

# **MODEL GUIDELINES: Service Animals and Emotional Support Animals in Domestic Violence Programs and Shelters**

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January 2018



**Working Like *DOG* S**<sup>TM</sup>

## Acknowledgements

This project was supported by funding from the New Mexico Governor's Commission on Disability (NMGCD). The opinions, findings, conclusions, and recommendations expressed in the publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the NMGCD. This document is adapted from the "Model Protocol on Service Animals in Domestic Violence Shelters" published in 2009 by Phil Jordan and Summer Carrick for the Washington State Coalition Against Domestic Violence.

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**New Mexico Coalition Against Domestic Violence (NMCADV)** works to achieve a coordinated local, regional, and statewide response to domestic violence through a collaborative network of member programs that consist of domestic violence service providers and other allied organizations and individuals. The NMCADV serves as a clearinghouse for information and referrals on all domestic violence related issues and services. The coalition collaborates with agencies and Advocates in the areas of program development, public policy, education and funding proposals.

**Assistance Dogs of the West** is a nonprofit service dog training and placement organization founded in Santa Fe, New Mexico, in 1995. ADW is an expert in the region regarding service animal law, handler rights and responsibilities. ADW has lectured extensively at professional conferences and to businesses, and its Founder and Executive Director were involved in the crafting of the New Mexico Service Animal Act of 2013.

Special thanks to the domestic violence programs who were responsible for bringing awareness to this topic and for their commitment to ensuring that services are accessible to **all** survivors.

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# Introduction

Communal living situations can be challenging, and introducing animals into the environment can create complications, conflicts and confusion. During the past few years, the subject of service animals and emotional support animals coming to domestic violence shelters has been a hot topic and it is not surprising that both Domestic Violence (DV) Advocates and Program Directors often become frustrated with trying to interpret the laws and ethical obligations surrounding this complex issue. Becoming informed and developing organizational policies and procedures can not only help mitigate some of the complexities involved with serving individuals with service and emotional support animals, but it may also ensure that survivors have better access to safety and independence.

There is a strong link between domestic violence and animal abuse and many survivors report that they delayed leaving an abusive relationship (or did not leave at all) out of fear that their animal would be injured or killed by their abusive partner. Animals can also be an important source of comfort and emotional support to both adults and children who have been exposed to domestic violence. For some survivors, their pet may be considered a family member and abandonment would never be an option no matter how great the risk. For survivors who have a service animal or emotional support animal, this can be even more critical. Service animals enable survivors to function independently; emotional support animals decrease anxiety and can provide mental health support – this can be critical especially for persons with disabilities when seeking services to end domestic violence.

This document will help support Advocates and others in making better informed decisions regarding service animals and emotional support animals by providing an informed framework for addressing conflicts and embracing complications as an integral part of advocacy services. This document defines the types of animals DV programs may encounter and should be used as a guide to help establish policies, protocols, and best practices to assisting individuals with animals that are seeking domestic violence shelter services.

## **Four types of animals will be identified in this document:**

- 1) Service Animals**
- 2) Emotional Support Animals**
- 3) Therapy Animals**
- 4) Pet and Companion Animals**

In various places throughout this document we have used personal pronouns to identify survivors. These individuals could be of any gender. For expediency, we have chosen to use the pronouns "she" and "her" because the majority of survivors served are female. Similarly, when referring to people who use power and control to abuse in their relationships, we have used the pronouns "he" and "him."

## **Disclaimer**

This document contains references to several laws relating to service animals and domestic violence shelters. It is not meant to be a complete review of all laws applicable to the subject. It is written by non-lawyers, for non-lawyers and is not intended to provide specific legal advice. Laws change over time, so if you want legal information for a specific situation, consult the Internet resources listed in this document and/or contact an attorney.

# Definitions & Distinctions

## **Definition of disability:**

The Americans with Disabilities Act (ADA) defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activities. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability.

## **What is a service animal?**

Under the ADA and the New Mexico Service Animal Act, a service animal is defined as a dog or a miniature horse (under 100 pounds) that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the service animal must be directly related to the person's disability.

## **What and who is a handler?**

A person with a disability who owns and utilizes a service animal is called a handler. In most instances the handler will be the person with a disability or a third party who accompanies a person with a disability, such as a parent who handles a service animal for a child with a disability.

According to New Mexico state law (New Mexico Service Animal Act of 2013), a handler also includes a person training a service animal; this team of trainer and service-animal-in-training also has public access (the right to accompany its handler into places of public accommodation) while they are training. A service animal can be owner self-trained, meaning that it does not have to be trained in affiliation with any organization; its owner may train the dog or miniature horse.

## **What kind of animal can be a service animal?**

Under the ADA, a service animal is defined as **only** a dog or a miniature horse (under 100 pounds).

## **What kind of certification do service animals have?**

Service animals do not require any kind of certification. They must be individually trained to provide assistance, but training varies widely based on the tasks the animal performs. The training can be done by professional trainers or individually by the person with the disability. Some service animals have identifiable harnesses, vests, collars, or other documentation, but many do not, and none are required. The service animal's behavior - including performing a task - is what provides assurance that the animal really is a service animal.

### **If there is no certification, how do I know the animal is really a service animal?**

If a person says their animal is a service animal, it is good advocacy practice to take them at their word — start by believing. The service animal's behavior is what provides assurance that the animal really is a service animal.

An Advocate can ask only two questions to a handler presenting with a service animal:

- 1) "Is that a service animal required for disability?" and
- 2) "What work or tasks does it perform for you?"

According to the federal Americans with Disabilities Act and the New Mexico Service Animal Act of 2013, as well as the Fair Housing Act, an Advocate cannot ask any other questions about the person's disability, and cannot ask to see the dog demonstrate a task.

### **What is an emotional support animal (ESA)?**

An emotional support animal (ESA) can be any animal that provides a benefit to a person with a documented disability. An emotional support animal is not considered a service animal. An ESA has privileges under the Fair Housing Act, but not under the ADA.

### **What is a companion animal?**

A companion animal is another word for a pet, and is not trained to perform a task that mitigates a disability. It is a domesticated animal kept for pleasure, not utility (Merriam-Webster Dictionary). A pet does not have any privileges or public access rights, even if their owner has a disability.

### **What is the difference between a service animal and a pet?**

Service animals are not pets. A person with a disability uses a service animal as an auxiliary aid, similar to the use of a cane, crutches or wheelchair. "No Pet" or "No Animal" policies do not apply to service animals.

### **What is a therapy animal?**

A therapy animal is a pet which may or may not have some obedience training who is taken to facilities that request/allow its presence to provide brief visits with the people whom the facility serves. Examples of therapy animals are: dogs/cats/rabbits/etc. that go to schools where children practice reading aloud to the animal; llamas that visit the elderly in nursing homes; dogs/cats/rabbits/etc. that visit patients in hospitals; and more. Pet Partners(R) and Therapy Dogs International are two of the larger, nationwide therapy animal organizations.

### **What is the difference between a service animal and a therapy animal?**

Service animals have public access rights. Therapy animals are pets and do NOT have any public access rights. They can only go places where pets cannot if pre-approved by the facility which they are visiting. They usually make visits for no more than 2 hours at a time, while a service animal may work all day. A therapy animal may be registered with a therapy animal

organization, but this does not give them any special legal rights regarding public access or housing; they are treated the same as pets.

**What is the difference between an emotional support animal (ESA) and a therapy animal?**

ESA's handlers have a disability, of which the ESA helps alleviate symptoms by its presence. A therapy animal's owner may not have a disability, and its role is as a pet who brings comfort to many other people, not its owner. Some people utilize their ESA also as a therapy animal, but one may not utilize their therapy animal as ESA unless they have a disability and documentation from a licensed professional attesting to the disability and the ESA's benefit to its owner/handler.

**\*NOTE: people often confuse these terms.** It is important for Advocates to know what they can ask and what they cannot ask in helping to determine if the survivor's animal is a service animal, emotional support animal, or therapy animal/pet, so that appropriate access, accommodations, and referrals are provided to the survivor and her animals.

Please see the table on the next page illustrating some of the key distinctions between service animals, ESAs, and therapy animals.

# 3 TYPES OF

# SUPPORT ANIMALS



COMPARISON	SERVICE DOGS	THERAPY DOGS	EMOTIONAL SUPPORT
ADA covered: Rights to bring animal into public establishments			
Needs to tolerate a wide variety of experiences, environments, people			
May live with their Disabled owners, even if "No Pets" policy in place			
Primary function is to provide emotional support, through companionship			
Specifically trained to assist just one person			
Provide emotional support and comfort to many people			

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# Service Animals

## **Who uses service animals?**

Some people with disabilities use an animal to perform tasks related to their disabilities, provide warnings or medical alerts, or help keep them safe. The assistance the animals provide can lessen symptoms, help remove day-to-day barriers, or help keep them healthy. People with many different types of disabilities use service animals, including but not limited to people with mobility, cognitive, vision, hearing, seizure, diabetes, or psychiatric disabilities. A service animal must be trained to perform a task that mitigates the disability; its mere presence providing comfort and lowering anxiety is not enough to qualify as a service animal. People with visible and invisible disabilities utilize service animals.

## **How do I know the person has a disability?**

If they are using a service animal, then they have a disability. Usually, that is all you need to know. There are laws and rules that limit what you can ask a person who wants to use your services. For example, you may not ask a person to tell you what type of disability she has. You may also not ask her to have the dog demonstrate the task it is trained to perform.

## An Advocate can ask only two questions to a handler presenting with a service animal:

- 1) "Is that a service animal required for disability?" and
- 2) "What work or tasks does it perform for you?"

An Advocate cannot ask any other questions about the person's disability, and cannot ask to see the dog perform a task.

Our work embraces the value of believing survivors when they seek domestic violence services or support. If a survivor identifies as having a disability, it is recommended that you accept her word and assume she is protected by disability rights laws.

## **What if someone is "faking" their animal as a service animal?**

The New Mexico Service Animal Act of 2013 establishes legal penalties if someone knowingly presents as a qualified service animal an animal which does not meet the definition of a "qualified service animal." The penalties include possibility of a fine and jail time.

## **Don't I need to know about the survivor's disability so I can provide services?**

You will need to know about the survivor's **abilities**. Knowing the name of a survivor's disability or diagnosis may lead you to make incorrect assumptions. The same disease, disorder or condition might affect two people in completely different ways.

When you ask someone about their disability, you may not get information that is helpful. The survivor may think you are asking only about things she cannot do, rather than helping her

develop an advocacy plan based on her strengths and survival strategies. A better approach is to discuss with every survivor how things work throughout your program so she can tell you what works best for her. It is always helpful to know what tasks a survivor needs support with.

For example:

- What is the physical layout of your shelter? Does your building have stairs and no elevator? What would be the best way to solve any barriers/problems created by your building's layout?
- You can ask the survivor: What could make your stay in shelter most comfortable for you and your service animal? Do you have the supplies you need for yourself and your service animal? Do you have a toileting schedule for your service animal and need any assistance with that? You can tell the handler where approved toileting locations for their service animal are, and supply what is needed for cleanup.
- Will the survivor need to schedule and maintain appointments? What kind of reminder for appointments works for her?
- Will she need to review written documents? How does that work best for her? Read them together aloud? Have documents available in large print or on a cassette tape?
- Will she need assistance coordinating transportation? Note that service animals have access to all public transportation modes; however, the handler and Advocate may have to educate transportation providers and Advocate for herself.

### **What do service animals do?**

Below is a list of some of the various types of service animals and tasks they may perform:

- Hearing service animals alert a person who is Deaf or hard of hearing when a sound occurs, such as a doorbell or fire alarm.
- Seeing eye or guide animals assist people who are blind or have low vision.
- Service animals may be trained to alert their owner to certain behaviors or interrupt repetitive movements. This can help the person better communicate and process sensory input. Service animals also provide physical assistance to their partner with physical or mobility limitations such as retrieving dropped items, assisting with daily living activities such as dressing, doing laundry, transferring in and out of a wheelchair and other types of physical assistance.
- A medical alert service animal may be trained to alert or respond to a variety of medical needs. For example, a diabetic alert service animal may be trained to help a person with diabetes by carrying medication and going for help in an emergency. These animals also alert the handler of low or high blood sugar.
- A seizure response or alert service animal may help someone who has epilepsy or a seizure disorder by alerting and warning the handler of an impending seizure, and carrying medication.

- Personal protection (guard dog) is NOT a task recognized under the ADA.

### **How should I interact with the service animal?**

It's simple -- you don't! Your focus should be on the handler who is seeking services, not on the service animal. The person seeking services should be your priority and needs your assistance with their experience of domestic violence, not their disability. The service animal is there to assist their handler, just like a wheelchair or other assistive device. Interacting with the service animal can communicate to the handler that they are not as important to the Advocate, and it can also distract the service animal from its work.

## **Laws about Service Animals**

### **What are the laws that apply to domestic violence shelters and service animals?**

There are four laws that directly apply to service animals and domestic violence shelters. Three of them are federal laws and one is a New Mexico state law.

- New Mexico Service Animal Act of 2013
- Title III of the Americans with Disabilities Act
- Section 504 of the Rehabilitation Act
- Fair Housing Amendments Act

### **Why are there four different laws?**

Each law has a slightly different focus, but all four laws embrace the same principle - making sure that people with disabilities have equal access to services and safe shelter. All four laws apply to domestic violence programs and safe shelters.

- **New Mexico Service Animal Act of 2013.** The 2013 New Mexico State Legislature passed a bill (SB320) that updates the Service Animal Act. Sponsored by Senator Nancy Rodriguez, Santa Fe, the "Service Animal Act" aligns New Mexico's statute with the 2011 updates to the Americans with Disabilities Act (ADA). It is important to note that under New Mexico state law, service-animals-in-training have the same public access rights as fully trained service animals, as long as the service-animal-in-training is with its trainer, who may also be its handler.
- Title III of the **Americans with Disabilities Act (ADA)** is a federal law that applies to all businesses and nonprofit service providers. The ADA calls these "places of public accommodation." Any program operated by a domestic violence or sexual assault agency is a place of public accommodation, and thus subject to Title III of the ADA.
- **Section 504 of the Rehabilitation Act** is a federal law that covers any program operated by agencies receiving federal financial assistance. All state-funded shelters are covered under this law because they receive federal funds that pass through the state.

- **Fair Housing Amendments Act** is a federal law that applies to most housing providers, including shelter and transitional living programs.

### **Do these laws require that shelters allow service animals?**

Yes. All four laws require shelters to allow service animals. Your program is required to modify any "no animal" policy if it's necessary to allow equal access for a person with a disability using a service animal.

### **What is my shelter required to do under these four laws?**

Under Title III of the ADA, your program is required to make reasonable modifications (sometimes called reasonable accommodations) to your policies and practices so that a person with a disability can have access to your services. Generally speaking, your program is responsible for the cost associated with these reasonable accommodations (see [www.ada.gov](http://www.ada.gov) for information about what is considered "reasonable").

Like the ADA, Section 504 of the Rehabilitation Act requires "reasonable modifications" to policy and practice be made for people with disabilities. This includes allowing service animals if it's necessary for the person with the disability to participate in the program. The law states that "no . . . individual in the United States shall, solely by reason of [her disability], be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 29 U.S.C. §794(a)

The Fair Housing Act also requires reasonable modifications and reasonable accommodations for people with disabilities. The Department of Housing and Urban Development (the agency that enforces the Fair Housing Act) has made it clear that service animals AND emotional support animals must be allowed. The language in this law can be a little confusing because they define reasonable modifications differently than the other federal laws. When the Fair Housing Act talks about reasonable modifications, they are talking about changes to the actual housing unit such as adding ramps or grab bars, changing door knobs to levers, or widening doorways. Reasonable accommodations under the Fair Housing Act are changes to policy and practice, such as allowing service animals and emotional support animals despite a no animal policy, or providing assistance in filling out application forms.

### **How do I find out if an animal is really a service animal?**

The easy answer: It is good advocacy practice to believe survivors when they tell you the animal is a service animal. Not only do you not need documentation, in fact, there is no documentation required under any of these four laws.

***CAUTION: There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the United States Department of Justice does not recognize them as proof that the animal is a service animal.***

The complicated answer: There are two parts to this answer.

1. When a survivor comes to you for advocacy services (other than shelter), you cannot ask for documentation or certification for her service animal. This is prohibited by the ADA, and the Rehabilitation Act (and no such documentation or certification requirement actually exists!)

When someone contacts your program for services, the law is very clear. You cannot ask about the survivor's disability (either directly or indirectly), and you cannot require documentation that an animal is a service animal. The laws were written this way so that people with disabilities would not have to prove they have a disability by carrying documentation.

If you feel you must ask someone about their animal, be aware that you must be very careful about what you ask. The U.S. Department of Justice suggests that under the ADA, **you may only ask two questions:**

- (1) "Is this a service animal required for disability?"\* and
- (2) "What work or tasks is the animal trained to perform?"

Other inquiries could leave you vulnerable to a discrimination complaint.

**\*NOTE:** New Mexico state law gives service-animals-in-training the same public access rights as fully trained service animals, when the service-animal-in-training is with their trainer. A trainer does not have to be affiliated with an organization. A survivor could be training her own animal to be her own service animal.

### **Can I keep the service animal out of the common areas?**

No. When service animals are working, they accompany their handler. By limiting where a service animal can go in your shelter, you are limiting where the survivor can go. The person with the disability and a working service animal must be allowed to go wherever any other survivor is allowed to go, including kitchens, restrooms, and sleeping areas. Limiting access to common areas could lead to a discrimination complaint.

This does not mean that the animal has free run inside your shelter. When the animal is working, it must always be under direction and control of the owner. The service animal must be harnessed, leashed, or tethered while in public places unless these devices interfere with the service animal's work or the person's disability prevents use of these devices.

### **What if the animal is growling or threatening other residents or the staff?**

If the animal is directly threatening a resident or staff member, ask the owner of the animal to get it under control.

However, sometimes a resident or staff member might misinterpret an animal's actions. If you receive a complaint that an animal is exhibiting aggressive behavior, take the time to ask the owner what is going on. There are a variety of reasons a person could misinterpret an animal's

behavior. For example, the animal could be being teased by children, which interferes with its work. The animal may have had its tail accidentally stepped on. Some service animals inform their owners of impending seizures by making noises that could be misinterpreted. Other service animals place themselves between their owner and someone talking to them because of social anxiety issues - this behavior can seem to be threatening when, in fact, it is what the animal has been trained to do.

### **What if the animal is actually threatening staff or residents?**

There are four reasons that can justify the removal of a service animal from your shelter. You can ask a person to remove their service animal if:

1. The specific service animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation. It is extremely rare for service animals to be truly dangerous. To have an animal removed for this reason, there must be actual evidence of danger. You cannot, for example, ask to have a dog removed simply because someone is afraid of it. Nor could you ban all pit bulls because you believe they are dangerous.
2. The specific service animal is disruptive to the point that it is interfering with programming or the provision of services. In general, if a service animal is disruptive (for example, jumping up on people in a friendly but annoying way, barking) staff should talk with the participant, telling her that the animal is interfering with programming and may need to be removed if the survivor cannot get the animal under control. If the behavior continues to disrupt programming, the participant may be asked to remove the animal and told the animal may not return.
3. The specific service animal in question causes substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to a service animal (though under NM state law, a miniature horse service animal is defined as being under 100 pounds). A determination that a service animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct — not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused.
4. The service animal is creating an unsanitary condition. Note that the survivor may be unable to keep the animal clean, or to clean up the animal's waste because of a disability. Although the law may not require this type of assistance, it likely falls within your program's mission and values to help with these tasks. Moreover, supporting the survivor in this way allows her to have a wider array of choices for safe housing, independence, and ending the cycle of violence in her life.

**Note:** In any rare case where you ask a survivor to remove her service animal, you should make it clear that she is welcome to continue participating in shelter activities without the animal, and you must make efforts to provide reasonable accommodations so she can do so.

### **What if another resident or staff person has allergies to animals?**

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a domestic violence shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.

### **❖ Allergies/Fear of animals/Aversion to animals**

Your program is dedicated to serving all survivors. Because shelters are communal living environments, sometimes the wishes or needs of survivors can conflict. If a staff person or another shelter resident is allergic or afraid of the service animal, you have an issue that must be addressed. The Violence Against Women with Disabilities Project of Wisconsin offers this advice:

*A best practice approach would be to try different options to work out this dilemma without solely burdening the person with the service animal, so that both people can participate. This practice involves dialogue among the staff and the program participant using the service animal and the individual who is scared or has allergies. Think creatively. Are there options that allow both persons to fully participate but maintain some distance from each other (use common space at different times)? Are there options that might reduce exposure for allergies (single bedroom for a person with service animal)?*

*From a legal perspective, keep in mind that while some people might have fear of dogs or other animals, this is not generally a valid reason for excluding a person with a disability using a service animal. For most people with allergies, the presence of an animal causes discomfort, such as sneezing or sniffing. Although it is understandably uncomfortable, this reaction does not constitute a "disability" as defined under the law; therefore, no accommodation is necessary for the allergic person. Rarely, another participant's allergy is so severe that animal contact may cause acute respiratory distress. In these cases, the allergic participant also may request an accommodation.*

-- Disability Rights Wisconsin, Wisconsin Coalition Against Domestic Violence, Wisconsin Coalition Against Sexual Assault (2008).

There are a couple of issues to consider when attempting to resolve conflicts between residents related to a survivor's service animal. Before discussing the situation with other residents, be sure to ask the survivor for permission to talk with other residents about her service animal.

Do not assume that the survivor with the service animal is responsible for resolving the

situation. The conflict is not her fault or solely her responsibility. Talk with all people involved and do not assume the person with the service animal is the one who should leave or go to a hotel.

You may encounter staff or residents who object to animals living indoors for personal or religious reasons. This can be a challenge, but many shelter Advocates have found that open discussions between staff and residents (with permission from everyone involved) have often led to solutions that are acceptable to everyone and preserved the right of the survivor with the service animal to use your services.

**Do I have to pay for the service animal's food? Do I have to clean up after the service animal? What are the survivor's responsibilities?**

Generally, the owner of the service animal has the responsibility to look after and supervise the animal, including costs associated with food and care. If the survivor is unable to pay for the animal's care, consider a small investment in food and grooming supplies. This assistance may enable the survivor to stay in your shelter and remain safe. Remember that the survivor may have left their home in a hurry and may not have brought all the supplies for themselves or their service animal.

If the survivor's disability prevents her from being able to perform any of the functions needed to care for the animal, she may request that shelter staff assist her. Many programs have provided this sort of assistance as a reasonable accommodation.

The owner of the service animal is responsible for maintaining control of the animal at all times. This generally means that while the animal is in common areas, it is on a leash, in a carrier, or otherwise in the direct control of the animal owner or an assistant. When in the presence of others, the animal is expected to be well-behaved (not jumping on or barking at people).

**What if the animal doesn't have the shots that it needs, or doesn't have an animal license from the county?**

Check the laws in your county about licensing animals. Most counties require licenses and proof of certain vaccinations. Service animals generally must comply with these laws. If the survivor left her home quickly, she may not have the documentation she needs. Although not required by law, many shelters have assisted survivors in obtaining vaccinations and/or a license for their animal if needed.

**Our program doesn't have very much money. What do we do if we can't afford the "reasonable modification" or "reasonable accommodation" needed by the survivor?**

People with disabilities often know what they need, and are accustomed to finding creative solutions to accommodation problems. In many cases, low-cost (or no-cost) solutions can be found when Advocates discuss with the survivor what might solve the access problem.

In cases where the solution to the problem involves considerable expense or effort, you may or may not be responsible for the cost. Generally speaking, if the accommodation is reasonable,



readily achievable, and does not require you to make changes that would fundamentally alter the nature of the services you provide, you are responsible for the cost of the accommodation. The law does not require you to provide an accommodation that would result in an undue burden on your program.

For more complete information on the definitions of the legal terms in the paragraph above ("reasonable," "readily achievable," "fundamentally alter the nature of the services," and "undue burden") you should look on the ADA website at <http://www.ada.gov>, or the other web resources listed.

### **Where can I find more information about service animals?**

- New Mexico Governor's Commission on Disability: [gcd.state.nm.us/service-animals](http://gcd.state.nm.us/service-animals)
- ADA National Network: [adata.org/publication/service-animals-booklet](http://adata.org/publication/service-animals-booklet)
- US DOJ website: [ada.gov](http://ada.gov)
- Assistance Dogs International: [assistancedogsinternational.org](http://assistancedogsinternational.org)
- National Federation of the Blind: [nfb.org](http://nfb.org)
- Assistance Dogs of the West: [assistancedogsofthewest.org](http://assistancedogsofthewest.org)
- Southwest ADA Training Center: [southwestada.org](http://southwestada.org)
- Guide Horse Foundation: [guidehorse.com](http://guidehorse.com)
- ADA Questions and Answers: U.S. Dept. of Justice Human Rights Division: [ada.gov/regs2010/service\\_animal\\_qa.html](http://ada.gov/regs2010/service_animal_qa.html)
- ADA Small Business [and Non-profit Service Provider] Guide: U.S. Dept. of Justice Human Rights Division: [ada.gov/smbusgd.pdf](http://ada.gov/smbusgd.pdf)

# Emotional Support Animals

## What is an emotional support animal (ESA)?

An emotional support animal (ESA) can be any animal that provides a benefit to a person with a documented disability. An ESA is not a service animal. ESAs may provide companionship, relieve loneliness, or help with depression, anxiety, or certain phobias. They are not required to have any specialized training nor are they required to perform specific tasks for its handler.

## What are the housing-related laws that apply to ESAs?

- Fair Housing Amendments Act (Fair Housing Act): a federal law that applies to most housing providers, including shelter and transitional living programs.
- Section 504 of the Rehabilitation Act of 1973 (Section 504)

## Does the Fair Housing Act and Section 504 require that domestic violence shelters allow ESAs?

Yes. An ESA is a reasonable accommodation, grounded in one or both of the following statutes listed in this chart:

Statute	Covered Housing	Elements of Reasonable Accommodation Claim
<p><b>Fair Housing Act</b></p> <p>42 U.S.C. §§ 3601 et seq.</p>	<p>Applies to virtually all forms of housing, whether for sale or rent. The exceptions include (a) buildings with four or fewer units where the landlord lives in one of the units, and (b) private owners who do not own more than three single-family houses, do not use real estate brokers or agents, and do not use discriminatory advertisements.</p>	<p>(1) Tenant has a disability;</p> <p>(2) Landlord/Housing Authority knows about disability;</p> <p>(3) Reasonable accommodation may be necessary to afford tenant an equal opportunity to use and enjoy his or her dwelling; and</p> <p>(4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.</p>
<p><b>Rehabilitation Act</b></p> <p>29 U.S.C. § 794</p>	<p>Applies to any program that receives federal assistance, such as public or subsidized housing (although a landlord who only accepts Section 8 rental assistance is not subject to § 504).</p>	<p>(1) Tenant has a disability;</p> <p>(2) Tenant was excluded from and denied participation in services, programs, and activities;</p> <p>(3) Exclusion was because of disability; and</p> <p>(4) Reasonable accommodation would not constitute an undue burden or fundamental alteration.</p>

### **What is my shelter required to do regarding ESAs?**

Your shelter and transitional living program is required to allow ESAs, if it meets these requirements: 1) Handler has a disability; and 2) documentation can be provided for the ESA, as detailed below.

### **How do I find out if an animal is really an ESA?**

Service animals do not have documentation, but an ESA does. When a survivor is applying for housing in your shelter or transitional housing, the Fair Housing Act applies. Under the Fair Housing Act and Section 504, a housing provider may ask for a written statement from a health care or mental health professional (the provider does not need to be an M.D., but should be qualified to provide the diagnosis or prescription, including psychiatrist, social worker, or other mental health professional). The statement should say that the individual is a person with a disability and will be assisted by an emotional support animal. Your shelter staff may not ask for details or the nature of an individual's disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support to that individual.

Neither law requires that you ask for this documentation, and many shelters do not require it. However, if you choose to ask for it, you should proceed carefully. If you ask for documentation from one survivor, you should ask all survivors with emotional support animals for documentation. If you assist one survivor in obtaining the needed documentation, you should assist all survivors with emotional support animals. Your policies and practices should be consistent.

Remember that the survivor may have had to leave her home quickly for her safety, without all of her documentation for herself or her ESA. We recommend that Advocates welcome the survivor and animal into safe shelter, and assist the survivor in obtaining this documentation for their ESA, just as they assist her in obtaining any other documentation she may have left behind.

Please see the end of this model protocol for a *sample* letter of documentation of an ESA, by the Bazelon Law Center.

***CAUTION: There are individuals and organizations that sell ESA certification or registration documents online. These documents do not convey any rights under the Fair Housing Act or Section 504, and the United States Department of Justice does not recognize them as proof that the animal is an ESA.***

### **What are my rights and responsibilities regarding an ESA in shelter or transitional living program? Under what circumstances can I ask the ESA to be removed?**

This is the same for ESAs as it is for service animals. See the previous service animal section.

**Where can I get more information about the laws that apply to emotional support animals?**

Right to Emotional Support Animals in "No Pet" Housing / Bazelon Center for Mental Health Law:

<http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf>

Reasonable Modifications Under the Fair Housing Act / U.S. Dept. of Justice & U.S. Dept. of Housing & Urban Development:

[https://www.hud.gov/sites/documents/reasonable\\_modifications\\_mar08.pdf](https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf)

Brief Overview of Housing and Companion Animals / Kate Brewer, Michigan State University College of Law:

[www.animallaw.info/articles/qvuspetsandhousinglaws.htm](http://www.animallaw.info/articles/qvuspetsandhousinglaws.htm)

Summary of Emotional Support Animals and Housing Laws / Kate Brewer, Michigan State University College of Law:

[www.animallaw.info/articles/ovuspetsandhousinglaws.htm](http://www.animallaw.info/articles/ovuspetsandhousinglaws.htm)

Service Animals and Emotional Support Animals: Where are they allowed and under what conditions? / ADA National Network:

<https://adata.org/publication/service-animals-booklet>

# Therapy Animals

## **What is a therapy animal?**

Therapy animals are animals, oftentimes dogs, cats, rabbits, and llamas, that have been granted visitation privileges at hospitals, schools, nursing homes, and other locations. Institutions may invite, limit, or prohibit access by therapy animals. Therapy animals provide people with therapeutic contact, usually in a clinical setting, to improve their physical, social, emotional, and/or cognitive functioning.

## **What are the laws that apply to domestic violence shelters, programs, and therapy animals? Do any require that shelters allow therapy animals?**

There are no laws that require domestic violence shelters or programs to grant access to therapy dogs. Therapy animals are regarded as pets, unless they are also an ESA or service animal.

## **Where can I get more information about therapy animals?**

- Alliance of Therapy Dogs: [therapydogs.com](http://therapydogs.com)
- Pet Partners: [petpartners.org](http://petpartners.org)
- Therapy Dogs International: [tdi-dog.org](http://tdi-dog.org)

# Pets and Companion Animals

## **What are the laws that apply to domestic violence shelters, programs, and pets? Do any require that shelters allow pets?**

There are no laws that require domestic violence shelters and programs to allow pets. Some shelters in New Mexico have created policies to allow pets on the premise or even in the shelter. Advocates should be aware of their organization's policies and also of shelters who do accept pets. Advocates may work with survivors in accessing safe shelter options that meet their needs, including the CARE program, below.

## **Companion Animal Rescue Effort (CARE) - *Animal Protection of New Mexico***

The CARE program is a network of safe havens for the animals of domestic violence victims who are entering shelter. CARE provides temporary housing for companion animals, livestock and exotic animals. Temporary homes are provided through a network of government agencies and private agencies, veterinary clinics, groomers, boarding kennels and private individuals. Many of the safe havens within the New Mexico network are free of charge; others charge a nominal fee or operate on a sliding scale. For more information about the CARE program or to access CARE services contact the **CARE hotline at 844-323-CARE(2273)**. More information about the CARE program including a list of pet friendly housing and rentals can be found at [www.apnm.org/programs/care/](http://www.apnm.org/programs/care/).

## **Additional Resources**

**[www.redrover.com](http://www.redrover.com)** - Redrover Relief provides domestic violence grants and resources for both individuals and domestic violence service providers .

**[www.thelinknm.com](http://www.thelinknm.com)**-Positive Links provides statewide trainings on the link between animal abuse and human violence and other resources.

# Service Animals and ESAs in Domestic Violence Shelters

## **Suggested policies and procedures**

The first section in this document provided basic information about service animals and the people who use them. The second section presented more in-depth details of each of the four types of animals that domestic violence program Advocates will likely encounter. This third section will provide information and suggestions about developing policies and practices in your program related to service animals and emotional support animals (ESA).

### **Screening and intake practices at your program**

The first step in developing your new service animal and ESA policy is to examine your program's screening and intake practices.

No domestic violence Advocate would tell a survivor that their program does not serve people with disabilities, but some common questions asked during screening or intake can inadvertently make survivors with disabilities feel unwelcome.

Historically, many service providers have found it expedient to screen people with disabilities out of services. This may have happened because they believed that people with disabilities were hard to serve. Thus, screening them out saved time and resources for the staff. When providers do this - whether they are domestic violence Advocates or any other service agency - they are establishing a de facto policy that people with disabilities are not welcome.

Because of this dynamic, many people with disabilities are accustomed to being screened out when they seek services and may be suspicious of your intent. Look at your program's screening and intake questions and answer them as though you were a survivor with a disability. Look for questions that might inadvertently send a message that you would be unwelcome. Think of ways you can collect the information in a supportive manner.

### **Issues & problem solving**

The first time a service animal or ESA comes into your shelter, you are likely to have concerns. There are many things to think about and if you have never had animals in your shelter, these issues will be new to you. This section will help identify concerns or issues surrounding service animals and ESAs in shelters, suggest some possible solutions, and explore approaches to

problem-solving that empower survivors.

The issues that are addressed in this section are:

1. Sanitation
2. Liability
3. Licensing and required shots for the animal
4. Talking with the survivor about the animal
5. Talking with other participants about the animal
6. Disruption of programming
7. Dangerous animals

## **1. Sanitation**

### **Caring for the animal**

Service animals and ESAs should be kept reasonably clean and it is the responsibility of the animal's owner to maintain its hygiene. One thing to consider is that people with service animals are often dependent on their animal. For this reason, it is likely that the abuser has not allowed the survivor to take care of it; an ESA also can be targeted due to the strong bond the survivor has with it. This tactic gives him greater control over the animal, and by extension, over the survivor. If this is the case, the survivor may not know what it takes to keep the animal clean. It is also possible that the survivor's disability makes it difficult or impossible to take care of the animal.

Giving the survivor some support in learning how to care for the animal or some assistance with difficult tasks could not only be considered a reasonable accommodation, but would increase her autonomy. If the shelter staff or volunteers are unable to assist in this way, you may be able to find someone at your local assistance dog organization, animal shelter, humane society, or animal rescue organization who would be happy to work with your shelter.

### **Toileting of the Service Animal and ESA**

Service animals and ESAs should be toilet trained or housebroken and the owner should clean up after the animal. Plastic bags can be used to pick up feces, and they can be tied off and thrown in the garbage can. The produce section at your grocery store has bags that work well for this. If the survivor is unable to perform this task, you may be able to recruit an animal lover from the staff or other survivors to assist. Some Advocates and survivors have said they would rather clean up after an animal than do dishes!

### **Animals in food preparation areas**

Working service animals are allowed to accompany their owner in all common areas, including the kitchen. The service animal may be necessary in this situation for the handler. As always, service animals must be under the direction and control of the owner and should be well-behaved.

### **Fleas**

Dogs (or other animals) that have fleas can create an ongoing problem for shelters. Several



shelter Advocates said they have been successful treating animals by using one of the commercial products that are available. These products do not expose people to airborne insecticides and are easily applied on the back of the animal. They generally rid the animal of fleas within 18 hours. If possible, an animal that is infested with fleas should be treated before coming inside the shelter.

If your shelter becomes infested with fleas, there are many commercial options that can deal with the problem. Follow all product instructions and pay careful attention to any cautions or warnings.

## **2. Liability**

Domestic violence and sexual assault programs are understandably concerned about potential liability when an animal is present in the shelter. This concern may have led your program to adopt a "no pet" or "no animal" policy at your program.

However, denying or discouraging access to a person with a disability who uses a service animal may expose your program to legal liability. Executive directors confronting this situation are therefore encouraged to seek legal advice.

When you increase access to your services, you may actually decrease your risk of liability.

## **3. Licensing and required shots (county requirements)**

Most New Mexico counties require animals to receive certain types of shots and that they be licensed in the county. The requirements vary by county, so be sure to check with your local officials. Service animals and ESAs are generally not exempt from these laws.

It is likely that the survivor came to you without stopping to collect documentation about the animal's health and immunization history. Advocates are accustomed to helping survivors with various kinds of documentation, and Advocates across the state report that obtaining health records for a service animal has not been difficult.

It is also possible that the animal has not been licensed or received its shots. Assisting the survivor with these tasks will help her gain more autonomy. Advocates from across the state have formed relationships with local animal shelters, Humane Societies, or animal rescue groups. These allies have been helpful in resolving these and many other issues.

## **4. Talking with the survivor about how the service animal will fit in**

Communal living is always difficult. Bringing a service animal or ESA into the shelter can create challenges for the survivor, the animal, and for staff. Shelter Advocates emphasize that letting the survivor know what to expect and having a discussion about how the animal will interact with staff and other survivors is an important first step.

When initiating this discussion, there are a couple of things to keep in mind. First, people who

use service animals often face discrimination when trying to access public places, and people with ESAs often face discrimination related to their housing. This sometimes leads to defensiveness about their animal. Start your conversation by assuring the survivor that she and the service animal or ESA are welcome.

Disability rights laws such as the ADA limit the questions you can ask about a person's service animal (see Section 2). One question that you are allowed to ask is: What tasks does the animal perform for you? The answer to this question will help you understand when the animal will be accompanying the survivor. This can lead into a discussion about how the survivor and her service animal can best coexist with other residents and staff in the shelter.

## **5. Talking with staff and other survivors in the shelter about the service animal**

When a service animal or ESA comes into your shelter, staff and other residents will be curious. Staff or other residents should not pet or play with the service animal when it is working. A service animal is not a pet and should not be distracted from its duties. Be prepared to explain the presence and function of the animal, without breaching the confidentiality of the survivor. Remember that the survivor's confidentiality includes the nature of her disability.

In your preliminary discussion with the survivor, ask her what she is comfortable sharing about her animal and its function with other residents, and honor her response. Obtain her permission before passing on this information to staff and other residents. Remember to focus on the survivor and not the service animal.

## **6. Disruption of programming**

Service animals and ESAs should not disrupt programming at your shelter. If a service animal is not well behaved - for example, jumping on people to seek attention, or barking - you may ask the survivor to keep the animal under control. Usually you and the survivor can find a solution to this type of temporary issue.

If you and the survivor have tried and failed to end the disruptive behavior, you may ask the survivor to take the service animal or ESA out of the shelter. At this point, you must offer the survivor the opportunity to stay in your shelter without the service animal or ESA, and discuss accommodations that would make that possible.

Utilizing the CARE program or building a relationship with a local animal shelter may be a part of the solution to this problem.

## **7. Dangerous animals**

Service animals and ESAs should not threaten, growl, bite, or claw other residents or staff. If you receive a complaint about an animal that is threatening others or appears dangerous, act quickly to find out exactly what has happened. If there is not an immediate threat, take the time to ensure that the animal's behavior has not been misinterpreted.

You may ask that the service animal or ESA be removed from the shelter only if it represents a direct threat. If you ask the survivor to remove the animal, you must offer the survivor the opportunity to stay in your shelter without the animal, and discuss accommodations that would make that possible.

### **Service animals in your shelter - things to remember**

- Make the survivor feel at ease - let her know that her service animal or ESA is welcome.
- Talk with the survivor about the animal and communal living. Ask the survivor about the tasks the animal performs for her (if a service animal) and how much about the animal you can share with other residents.
- Consider the confidentiality of the survivor - including information about her disability - when discussing the service animal with staff and other residents.
- After obtaining the survivor's permission, talk to other residents and staff about the service animal.
- When problems arise between the survivor and staff or other residents, find creative ways to resolve differences that do not place the burden for solving the problem on the survivor with the service animal or ESA.
- Build relationships with local animal shelters, Humane Societies, or animal rescue organizations. These relationships may help solve problems around licensing, immunizations, or animal care.
- Decide whether your shelter will ask for documentation of an ESA. If you opt to require this documentation, develop a policy that details:
  - o how equal access for a person with an ESA is assured;
  - o how your staff will assist survivors in getting the needed documentation;
  - o how staff will be trained regarding how to ask for the documentation without asking for specific disability-related information;
  - o how staff will be trained regarding what information is required in the documentation and who may provide the documentation.
- Remember that if you ask a survivor to remove her service animal or ESA from the shelter, invite her to remain and discuss accommodations that might make that possible.

## APPENDIX A: Sample Letter by Medical/Mental Health Provider of ESA

**(NOTICE/DISCLAIMER:** This letter is a sample, created by the Bazelon Law Center, and is intended to be an example to be changed as necessary.

### **Sample Letter from a Medical Service Provider to Verify Medical Need for an Emotional Support Animal; aka “ESA”)**

[MUST BE PREPARED ON A MEDICAL PROVIDER’S LETTERHEAD WHO IS  
AWARE OF THEIR PATIENT’S LEGITIMATE DIAGNOSIS OR MEDICAL CONDITION]

[Date – *must usually be not older than one calendar year*]

Name of Professional (therapist, physician, psychiatrist, rehabilitation counselor)

Road

City, State Zip

Phone/Fax

Dear [Housing Authority/Landlord]:

[Full Name of Tenant] is my patient, and has been under my care since [date]. I am intimately familiar with his/her history and with the functional limitations imposed by his/her disability. He/She meets the definition of disability under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973.

Due to mental illness, [first name], has certain limitations regarding [chose one or more: social interaction/coping with stress/ anxiety, etc.]. In order to help alleviate these difficulties, and to enhance his/her ability to live independently and to fully use and enjoy the dwelling unit you own and/or administer, I am prescribing an emotional support animal that will assist [first name] in coping with his/her disability.

I am familiar with the voluminous professional literature concerning the therapeutic benefits of assistance animals for people with disabilities such as that experienced by [first name]. Upon request, I will share citations to relevant studies, and would be happy to answer other questions you may have concerning my recommendation that [Full Name of Tenant] have an emotional support animal.

Should you have additional questions, please do not hesitate to contact me.

Sincerely,

[ORIGINAL SIGNATURE of medical provider licensed to treat the condition]

[Name of Professional, indicating scope of practice.]

[Title (physician, etc.)]

## APPENDIX B: New Mexico Service Animal Act of 2013

**AN ACT RELATING TO DISABILITY; RENAMING THE ASSISTANCE ANIMAL ACT AS THE "SERVICE ANIMAL ACT"; AMENDING THE SERVICE ANIMAL ACT TO PROVIDE FOR QUALIFIED SERVICE DOGS AND QUALIFIED SERVICE MINIATURE HORSES; ENACTING A NEW SECTION OF THE SERVICE ANIMAL ACT TO PROHIBIT A PERSON FROM KNOWINGLY PRESENTING AS A QUALIFIED SERVICE ANIMAL ANY ANIMAL OTHER THAN A QUALIFIED SERVICE ANIMAL; PRESCRIBING CIVIL AND CRIMINAL PENALTIES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

### **SECTION 1.**

Section 28-11-1.1 NMSA 1978 (being Laws 2005, Chapter 224, Section 1) is amended to read:  
28-11-1.1. SHORT TITLE.--Chapter 28, Article 11 NMSA 1978 may be cited as the "Service Animal Act".

### **SECTION 2.**

Section 28-11-2 NMSA 1978 (being Laws 1989, Chapter 242, Section 1, as amended) is amended to read:

#### **28-11-2. DEFINITIONS.--As used in the Service Animal Act:**

- A. "emotional support animal", "comfort animal" or "therapy animal" means an animal selected to accompany an individual with a disability that does not work or perform tasks for the benefit of an individual with a disability and does not accompany at all times an individual with a disability;
- B. "qualified service animal" means any qualified service dog or qualified service miniature horse that has been or is being trained to provide assistance to an individual with a disability; but "qualified service animal" does not include a pet, an emotional support animal, a comfort animal or a therapy animal;
- C. "qualified service dog" means a dog that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities; and
- D. "qualified service miniature horse" means a miniature horse that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities."

**SECTION 3.** Section 28-11-3 NMSA 1978 (being Laws 1989, Chapter 242, Section 2, as amended) is amended to read:

#### **28-11-3. ADMITTANCE OF QUALIFIED SERVICE ANIMAL.**

A. Notwithstanding any other provision of law:

- (1) a person with a disability who is using a qualified service animal shall be admitted to any building open to the public and to all other public accommodations and shall be allowed access to all common carriers; provided that the qualified service animal is under the control of an owner, a trainer or a handler of the qualified service animal. A person shall not deny an individual with a qualified service animal entry to a building open to the public or to any public accommodation or deny access to a common carrier, regardless of any policy of denying to pets entry to that building, public accommodation or common carrier. A person shall not be required

to pay any additional charges for the qualified service animal, but may be liable for any damage done by the qualified service

animal; provided that persons without disabilities would be liable for similar damage; and

(2) in an emergency requiring transportation or relocation of the owner or trainer of the qualified service animal, to the extent practicable, accommodations shall be made for the qualified service animal to remain or be reunited with the owner, trainer or handler. When accommodations cannot be made for allowing the qualified service animal to remain with the owner, trainer or handler, the qualified service animal shall be placed pursuant to instructions provided by the owner, trainer or handler.

B. This section does not require a public accommodation or common carrier to permit an owner, trainer or handler using a qualified service animal to have access to a public accommodation or common carrier in circumstances in which the individual's use of the qualified service animal poses a direct threat of significant harm to the health or safety of others."

#### **SECTION 4.**

Section 28-11-4 NMSA 1978 (being Laws 1989, Chapter 242, Section 3, as amended) is amended to read:

28-11-4. PENALTY.

A. A person who violates a provision of the Service Animal Act is guilty of a misdemeanor and, upon conviction, shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. Nothing in this section shall be construed to preclude any other remedy otherwise available pursuant to common law or other law of this state."

**SECTION 5.** Section 28-11-5 NMSA 1978 (being Laws 1999, Chapter 113, Section 1, as amended) is amended to read:

#### **28-11-5. FINDINGS AND PURPOSE--INTERFERENCE WITH QUALIFIED SERVICE ANIMALS PROHIBITED--CRIMINAL AND CIVIL PENALTIES.**

A. The legislature finds that unrestrained animals constitute a danger to qualified service animals and public safety. The purpose of this section is to protect persons with disabilities and qualified service animals from attack by unrestrained animals.

B. It is unlawful for any person, with no legitimate reason, to:

(1) intentionally interfere with the use of a qualified service animal by harassing or obstructing the owner, trainer or handler of the qualified service animal or the qualified service animal; or

(2) intentionally fail or refuse to control the person's unrestrained animal, which animal interferes with or obstructs the owner, trainer or handler of the qualified service animal.

C. The provisions of this section shall not apply to unrestrained animals on private property not open to the public.

D. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978. A person convicted under this section may be ordered to pay restitution, including, but not limited to, actual damages.

E. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978."

**SECTION 6.** A new section of the Service Animal Act is enacted to read:

**"PROHIBITION OF FALSE PRESENTATION OF ANIMAL AS A QUALIFIED SERVICE ANIMAL.**

A. A person shall not knowingly present as a qualified service animal any animal that does not meet a definition of "qualified service animal" pursuant to Section 28-11-2 NMSA 1978. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978.

B. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978."

# QUICK TIP REFERENCE SHEET

## on Service Animals and Emotional Support Animals

	<b>Assistance/Service Animal</b>	<b>Emotional Support Animal</b>
<b>Which laws apply?</b>	<ul style="list-style-type: none"> <li>• The Americans with Disability Act of 1990</li> <li>• Section 504 of the Rehabilitation Act of 1973</li> <li>• NM Service Animal Act of 2013</li> </ul>	<ul style="list-style-type: none"> <li>• The Fair Housing Amendments Act of 1988</li> <li>• Section 504 of the Rehabilitation act of 1973.</li> </ul>
<b>What animals are included?</b>	<ul style="list-style-type: none"> <li>• Dogs</li> <li>• Miniature horses (under 100 lbs)</li> </ul>	<ul style="list-style-type: none"> <li>• Any animal</li> </ul>
<b>Where do these animals have access?</b>	<ul style="list-style-type: none"> <li>• Places of public accommodation</li> <li>• Programs &amp; housing receiving federal funding.</li> </ul>	<ul style="list-style-type: none"> <li>• Nearly all types of housing</li> <li>• Resident common areas</li> <li>• Programs &amp; housing receiving federal funding.</li> </ul>
<b>What are the training requirements?</b>	<ul style="list-style-type: none"> <li>• The animal must be trained to do work or perform a task for a person with a disability*.</li> <li>• The work or tasks must be directly related to the individual's disability.</li> <li>• Emotional support and/or comfort do not qualify as work or task.</li> </ul>	<ul style="list-style-type: none"> <li>• No specific training required.</li> <li>• The animal must provide a direct benefit to the individual's disability*.</li> <li>• Emotional support and/or comfort is considered a benefit to the person's disability.</li> </ul>
<b>What certification/documentation can I request?</b>	You may not request/require certification or documentation of the animal or the person's disability.	For housing: a letter from a physician or mental health professional stating that the animal provides a direct benefit to the person's disability may be requested.
<b>How do I know this really is a service/emotional support animal?</b>	<p>If the need for a service animal is not immediately obvious, you may ask 2 questions:</p> <ol style="list-style-type: none"> <li>1. Is this a service animal that is required because of a disability?</li> <li>2. What work or task has the dog been trained to perform?</li> </ol>	For housing: If the disability is not obvious, you can request reliable documentation from a medical professional stating the need for the emotional support animal.

*\*A disability is defined as a physical or mental impairment that substantially limits one or more major life activities. 24 CFR 100.*

### Emotional Support Animals (ESAs) vs. Psychiatric Service Animals (PSAs)

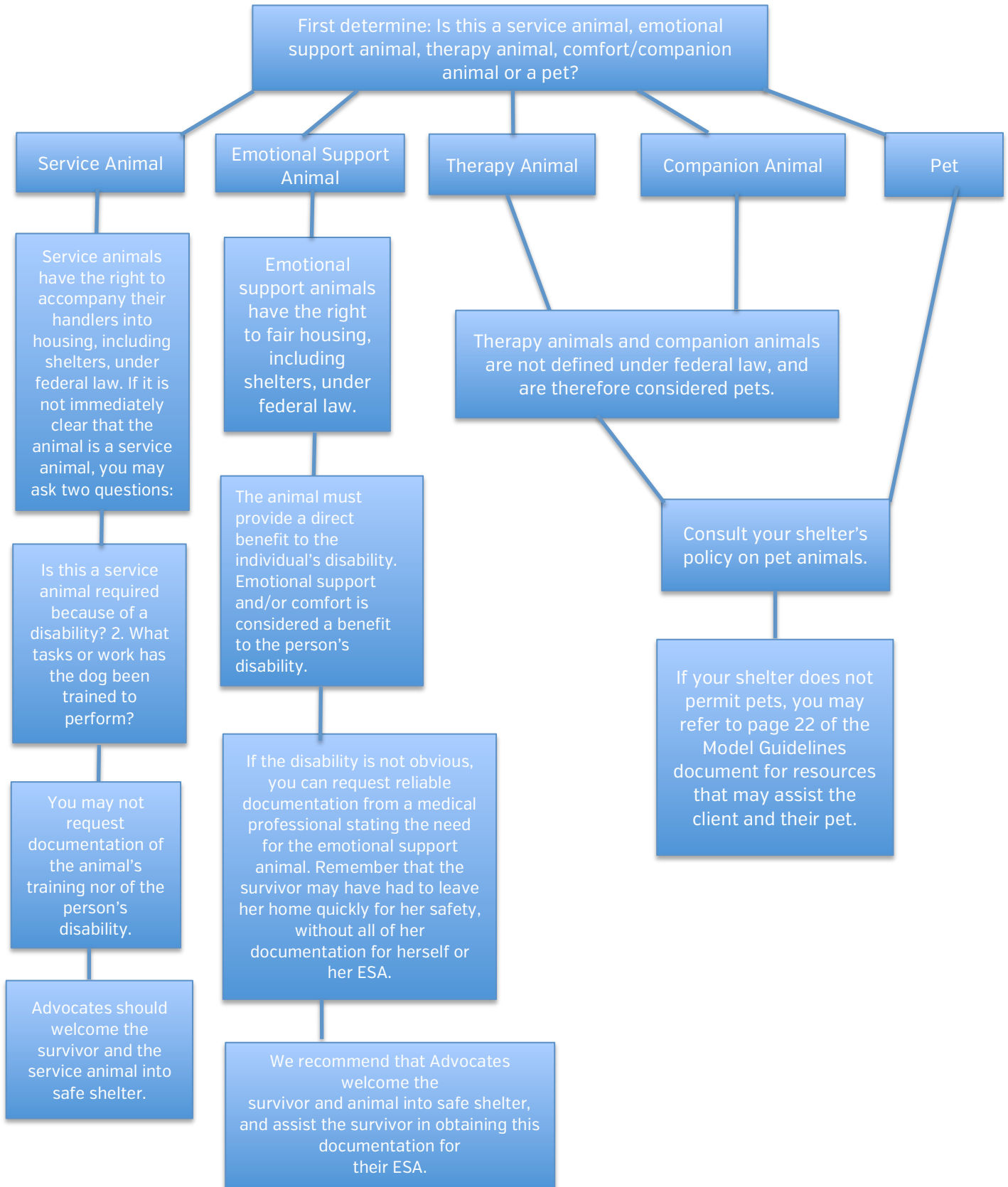
Emotional Support Animals and Psychiatric Service Animals are frequently confused. Here are some common factors that are used to distinguish the two:

- **Species:** A number of animals can qualify as an ESA. Only miniature horses and dogs can be service animals under the federal law.
- **Purpose:** ESAs provide emotional comfort or support to the handler by its presence; service dogs are trained to perform specific tasks or work for individuals with disabilities.
- **Training:** An ESA does not require specialized training. The owner only requires a letter from a mental health professional stating that the animal's therapeutic value will benefit a person with a disability for housing purposes. Service dogs must be trained to performs specific tasks or do work for the individual with a disability.
- **Legal Protections:** ESAs are protected under the Fair Housing Act whereas PSAs are covered under the Americans with Disabilities Act and the Fair Housing Act.
- **Public Access:** A PSA can accompany its owner to all places of public accommodation; ESAs do not have public access.



**WHEN SOMEONE COMES TO YOUR FACILITY WITH AN ANIMAL...**

As Advocates, our recommendation is to start by believing the victim when they say they have a service or emotional support animal. If the situation is unclear, you can follow these steps to determine the appropriate action for a survivor who arrives with an animal.





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

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**SPECIAL ATTENTION OF:**

HUD Regional and Field Office Directors of Public and Indian Housing (PIH); Housing; Community Planning and Development (CPD), Fair Housing and Equal Opportunity; and Regional Counsel; CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**  
Issued: April 25, 2013  
Expires: Effective until  
Amended, Superseded, or  
Rescinded

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Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations<sup>1</sup> for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA<sup>2</sup>.

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<sup>1</sup> Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

<sup>2</sup> Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

3. **Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities<sup>3</sup> with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

### **Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504**

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals<sup>4</sup> in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.<sup>5</sup> While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

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<sup>3</sup> Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

<sup>4</sup> Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

<sup>5</sup> For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

If the answer to question (1) **or** (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) **and** (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.<sup>6</sup>

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

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<sup>6</sup> A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.<sup>7</sup>

## **Section II: The ADA Definition of "Service Animal"**

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly 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. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."<sup>8</sup> Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses<sup>9</sup>), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

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<sup>7</sup> Ibid.

<sup>8</sup> 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

<sup>9</sup> 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.<sup>10</sup> A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.<sup>11</sup>

### **Section III. Applying Multiple Laws**

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."<sup>12</sup>

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<sup>10</sup> 28 C.F.R § 35.136; 28 C.F.R. § 36.302(c).

<sup>11</sup> For more information on ADA requirements relating to service animals, visit DOJ's website at [www.ada.gov](http://www.ada.gov).

<sup>12</sup> 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, “an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a ‘reasonable accommodation’ that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat.”<sup>13</sup> In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may “nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct.”<sup>14</sup> While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for “service animal,” the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.<sup>15</sup>

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider’s responsibility to know the applicable laws and comply with each of them.

#### **Section IV. Conclusion**

The definition of “service animal” contained in ADA regulations does not limit housing providers’ obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.


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<sup>13</sup> 75 Fed. Reg. at 56194, 56268.

<sup>14</sup> 75 Fed. Reg. at 56166, 56240.

<sup>15</sup> 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.



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John Trasviña, Assistant Secretary for  
Fair Housing and Equal Opportunity