

Service Animals Update 2015



FloridaRealtors®

The Voice for Real Estate® in Florida

Margy Grant, Esq.

Vice President & General Counsel

**ASSISTANCE ANIMALS ARE
NOT PETS.**



Assistance Animals

- Fair Housing Law

It is unlawful:

- (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--
 - (A) that buyer or renter,
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.

42 U.S.C.S. Section 3604(f)(1)



What is an assistance animal?

- Works, provides assistance, or performs tasks for the benefit of a disabled person or provides emotional support that alleviates one or more identified symptoms of a person's disability.
- Assist disabled individuals in some identifiable way that makes it possible for them to make more effective use of their housing.
 - Do not have to be certified, individually trained or require a special license.
 - Includes dogs, but may also include other animals such as cats, birds, or other domesticated animals.
 - May be any breed, size or weight.
 - Not required to wear special collars or harnesses.



PROHIBITED DISCRIMINATION

Definition of Discrimination includes:

- a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

42 U.S.C.S. Section 3604(f)(3)(B)



Service Animal Legislation

- Makes it a crime to fake a service animal
 - So this makes it so much easier to deny a service animal right?

• **WRONG**



When does FHA reasonable accommodation not apply?

- Reasonable Accommodation requirements do not apply in limited cases
 - Owner-occupied buildings with 4 or less units.
 - Single family housing when individual owner: 1) does not own more than three single family homes at any one time; 2) does not use a real estate agent and does not employ any discriminatory advertising; 3) has not engaged in a similar sale of a home within 24-month period and 4)not is not in the business of selling or renting dwellings.
 - Hotels and Motels are not considered dwellings under the FHA.
 - Private Clubs.



Process of Request for reasonable accommodation

- A request may be made orally or in writing.
- Once request received, housing provider should ask:
 - 1) Does the person seeking to use and live with the assistance animal have a disability?
 - Does the person have a physical or mental impairment substantially limiting one or more major life functions.
 - 2) Does the person making the request have a disability-related need for an assistance animal?
 - Does the animal work, perform tasks, etc. for the benefit of the disabled individual?



Okay...what can we ask??

- Housing provider MAY NOT ask for documentation if disability or disability-related need for an assistance animal is readily apparent or already known to the housing provider.
- Housing provider MAY ask for reliable documentation if disability or disability-related need for an assistance animal is not readily apparent or already known to the housing provider.



What can we not ask?

- Housing provider MAY not ask for access to medical records or medical providers or to provide detailed or extensive information or documentation regarding the individuals disability.
- Interactive process - a housing provider can not deny a request because they are uncertain whether a person has a disability or disability-related need for an assistance animal.
 - Reference new legislation



Are there any exceptions

- Housing provider not required to make reasonable accommodations if:
 - Imposes an undue financial burden and administrative burden.
 - Would fundamentally alter the nature of the housing provider's services.
 - SPECIFIC assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by reasonable accommodation.
 - SPECIFIC assistance animal in question poses a direct threat to the health and safety of others that can not be reduced or eliminated by reasonable accommodation.



What about the property?!

- Disabled person must properly manage assistance animal.
- You may hold disabled person liable for damages caused to the premises by the assistance animal.



Other items that are disallowed

- Unreasonably delay, condition or deny request.
- Can not require an emotional support animal have any specific training.
- Apply a blanket weight or breed restriction.
- Require pet insurance.
- Charge a pet deposit.



Insurance Issues

- Landlord still subject to the law.
- HUD memo June 12, 2006



WARREN V. DELVISTA TOWERS

CONDOMINIUM

- Resident sued condominium association when refused to modify the “no pet” policy to allow resident to live with his emotional assistance animal.
- Court held:
 - Change to “no pet” policy was a reasonable accommodation.
 - Fair Housing Act preempted local ordinance banning a particular dog breed.



How do we convince our clients?

- WARREN V. DELVISTA TOWERS
CONDOMINIUM

- Resident sued condominium association when refused to modify the “no pet” policy to allow resident to live with his emotional assistance animal.
- Court held:
 - Change to “no pet” policy was a reasonable accommodation.
 - Fair Housing Act preempted local ordinance banning a particular dog breed.



ADA differences

- Housing providers may have separate obligations under the ADA.
- ADA defines “Service Animal” narrowly.
 - As of March 2011 only dogs are recognized as service animals under Titles II and III of the Americans with Disabilities Act.
 - Specify that emotional support animals do not qualify as service animals under the ADA.



Questions?

Margy Grant

Legal hotline: 407 438 1409

margyg@floridarealtors.org

