option of continuing to enjoy its goods and services without having the service animal on the premises.

**Q: Can I exclude an animal that doesn't really seem dangerous but is disruptive to my business?**

A: There may be a few circumstances when a public accommodation is not required to accommodate a service animal--that is, when doing so would result in a fundamental alteration to the nature of the business. Generally, this is not likely to occur in restaurants, hotels, retail stores, theaters, concert halls, and sports facilities. But when it does, for example, when a dog barks during a movie, the animal can be excluded.

If you have further questions about service animals, or other requirements of the ADA, you may call the U.S. Department of Justice's toll-free ADA Information Line at 800.514.0301 (voice) or 800.514.0383 (TDD).

To download this document, please visit: <http://www.ada.gov/qasrvc.htm>. ■