

# Landlord-Tenant Guide to Service and Assistance Animals

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## **1. THE DEFINITION OF ASSISTANT AND SERVICE ANIMALS**

There's the "legal" definition of an assistant animal and a service animal and there's a "whole lot of in-between" as determined in specific cases where disabilities and animals and support are analyzed.

The Americans with Disabilities Act (ADA) defines a service animal 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. If your dog meets the definition then it doesn't matter whether they have a license.

## **2. THE DIFFERENCE BETWEEN ASSISTANT AND SERVICE ANIMALS**

There are "therapy animals." (animals used to assist others in different types of therapy). They are "generally trained" but not expected to do specific tasks.

Service animals are different and many people have various misconceptions. Service animals do not require a special certification or license or official documentation. Service dogs don't have to be a certain breed or size.

Service animals aren't pets and are necessary medical equipment. Generally speaking, service animals are allowed to go anywhere that a wheelchair, walker or other assistive device

can go and are “specifically trained” for the person’s needs through trained tasks (also an undefined term).

### **3. RIGHTS AND RESPONSIBILITIES AS A HANDLER**

Service dogs are with handlers all the time and require a lot of training. The dogs/ESA require daily care and you have to be ready to answer a lot of questions about the service dog/ESA. Service dogs/ESAs can be expensive, have to be treated with a lot of respect and you have to avoid the “pet” approach to interacting with them.

### **4. RIGHTS AS A HOUSING OR PROPERTY MANAGER?**

Have to be Uber careful here! Every day the number of tenants seeking to have their “pet” be exempt from leases and other requirements swell. Arguments are being made regarding depression, posttraumatic stress disorder, anxiety, arthritis, and heart attacks. This is done generally with applications and under the guise of a request for an assistance or emotional support animal status.

### **5. DISABILITY LAWS AND SPECIFIC REGULATIONS REGARDING SERVICE ANIMALS**

Start with the federal, work down to state, local and by agreement (lease, etc.). Figure that the most stringent should dictate what and how you perceive/handle service dogs/ESAs, etc.

Some general information since a host of people including service providers, landlords, etc., are uncertain as to what they can ask, do, insist in their dealings with people who present an animal as a service animal.

The United States Department of Justice (DOJ) defines Service Animals as dogs that are individually trained to do work or perform tasks for people with disabilities. This includes guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with PTSD, etc.

Service animals are not pets. The dog's work or task must be directly related to the person's disability. Ironically, dogs whose function is to provide comfort or emotional support do not qualify as service animals under the Americans with Disabilities Act (ADA) of 1990. The ADA and Section 504 of the Rehabilitation Act of 1973, require that health care facilities must allow the use of a service animal by a person with a disability. During a disaster or public health emergency, staff may not: (1) ask about the person's disability; (2) require medical documentation, a special identification card, or training documentation for the dog; (3) require the dog to demonstrate



its ability to perform the work or task. If it's not clear what the animal does, staff can ask if the dog is required because of "a" disability; and what work/task has the dog been trained to perform. Service animals can go anywhere where the patients and others can go unless the dog's presence creates a "direct threat" to other persons in the area. You can't ask the person with service animal to remove it unless the dog is not housebroken, is out of control, or if the handler can't control the service animal. Service animals must be harnessed or leashed unless the devices interfere with their work/tasks.

**LANDLORD/TENANT CONCERNS:** In the landlord/tenant setting, the landlord's pet policy doesn't apply! A service animal or emotional support animal IS NOT considered a "pet." In effect, such an animal is the equivalent of a "piece of medical equipment."

### **Federal Laws**

Federal fair housing laws require landlords to allow reasonable accommodations for tenants with disabilities:

- (1) Landlords may not prohibit a service animal or emotional support animal from living in the unit.
- (2) Tenants can't be charged an extra "pet" rent or "pet" security deposit for a service or emotional support animal.
- (3) Other "pet policy" rules like breed/weight restrictions can't be applied to service or emotional support animals.

There are two exceptions allowing landlords to deny a service or companion animal:

- (4) If the landlord lives in the unit, and they or a member of their immediate family have an allergy to the animal.
- (5) If that specific animal has aggressively threatened someone. (this is based on the specific animal and not the breed or size)

The ADA gives specific guidelines for what are and are not "service animals." Some people believe that ONLY service animals are protected. The ADA, however also notes that "emotional support animals that do not qualify as service animals under the Department's title III regulations may nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the Fair Housing Act and the ACAA."

As a general observation, the federal Fair Housing Act requires housing facilities to allow service dogs and animals, if necessary for a person with a disability to have an equal opportunity to use and enjoy the home.

On January 28, 2020, the U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO) released Notice FHEO-2020-01, sometimes referred to as the "Assistance Animals Notice." The Notice includes two sections.

The first, "Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act,"

recommends a set of best practices for complying with the Fair Housing Act (FHA) when assessing a person with a disability's accommodation requests involving animals in housing. The second section is "Guidance on Documenting an Individual's Need for Assistance Animals in Housing." It provides guidance on information that an individual seeking a reasonable accommodation for an assistance animal may need to provide to a housing provider about his or her disability-related need for the requested accommodation, including supporting information from a health care professional

The bottom line on all of this is to not assume and do your research before you react to a person with a service animal or choose to "dictate" what qualifies/doesn't qualify as a service or emotional support animal.





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