



Service Animals - Comfort Animals - Family Pets: Is There A Difference?

BY JOHN H. PENTECOST, Esq.

Sorting through the legal framework on service animals can feel like a “dog chasing its tail.” The lack of legal clarity puts disabled people in danger of discrimination and at the same time creates potentially substantial legal liability for an unwary manufactured housing community and its ownership.

Inconsistent Community Rules and Regulations Can Trap The Unwary

If your community rules and regulations do not currently address pet restrictions and pet conduct rules, they should be amended by your community attorney. It is also important to enforce pet rules in a consistent, but nondiscriminatory manner. If your rules are vague, then you may open yourself up to potential issues and lawsuits. You should make it clear that all “animals” in the community are subject to the community’s pet conduct rules, because “service animals” are not considered “pets” under current law. While a tenant may have a service animal that deviates from the community rules, service animals must still comply with the pet “conduct” rules like any other domesticated animal on your property.

What is a Service Animal?

The Federal Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973 all require that applicants and tenants with disabilities be provided with “reasonable accommodations” as needed in order for

them to have an opportunity for full use and enjoyment of their housing. Allowing tenants and their guests who have disabilities to be accompanied by their service animals is a reasonable accommodation to housing policies and practices. These three regulations seem at first glance to be an imposition on the communities that may, for good reasons, have policies, which do not allow pets and animals or restrict the number, size and weight of animals allowed on the premises. However, the benefits of

these rules should also be considered, when addressing an accommodation request.

There is a difference between service animals and recognized social animals, which can include “emotional support” animals and “comfort” animals. Social animals are those used to address animal-assisted therapy goals, and are trained to be used in a wide variety of settings, including hospitals,

nursing facilities, schools, and other institutions. There are several national organizations that provide structured training and certification programs for social animals, but most are not recognized as “service animals” under Federal law.

The most common service animals are dogs, but sometimes other species are used as well like a cat or bird. Service animals may be any

breed, size or weight. Some, but not all, wear special collars and harnesses. However, there is no legal requirement for service animals to be visibly identified or to have documentation. The ADA defines a service animal as “any animal that is individually trained to do work or person tasks for the benefit of a person with a disability.” The Fair Housing Act considers “companion” animals to be a type of service animal; however, they are not always trained to perform tasks.

According to the Department of Justice, you may ask your tenant or applicant if the subject animal, typically a dog, has received any special training and, if so, a description of that special training. You may not ask about the person’s disability. Furthermore, access laws in the United States, including the ADA, permit people who have service animals, e. g. , guide dogs, to be accompanied by their service animals everywhere the general public is allowed - basically all areas of public accommodation.

Now What’s The Difference Between A Service Animal and a Pet?

Service animals are not considered to be pets. A person with a disability uses a service animal as an auxiliary aid, which is similar to a person using a cane, crutch or wheelchair. For these reasons, fair housing laws require that housing providers make modifications to “No Pets” or “Restrictions on Pets” policies to permit the use of a service animal by an individual with a disability. Additionally, pet fees cannot be charged for service animals (i. e. , pet deposits), because service animals are not considered “pets.” You can have general requirements of homeowner insurance, which is required for all tenants in the Community. Tenants will also be responsible for the conduct

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of and destruction by their respective animals, be it a service animal, comfort animal or pet.

Managing Service Animal Accommodations

Community managers must review all requests a disabled tenant makes for reasonable accommodations under the Fair Housing Act, including requests for their service animal. You can require the tenant to provide written verification from the tenant's healthcare and/or mental healthcare provider that the tenant has a disability and needs the service animal. The provider need not be a medical doctor, but does need to be a healthcare professional. You can require proof that the tenant is disabled, but you cannot require the tenant to provide information about their specific disability.

What Type Of Help Do Service Animals Provide?

A guide animal serves as a travel tool by a person who is legally blind. A hearing animal alerts a person with significant hearing loss or who is deaf when a sound occurs, such as a doorbell; knock on the door, or a fire alarm. A service animal helps a person who has a mobility or health disability. Duties may include car-

rying, fetching, opening doors, ringing doorbells, activating elevator buttons, steadying a person while walking, etc. Many service animals are also known as assistance animals. A companion animal or emotional support animal assists people with psychological disabilities. Emotional support animals can help alleviate symptoms such as anxiety, depression, stress and difficulties regarding social interactions.

Why Should Community Owners Proceed With Caution?

You must consider all requests for reasonable accommodation and each should be dealt with on a case by case basis. Generally, any person or entity engaging in prohibited conduct – i. e. , refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable. A request for a reasonable accommodation may be only denied providing the accommodation is unreasonable (i. e. , if it would impose an undue hardship on the community).

You must comply with the applicable laws and regulations as they relate to reasonable ac-

commodations for “service animals” and you should address each request individually, promptly and fairly, based on its own factual scenario. In addition to the Federal laws noted above, many states, like California, have their own fair housing laws, which can be more restrictive or provide boarder definitions of “service animals,” making the analysis even more difficult. If your community receives a request for reasonable accommodation for a “service animal,” reach out to your community attorney for counsel and advice. It will be money well spent.



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