

# THERAPY AND SERVICE ANIMALS

## STATE AND FEDERAL LEGISLATION

### WHAT LANDLORDS MUST DO TO BE IN COMPLIANCE



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# 1. ANIMALS IN HOUSING ARE GOVERNED BY TWO FEDERAL ACTS, WHICH HAVE DIFFERENT RULES, DEFINITIONS, ENFORCEMENT AGENCIES AND STRENGTHS.

## **AMERICANS WITH DISABILITIES ACT:(ADA) 42 U.S.C.A. SEC 12101 ET SEQ.**

- GOVERNS “SERVICE ANIMALS”
- U.S. DEPARTMENT OF JUSTICE ENFORCES AND WRITES RULES

## **FAIR HOUSING ACT (FHACT) & SEC 504 OF REHABILITATION ACT OF 1973**

- GOVERNS “THERAPY/ASSISTANCE ANIMALS”
- U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WRITES RULES



# QUESTION: CAN BOTH ACTS APPLY TO THE SAME ANIMAL?

ANSWER: YES,

1. WHERE IT IS A DOG
2. WHERE IT IS “HOUSING”
3. A “SERVICE” ANIMAL CAN ALSO ACT AS A “THERAPY/ASSISTANCE” ANIMAL

**NOTE:** A CAT CAN BE A “THERAPY” ANIMAL BUT CANNOT BE A “SERVICE” ANIMAL.



## 2. SERVICE ANIMALS: ADA

WHAT IS A “SERVICE” ANIMAL?

- A **DOG** INDIVIDUALLY TRAINED TO DO **WORK** OR PERFORM TASKS



# WHAT IS WORK?

- WORK IS NOT GIVING A PERSON EMOTIONAL SUPPORT, COMPANIONSHIP, OR COMFORT, OR HELPING A PERSON WITH WELL-BEING. USE OF FH ACT RULES FOR “THERAPY/ASSISTANCE” ANIMALS IS MORE LIKELY TO BE APPLICABLE TO THAT PURPOSE.
- WORK IS THE PERFORMANCE OF TASKS FOR ONE WITH A DISABILITY, WHICH MAY BE PHYSICAL, SENSORY, PSYCHIATRIC, OR INTELLECTUAL.



# WHERE ARE “SERVICE” ANIMALS ALLOWED TO GO?

- ANY “PLACE OF PUBLIC ACCOMMODATION” WHICH INCLUDES:
  - ❖ PLACES OF PUBLIC EDUCATION, SCHOOLS, UNIVERSITIES
  - ❖ RENTAL HOUSING, LEASING OFFICES
  - ❖ INNS, HOTELS/MOTELS AND OTHER LODGINGS
- BUT SERVICE ANIMALS CAN BE EXCLUDED FROM INNS, HOTELS, ETC., WHERE THERE ARE FIVE OR FEWER UNITS AND IT IS OWNER OCCUPIED; SUCH UNITS ARE NOT RESIDENCES.



- ON AIRLINES, WHICH ARE GOVERNED BY THE AIR CARRIER ACCESS ACT OF 1986 (ACAA), AN AIRLINE CAN REQUIRE DOCUMENTATION OF TRAINING AND NOTICE FROM THE PASSENGER. NOTICE SHOULD BE GIVEN AFTER TICKET PURCHASE TO AVOID “SUDDEN LACK OF SEATING”.

ADA SERVICE ANIMALS AND FH ACT “THERAPY/ASSISTANCE” ANIMALS ARE BOTH PROTECTED UNDER ACAA OF 1986. DOCUMENTATION LESS THAN ONE YEAR OLD MUST BE PROVIDED FOR “THERAPY/ASSISTANCE” ANIMALS. SEE 14 C.F.R.SEC. 382.117



# PLACES THAT SERVICE ANIMALS ARE NOT ALLOWED TO GO ON CAMPUS:

- FOOD PREPARATION AREAS;
- PLACES THAT PRESENT DANGER TO ANIMAL;
- CLEAN ROOMS, I.E. LABS;
- MACHINE ROOMS.





# WHAT IS A “DISABILITY” FOR PURPOSES OF “SERVICE” DOGS?

- A DOCUMENTED PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES, A RECORD OF SUCH AN IMPAIRMENT, OR BEING REGARDED AS HAVING SUCH AN IMPAIRMENT.



- THE “SERVICE “DOG, AS IT RELATES TO DISABILITY, IS TRAINED AS A
  1. GUIDE DOG: SMELL, VISION, HEARING, ETC.
  2. SIGNAL DOG
  3. SEIZURE-ALERT DOG
  4. MOBILITY IMPAIRMENT DOG
  5. PSYCHIATRIC SERVICE DOG (TRAINED TO, E.G., INTERRUPT SELF-MUTILATION, KEEP THOSE WITH DISSOCIATIVE IDENTITY DISORDER GROUNDED IN TIME AND/OR PLACE, REMIND OWNER TO TAKE MEDICINES. THIS TYPE OF TRAINED DOG SOMETIMES OVERLAPS WITH “THERAPY/ ASSISTANCE” ANIMALS BEING USED FOR EMOTIONAL SUPPORT.



POST TRAUMATIC STRESS SYNDROME (also known as PTSD) IS RECOGNIZED BY DSM IV AND HAS SOME FREQUENCY AMONG VETERAN STUDENTS ON COLLEGE CAMPUSES.

STUDENTS WHO ARE VICTIMS OF TRAUMATIC CRIMES OR OTHER SERIOUS EVENTS MAY SUFFER FROM PTSS ALTHOUGH THE STEREOTYPE IS FOR RETURNING VETERANS.

“SERVICE” DOGS” AND “THERAPY/ASSISTANCE” ANIMAL RULES COULD EACH BE USED TO MAXIMIZE BENEFITS TO VETERAN AND OTHER PTSS STUDENTS.



THE KEY THING TO REMEMBER IS THE CONCEPT OF **REASONABLE ACCOMODATION** IN BOTH FEDERAL ACTS. THERE ARE FEW ABSOLUTE RIGHTS.

THE ACCOMMODATION IS CONSIDERED REASONABLE IF:

- IT IS A CHANGE IN RULES, POLICIES, PRACTICES OR SERVICES SO THAT THE PERSON WITH THE DISABILITY WILL HAVE AN EQUAL OPPORTUNITY TO ENJOY THE DWELLING.

THE ACCOMMODATION IS NOT CONSIDERED REASONABLE IF:

- IT WOULD CREATE AN UNUSUAL HARDSHIP SUCH AS SIGNIFICANT STRUCTURAL CHANGE OR FINANCIAL IMPACT.



**QUESTION:** CAN A LANDLORD CHARGE A “PET DEPOSIT” FOR AN ADA SERVICE DOG?

**ANSWER:** STUDENT LEGAL SERVICE’S VIEW IS “NO”, BUT THERE IS SOME AMBIGUITY  
IN THE LAW.

DENIAL OF ACCOMMODATION TO A PERSON WITH A “SERVICE” ANIMAL IS A  
STATE CRIMINAL CHARGE IN ILLINOIS AND OTHER STATES



### 3. THERAPY/ASSISTANCE ANIMALS : FH ACT SEC. 504

WHAT IS A “THERAPY/ASSISTANCE” ANIMAL?

A “THERAPY/ASSISTANCE” ANIMAL IS AN ANIMAL:

- THAT DOES NOT HAVE TO BE SPECIALLY TRAINED TO ASSIST WITH SPECIFIC DISABILITY
- THAT IS “NEEDED” TO ASSIST WITH THE DISABILITY



# WHERE ARE “THERAPY/ASSISTANCE” ANIMALS PERMITTED TO GO?

- HOUSING; APARTMENTS, CONDOS, RESIDENTIAL PROPERTY
- THERE IS NOT AN AUTOMATIC/PROTECTED RIGHT FOR THERAPY/ASSISTANCE ANIMALS TO BE PRESENT IN OTHER PLACES OF PUBLIC ACCOMMODATION SUCH AS RESTAURANTS, BARS, CLASSROOMS
  - SOME STATES, SUCH AS ILLINOIS, STATUTORILY PERMIT “SERVICE” ANIMALS IN THE CLASSROOM, 105 ILCS 5/14.1.01 ET SEQ, WITH THE DECISION IN NICHELLE V. VILLA GROVE, 403 ILL.APP.3D1062, 936 N.E.2D690 (2010), IMPLICATING THE NOTION THAT “THERAPY/ASSISTANCE” ANIMALS ARE PERMITTED IN THE CASE OF AN ELEMENTARY STUDENT SUFFERING FROM AUTISM.



- COURTHOUSES AND COURTROOMS WILL PERMIT SERVICE ANIMALS ALTHOUGH THERE IS OFTEN RESISTANCE AT ENTRANCE SCREENING.
  - ON THE OTHER HAND “THERAPY” ANIMALS ARE NOT ROUTINELY REQUIRED TO BE ADMITTED.





# WHAT IS A “DISABILITY” FOR PURPOSES OF “THERAPY/ ASSISTANCE” ANIMALS?

- A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES.
- IF THE STUDENT TENANT HAS A “DISABILITY”, AND CAN SHOW THAT THE ANIMAL IS OF ASSISTANCE TO HER/HIM OR PROVIDES EMOTIONAL SUPPORT THAT ALLEVIATES ONE OR MORE OF THE SYMPTOMS OF THE DISABILITY, THEN A REASONABLE ACCOMMODATION OF THE ANIMAL LIKELY IS REQUIRED.



## WHAT WILL THE TENANT NEED TO OBTAIN HOUSING WITH ACCOMMODATION OF THE “THERAPY/ASSISTANCE” ANIMAL?

- UNLESS THE STUDENT CONDITION IS OBVIOUS OR KNOWN TO THE LANDLORD, THE LANDLORD CAN REQUIRE A LETTER FROM A LICENSED MEDICAL/PSYCHIATRIC PROFESSIONAL, OR EVEN LICENSED CLINICAL SOCIAL WORKER, THAT STATES:
  - “THERE IS A DISABILITY” AND
  - “THE ANIMAL PROVIDES NECESSARY SUPPORT IN DEALING WITH THE SYMPTOMS OF THE CONDITION”.
- THE LANDLORD IS NOT ENTITLED TO MEDICAL OR PSYCHIATRIC RECORDS.

## **NOTE:**

THE COUNSELING CENTER HAS STAFF MEMBERS WHO ARE LICENSED, WHO IN APPROPRIATE CASES CAN WRITE SUCH LETTERS.

IT MAY BE NECESSARY FOR THE SLS ATTORNEY TO PROVIDE GUIDANCE THAT PROTECTS CLIENT MEDICAL PRIVACY, I.E., DISCLOSING IN THE LETTER THE ABSOLUTE MINIMUM TO OBTAIN ACCOMMODATION ELIGIBILITY.



**QUESTION:** CAN THE LANDLORD CHARGE A PET/SECURITY/DAMAGE DEPOSIT FOR A “THERAPY/ASSISTANCE” ANIMAL?

**ANSWER:** NO!



# WHEN IT IS NOT A SERVICE OR THERAPY/ASSISTANCE ANIMAL

## 4. PETS: LEASES AND REGULATIONS AND A BIT OF LAW

- THE GENERAL RULE IS THAT PRIVATE AND PUBLIC RESIDENTIAL LEASE AGREEMENTS CAN PROHIBIT PETS REGARDLESS OF THE KIND OF PET.
- THE GENERAL RULE IS THAT PRIVATE AND PUBLIC RESIDENTIAL AGREEMENTS CAN REGULATE THE TYPE OF PET AND SIZE OF PET THAT WILL BE PERMITTED; “NO DOGS WEIGHING MORE THAN 60 LBS.” PUPPIES GROW UP, AS SOME OF OUR STUDENTS HAVE LEARNED. “NO PIT BULLS”, “NO CATS”, “NO SNAKES OR OTHER REPTILES” ARE ALSO PERMITTED.



- THE GENERAL RULE IS THAT WHERE PETS ARE PERMITTED BY THE LEASE, THE LANDLORD MAY SET REASONABLE TERMS FOR REMOVING THE PET FOR PET VIOLATIONS SUCH AS:

- EXCESS BARKING/MEOWING,
- ESCAPING INTO HALLWAYS,
- TENANT FAILURE TO CLEAN EXCREMENT,
- FAILURE TO KEEP PET LEASHED OUTSIDE OF THE UNIT, ETC.

LEASES FREQUENTLY IMPOSE FINES/PENALTIES ON A DAILY BASIS FOR VIOLATIONS.

- THE GENERAL RULE IS THAT WHERE PETS ARE PERMITTED, THE LANDLORD CAN CONTRACTUALLY REQUIRE A LARGE “PET DEPOSIT” THAT MAY EXCEED, AND BE IN ADDITION TO, THE ROUTINE DAMAGE/SECURITY DEPOSIT.



**QUESTION:** CAN A PET DEPOSIT BE MADE NON-REFUNDABLE?

**ANSWER:** ILLINOIS REGARDS PET DEPOSITS AS VALID LIQUIDATED DAMAGES NOT SUBJECT TO STATE STATUTE OR LOCAL ORDINANCE PROVISIONS THAT GOVERN NON-PET DEPOSITS. LAWS DO NOT REQUIRE

- TIMELY ACCOUNT FOR PET DAMAGE
- INTEREST ON PET DEPOSIT, ETC.

NON-REFUNDABILITY MUST BE DISCLOSED IN THE LEASE.



# INSURANCE

- IF THERE IS GOING TO BE A PERMITTED PET, SERVICE DOG, OR THERAPY ANIMAL, THE TENANT SHOULD MAKE SURE:
  - THAT THEY HAVE RENTER'S INSURANCE THAT COVERS BITES OR INJURIES CAUSED BY THE ANIMAL,
  - OR
  - THAT PARENT'S HOMEOWNER'S POLICY HAS THIS COVERAGE FOR A STUDENT LIVING OUTSIDE OF THE PARENTAL HOUSEHOLD.







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