



FAIR HOUSING AND THE ADA: REASONABLE ACCOMMODATIONS WITH SERVICE ANIMALS

A White Paper Report

Randall B. Holbrook
Legal Research Center, Inc.

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NAR Contact
Adriann Murawski
Advocacy Group
amurawski@realtors.org
202-383-1068



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I. INTRODUCTION

This paper reviews the laws protecting persons with disabilities from housing discrimination—in particular, the laws that allow persons with disabilities to keep an assistance or service animal at their residence. Further, a review of the federal laws, state/local legislative actions, and the enforcement mechanisms of fair housing and disability protections are discussion points.

Real estate professionals in the United States are well-versed in the laws against discrimination in housing. While the first federal law against discrimination in housing was [enacted in 1968](#), it was not until [the late 1980s](#) that disability-based discrimination was first included in these laws. The extension of the protection from discrimination affects a substantial segment of the population. According to the U.S. Census Bureau, [about 56.7 million people, or](#) nearly [1 in 5 Americans](#), report having a disability. Over half of them classify their disability as “severe.” According to the [National Fair Housing Alliance](#), claims of disability discrimination make up nearly 55% of all fair housing complaints filed with the U.S. Department of Housing and Urban Development.

II. APPLICABLE FEDERAL LAWS

There are four principal federal laws that address the housing concerns of the disabled: the Fair Housing Act ([42 U.S.C. §§ 3601–3619](#)); the Americans with Disabilities Act ([42 U.S.C. §§ 12101–12213](#)); the Rehabilitation Act ([29 U.S.C. §§ 701–796l](#)); and the Architectural Barriers Act ([42 U.S.C. § 4151–156](#)). The Fair Housing Act and the Americans with Disabilities Act are the two laws that will have the most application in the private housing market. In addition to the federal laws, state and local housing laws may also apply.

A. Fair Housing Act

The Fair Housing Act (FHAct) was enacted in 1968, and is enforced jointly by the U.S. Department of Housing and Urban Development and the U.S. Department of Justice. When the law was [first passed](#), it prohibited discrimination based on race, color, religion and national origin. An [amendment to the Act](#) passed in 1988 added discrimination based on familial status (the presence of a child under 18, or of a pregnant woman) or “handicap.” A handicap is [defined in the Act](#) as:

- 1) a physical or mental impairment which substantially limits one or more of such person’s major life activities,
- 2) a record of having such an impairment, or
- 3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance . . .

42 U.S.C. § 3602(h). HUD defines a “major life activity” as “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”¹

¹ 24 C.F.R. § 100.201 (b).

Some examples of physical or mental impairments listed in a [joint statement](#) by HUD and the U.S. Department of Justice include:

such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Examples of specific conditions that courts have held to constitute a handicap include:

- AIDS² or HIV³;
- developmental disabilities;⁴
- multiple sclerosis;⁵
- mobility problems requiring the use of a cane or a cart for support;⁶ and
- post-traumatic stress disorder.⁷

The FHAct [does not require](#) that “a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”

Although current drug or alcohol *use* is excluded from the definition of handicap, a person who is in recovery or enrolled in treatment for drug or alcohol addiction may be regarded as handicapped.⁸ The issue is always whether the person’s addiction is a substantial limitation on a major life activity.⁹

The FHAct not only prohibits housing providers from discriminating against persons with a disability, but also makes it unlawful for any person to refuse “to make

² *Baxter v. City of Belleville*, 720 F. Supp. 720 (S.D. Ill. 1989).

³ *Support Ministries for Persons With AIDS, Inc. v. Village of Waterford*, 808 F. Supp. 120 (N.D.N.Y. 1992).

⁴ *Advocacy Center for Persons with Disabilities, Inc. v. Woodland Estates Ass’n*, 192 F. Supp. 2d 1344 (M.D. Fla. 2002).

⁵ *Shapiro v. Cadman Towers, Inc.*, 844 F. Supp. 116 (E.D.N.Y. 1994).

⁶ *Astralis Condo. Ass’n v. Secretary, U.S. Dep’t of HUD*, 620 F. 3d 62 (1st Cir. 2010).

⁷ *Bhogaita v. Altamonte Heights Condo. Ass’n*, 765 F. 3d 1277 (11th Cir. 2014).

⁸ *Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683 (M.D. La. 2013).

⁹ *Oxford Invs., L.P. v. City of Philadelphia*, 21 F. Supp. 3d 442 (E.D. Pa. 2014).

reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”¹⁰ The “use and enjoy[ment] of a dwelling” includes the opportunity to use and enjoy public and common use areas.¹¹

The Fair Housing Act is administered and enforced by the U.S. Department of Housing and Urban Development’s [Assistant Secretary for Fair Housing and Equal Opportunity \(FHEO\)](#). It applies to all providers of housing, including residential landlords and condominium homeowners’ associations. In addition, any person who believes they have been injured by a discriminatory act may file a lawsuit in federal court.

Assistance Animals Under the FHAct. Many persons with disabilities rely on animals to assist them with their daily lives. The FHAct’s requirements of reasonable accommodations for persons with a handicap may include permission from a housing provider to keep such an animal in the person’s residence. In construing the FHAct’s reasonable accommodation requirement, HUD uses the term “[assistance animal](#),” and looks at when a resident must be allowed to have such an animal in his or her home. The HUD definition of assistance animal states that any species could be an assistance animal. Assistance animals [do not have to be individually trained or certified](#).¹² An animal

¹⁰ 42 U.S.C. § 3604(f)(3)(B)

¹¹ 24 C.F.R. § 100.204.

¹² While HUD’s position that no special training is needed is clear, some courts have taken a different view. See, e.g., *Prindable v. Ass’n of Apt. Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245 (D. Haw. 2003); *aff’d sub nom. DuBois v. Ass’n of Apt. Owners of 2987 Kalakaua*, 453 F. 3d 1175 (9th Cir. 2006). In that case, the court adopted the ADA definition of a “service animal” in deciding whether an accommodation was required. *Id.* at 1256. Note, however, that the same court recognized in 2012 that “the law has changed since *Prindable* was decided in 2003 by increasing acceptance of ‘assistance animals’ as possible ‘reasonable accommodations.’” *Ass’n of Apt. Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F. Supp. 2d 1268, 1285 (D. Haw. 2012). HUD statements issued after the *Prindable* case reaffirm the Department’s interpretation that special training is not required. See, e.g., FHEO Notice FHEO-2013-01, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs* (April 25, 2013), online at https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF.

that provides [generalized emotional support](#) for a person who has a diagnosed mental or emotional condition may be included in the definition of assistance animal if the emotional support provided is related to a person's disability.¹³

B. Americans With Disabilities Act

The Americans with Disabilities Act (ADA) is perhaps the most commonly known law relating to discrimination based on disability. The Act was signed into law by President George H.W. Bush in 1990. The law was a sweeping expansion of the rights of people with disabilities. It [prohibits discrimination](#) based on disability in the areas of employment, state and local government services, public accommodations, and telecommunications. The ADA is enforced by the U.S. Department of Justice.

A disability may be either a physical or a psychological condition, and the term is [defined in the law](#) as

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment . . .

The definition of the term "major life activities" in the ADA is the same as the definition in the FHAct. The term includes, but is not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." The term also includes major bodily functions. The ADA's definition of

¹³ Although special training is not a legal requirement for an emotional support animal, some private organizations do offer such training. See, Steiner, *Animals Can Provide Emotional Support and Service, but the Two Jobs are Distinct*, MinnPost, July 16, 2018, online at <https://www.minnpost.com/mental-health-addiction/2018/07/animals-can-provide-emotional-support-and-service-two-jobs-are-distinct>.

disability is to be “construed in favor of broad coverage of individuals” to the maximum extent permitted by the law.

The ADA [does not apply](#) to most types of residential housing. It does, however, apply to “public accommodations,” including areas open to the general public (e.g. a rental office). If an area is open but not to the general public (for example, a party room open only to residents of an apartment complex and their invited guests), the ADA does not apply. In the context of housing, as one [expert](#) put it, the “FHAct” is more widely applicable than ADA.

Service Animals Under the ADA. The rights of persons with disabilities to have an animal with them are more limited under the ADA than they are under the FHAct. [The ADA](#), which applies only to buildings or spaces open to the public, uses the term “service animal,” rather than “assistance animal.” The definition of “service animal” is significantly narrower than the definition of “assistance animal.” As interpreted by the U.S. Department of Justice, the ADA defines a service animal as a dog trained to accomplish a specific function related to a person’s disability. [Examples](#) include guide dogs for blind people, or a dog trained to sense when a person is about to have an anxiety attack and do something to help that person avoid the attack. Under certain circumstances, the Department of Justice has stated that a [miniature horse](#) may also qualify as a service animal. Animals kept solely for emotional support or comfort are explicitly excluded from the Department’s definition.

A further distinction between service animals under the ADA and assistance animals under the FHAct is where the different types of animals are allowed to be. Under the ADA, [a service animal](#) is generally allowed to accompany its owner into any public

place. An assistance animal as defined by the FHAct, however, may be barred from public places unless it also meets the ADA definition of a service animal. Even though the owner is allowed to keep the animal at home, it may not always be allowed to accompany the owner in public places. A person may have received a waiver from a “no pets” policy to allow them to keep a cat in their home for emotional support as defined in the FHAct. That waiver does not, however, allow them to bring the cat into a restaurant or grocery store that excludes pets.

C. Rehabilitation Act

The Rehabilitation Act applies mostly to the employment of persons with a disability. There are, however, two significant provisions of the Rehabilitation Act that have some connection with residential real estate. [Section 504 of the Rehabilitation Act](#) prohibits disability-based discrimination in “any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.” The law applies to federally-funded housing programs. In addition, [Subchapter VII](#) of the Rehabilitation Act relates to independent living services and centers for independent living. Independent living services are services that are designed to allow persons with disabilities or older people to continue living in their own homes or in community-based facilities. [Centers for independent living](#) are “consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agenc[ies] for individuals with significant disabilities (regardless of age or income)” that provide independent living services.

The Rehabilitation Act does not address the questions of assistance or service animals. The housing provisions of the Rehabilitation Act certainly imply a policy

preference for fair housing for those with disabilities, but the Act has little, if any, application to private real estate transactions.

D. Architectural Barriers Act

The Architectural Barriers Act of 1968 requires that buildings owned or leased by the federal government are **designed and constructed** “to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.” While the Act does apply to some types of housing, it **does not apply** to “a privately owned residential structure not leased by the Government for subsidized housing programs.”

There are no explicit references in the Architectural Barriers Act, or any of the promulgated regulations that define or have a clear connection to assistance or service animals.

III. STATE FAIR HOUSING AND SUBSTANTIAL EQUIVALENCY TO THE FEDERAL FAIR HOUSING ACT

State and local laws regarding housing discrimination tend to mirror the federal laws. For example, [Ohio law](#) makes it unlawful to discriminate on the basis of disability when selling or renting housing accommodations. A “disability” is [defined in the law as](#) “a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.”

While federal laws provide the minimum level of protection against discrimination, state and local laws may go further or have very specific differences from federal laws. As an example, the [Federal Fair Housing Act does not apply](#) to multi-family dwellings with four or fewer units if the owner occupies one of those units. The [Minnesota Human Rights Act](#), however, does not contain an equivalent exemption for owner-occupied property. Landlords in Minnesota who occupy one of their units must therefore follow laws that go beyond the federal minimum requirements.

Another example of broader state laws is in the definition of “disability;” specifically, whether a temporary disability qualifies a person for legal protection from discrimination. The ADA does not make clear whether a person with a temporary impairment may fit the definition of a disabled person.¹⁴ Federal courts have interpreted the ADA as prohibiting discrimination on the basis of a temporary condition that is “sufficiently severe.”¹⁵ The

¹⁴ A person thought to have an impairment that lasts or is expected to last six months or less is not “regarded as” having an impairment. 42 U.S.C. § 12102(3)(B). The law does not explicitly address a situation in which a person actually has such an impairment.

¹⁵ *Summers v. Altarum Inst. Corp.*, 740 F.3d 325, 330 (4th Cir. 2014).

Washington State Law Against Discrimination, however, states explicitly that it [applies](#) to conditions that are “temporary or permanent, common or uncommon, [or] mitigated or unmitigated,” without requiring a separate determination as to whether a condition is “sufficiently severe.”

A. Substantial Equivalence of State Laws and Enforcement with Federal Laws

Federal anti-discrimination laws apply throughout the nation. As discussed above, many state or local laws also prohibit discrimination. Enforcement of the Federal Fair Housing Act is mainly the responsibility of the Office of Fair Housing and Equal Opportunity at the U.S. Department of Housing and Urban Development (“HUD”). If HUD has determined that a state or local law is substantially equivalent to the FHAct, it may contract with that state or local government to investigate and address complaints in that state or locality. State or local jurisdictions would also be eligible for funding from HUD to ensure Fair Housing laws are enforced.

[Certification of substantial equivalence](#) is done in [two phases by HUD](#). The first phase – [“adequacy of law”](#) – looks at whether the language used in state or local laws provides the necessary rights, procedures, remedies, and provisions for judicial review are substantially equivalent to those provided by the FHAct. At minimum, the state or local law must prohibit discrimination against the same protected classes as the FHAct (race, color, national origin, religion, sex, disability, and family status). The state or local law must also:

1. provide for an agency to handle complaints;
2. give that agency the authority to investigate and resolve complaints;
3. not make filing a complaint so difficult that people are discouraged from doing so;
4. not include exemptions that substantially reduce the coverage compared to the FHAct; and

5. provide the same types of protections as those in the FHAct.

A state or local law that is different from the FHAct may still be deemed substantially equivalent if the differences do not diminish coverage of the FHAct. An example of a difference that would not diminish coverage is if the state or local law gives protection to protected classes in addition to those set out in the FHAct, such as source of income.

If the laws are substantially equivalent, HUD will offer the agency interim certification. Interim certification may last for up to three years. The three-year interim certification period gives the agency the opportunity to build its capacity to operate as a fully certified substantially equivalent agency.

The second phase of certification looks at the adequacy of the agency's performance. This phase asks whether, "in operation," the state or local law provides rights, procedures, remedies, and the opportunity for judicial review of agency decisions that are substantially equivalent to those in the FHAct. The adequacy of performance is [assessed by HUD during the interim-certification period](#), considering "whether the agency engages in timely, comprehensive, and thorough fair housing complaint investigation, conciliation, and enforcement activities." The performance assessment tries to judge the effectiveness of an agency's ability to process fair housing complaints by reviewing the agency's:

- thoroughness in processing cases;
- investigations for quality and consistency with the standards set by HUD;
- conciliation agreements and other settlements;
- administrative closures; and
- enforcement procedures, including administrative hearings and judicial proceedings.

If the agency's performance is adequate, HUD will certify its performance for five years. During that five-year period, HUD will continue to assess performance. If the agency continues to qualify for certification, HUD will renew the certification for another five years.

Certification of substantial equivalence shifts enforcement of fair housing laws to the state and local agencies. A discrimination complaint that is filed with HUD will be transferred to the state or local agency. In exchange for taking on enforcement efforts, these agencies will be eligible to receive training and technical assistance from HUD. Upon certification of substantial equivalency, the state or local agency may also be eligible to receive federal funding for fair-housing enforcement programs.

Substantial equivalency certification offers advantages to the public, as well as to the agencies involved. A local agency will typically act on a complaint more quickly, and the local staff will likely be more familiar with state laws. On the other hand, a failure to obtain or maintain certification can cause problems and confusion. If there is no equivalency, a complaint may be filed with HUD at the federal level because federal law will always apply. A complaint could also be filed at the state level, which could lead to a headache of bureaucracies. The parties involved with the case would have to work with each governmental agency.

An agency that does not continue to qualify as substantially equivalent to federal fair housing laws, run the risk of losing certification. The [State of Missouri](#) and [City of St. Louis](#), for example, recently lost their certifications. HUD determined that the [amended Missouri anti-discrimination law](#) was no longer substantially equivalent to federal law, as the amended law makes it [more difficult](#) to bring a successful housing discrimination action in Missouri, by providing that a person must prove that discrimination was the main

reason, and not just one reason, for an action. The [new law](#) also no longer protects people who file housing complaints from retaliation by property owners and landlords. The decertification means that Missouri will not be eligible to receive approximately \$600,000 in federal funds to investigate, resolve, or enforce FHAct laws.

As of August 6, 2018, HUD has [certified 79 state and local agencies](#) as being substantially equivalent. Note that certification of a local agency does not necessarily mean that the statewide agency will also be certified.

B. Service Animals and Assistance Animals

Almost every U.S. jurisdiction with a law against discrimination in housing prohibits discrimination based on handicap or disability.¹⁶ Many of those state laws include the requirement that a housing provider make an accommodation for a person with a disability. For example, laws in [Arizona](#) and [Colorado](#) provide that it is unlawful discrimination to refuse to make reasonable accommodations in rules, practices, or services so as to afford a disabled person “equal opportunity to use and enjoy a dwelling.” The reasonable accommodation requirements of many state laws are similar to the reasonable accommodation requirements of the FHAct. Since it is common for state courts to interpret state laws to mean the same thing as identical or similar federal laws, it is fair to assume that state laws will be interpreted as requiring a waiver from a “no pets” policy to be a required reasonable accommodation.

¹⁶ Mississippi is the only state without a statewide law similar to the Fair Housing Act. Mississippi’s law against housing discrimination prohibits discrimination based on handicap only with regard to housing projects or loans sponsored by the Mississippi Home Corporation. [Miss. Code § 43-33-723](#). The Virgin Islands Civil Rights Act prohibits housing discrimination, but the law does not contain any prohibition against discrimination based on disability, see, V.I. Code Ann. tit. 10, § 3, although the territorial Civil Rights Commission states otherwise on its website. See, http://usvidoj.codemeta.com/DivisionContent_1.php?divId=90 (last accessed June 27, 2018).

In addition to the laws that generally mandate reasonable accommodations, twenty-five states¹⁷ and the District of Columbia have laws that explicitly provide that denying a resident the right to have a service or assistance animal in their housing is, in some contexts, unlawful discrimination. These laws are typically more limited in their scope than federal laws and regulations.¹⁸ The most common limitation is that the law will apply only to certain types of dogs.¹⁹

The [California law](#) states that it is unlawful discrimination to refuse to lease or rent to a person who “uses the services of a guide dog, an individual who is deaf or hard of hearing on the basis that the individual uses the services of a signal dog, or to an individual with any other disability on the basis that the individual uses the services of a ‘service dog,’ or to refuse to permit such an individual who is blind or visually impaired to keep a guide dog, an individual who is deaf or hard of hearing to keep a signal dog, or an individual with any other disability to keep a service dog on the premises.” A “service dog” is defined in the law as “a dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.” Unlike federal law, the California law requires that a dog be specially trained before a housing provider will be required to make an accommodation.

¹⁷ California, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin.

¹⁸ City fair housing ordinances frequently track the language of state fair housing laws, but often do not make explicit reference to animals. See, e.g., [Minneapolis, Minn., Ordinance § 139.40](#) (requiring accommodations for persons with disabilities); [Portland, Ore. Ordinance § 23.01.060](#) (it is unlawful to commit any of the discriminatory acts set out in state law).

¹⁹ See chart at Appendix A, *Definition of Service/Assistance Animal*.

[Utah anti-discrimination law](#) uses the term “service animal.” That term is defined to include only dogs who are trained to perform specific tasks. The law states explicitly that the term does not include an animal used solely to provide emotional support, well-being, comfort, or companionship.

State laws also frequently limit the types of disability that will justify a service or assistance animal. [Wisconsin law](#) bars discrimination against an individual who keeps a specially trained animal “that is specially trained to lead or assist the individual with impaired vision, hearing, or mobility.” [Minnesota law](#) prohibits discrimination in housing against a person who is “totally or partially blind, or person who is deaf, or person with a physical disability” who has or obtains a “service dog,” however the term “service dog” is not defined in the statutes. [Tennessee laws on housing discrimination](#) require accommodation only for guide dogs used by people who are totally or partially blind. The guide dog [must be one](#) obtained from “a recognized school of training for such purposes.” A law passed in the 2018 legislative session in [Maine](#) provides landlords with immunity from civil liability for “personal injury, death, property damage or other damages resulting from or arising out of an occurrence involving an assistance animal at the dwelling unit.”

The federal Fair Housing Act [does not pre-empt](#) state anti-discrimination laws unless those law constitute unlawful discrimination, or unless the enforcement of those laws would interfere with enforcement of the FHAct. Thus, a condominium association was required to designate additional handicapped parking places even though a local law required condominium owners to give unanimous consent before common elements

could be transferred.²⁰ While a state law could provide additional rights, the federal law should be taken as the minimum that must be provided.

²⁰ *Astralis Condo. Ass'n v. Sec'y, U.S. Dep't of HUD*, *supra*, n. 6.

IV. REASONABLE ACCOMMODATION AND REQUESTS FOR ANIMALS

As mentioned above, federal law ([section 804 of the FHAct](#)) makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services to allow a person with a disability the equal opportunity to use and enjoy housing, including the public and common-use areas. The U.S. Department of Housing and Urban Development (HUD) has issued a statement to the effect that making a reasonable accommodation may mean that a resident is allowed to have an assistance animal even if the housing provider has a “no pets allowed” policy. HUD is careful to note that an assistance animal is not a pet, but is instead “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.” The requirement of a reasonable accommodation to allow a resident to have an assistance animal is simple to explain, but a number of common issues are raised in the application of this requirement.

Those common issues include:

- the requirement that a resident or prospective resident make a request for an accommodation;
- the questions a housing provider may ask of a person who makes a request;
- documentation that may be requested or required;
- the extent of the accommodation; and
- assistance animals that qualify.

A. Request Required

No housing provider is obligated to make an accommodation for an assistance animal unless the resident requests such an accommodation. The request to have an assistance animal triggers an interactive process that involves cooperation between the

resident and the housing provider. The request for accommodation is evaluated in the same manner as other requests for reasonable accommodations under the FHAct. An assistance animal must be allowed if a person has a disability (a physical or non-physical impairment that limits one or more major life activities), and a disability-related need for the animal.

B. Questions that May be Asked

A person may request an accommodation if they have a disability as defined in the FHAct - they have a physical or mental impairment that substantially limits one or more major life activities. A prospective tenant or resident who makes a request is not required to identify their disability when requesting an accommodation for an assistance animal.²¹ If a resident has a disability that is apparent to the provider (for example, being blind), no further inquiry into the disability is permitted.

C. Documentation Requested or Required

If a person's disability is not apparent, documentation may be requested. A [request for documentation](#) may ask only for information necessary to evaluate whether an accommodation is needed because of a disability. The person requesting an accommodation must show that he or she has a disability that meets the legal definition of a disability; that is, he or she must show that they have a physical or mental impairment that substantially limits one or more major life activities. The verification of a disability may be provided by "the requesting individual, medical professional, a peer support group, a

²¹ *Or. Bureau. of Labor & Indus. ex rel. Fair Hous. Council. v. Chandler Apts., LLC*, 705 Fed. Appx. 544, 547 (9th Cir. 2017).

non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability.”²²

Once disability has been established, a request for an accommodation must show that there is a connection between the requester's disability and the function that the service animal will provide.²³ If that connection is obvious, such as when a person is accompanied by a Seeing Eye dog, no further documentation may be requested. However, in the event that the disability-related need is not obvious, then further documentation may be necessary. The documentation of a disability-related need for an animal is sufficient if it shows that the assistance animal will provide disability-related assistance or support (including emotional support). The documentation should be from a medical provider or someone who has a therapeutic relationship with the person with the disability. The housing provider may not request access to medical records and may not ask for permission to contact the person's health care provider. Instead, the resident or prospective resident should be asked to provide the documentation from the provider. The housing provider is entitled to know how the animal provides a service that limits life's major activities for the requesting person.

There are websites that offer certificates of emotional support animals. While the animal may indeed provide emotional support, a clear connection to the service of the animal and person with the disability must be established so that a reasonable accommodation can be made. Online certificates may not fully depict a service needed

²² Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, May 14, 2004, online at <https://www.justice.gov/crt/us-department-housing-and-urban-development>.

²³ *Kennedy House, Inc. v. Philadelphia Comm'n on Human Rights*, 143 A. 3d 476, 489 (Pa. Commw. Ct. 2016).

by the animal and may not establish a therapeutic relationship between the online certificate provider and requesting tenant. Certificates from online sources verifying the need for an emotional support animal have not been tested in court.

In the case of *Castellano v. Access Premier Realty, Inc.*,²⁴ a resident's request to be allowed to keep a cat as an emotional support animal was supported by a detailed request from the resident, the resident's daughter, the county Department of Aging & Veteran Services, and an advocacy group, as well as her treating physician. The landlord acknowledged that other residents had been allowed to keep emotional support animals, but wanted this resident to provide additional information regarding her disability and her need for an assistance animal. The court held that the landlord's failure to grant the resident permission to keep her cat amounted to unlawful discrimination.²⁵

On the other hand, in *Hawn v. Shoreline Towers Phase 1 Condominium Association, Inc.*, a court dismissed a claim of discrimination based on a refusal to allow a resident to own a dog. The documentation provided by the resident was not sufficient to allow the provider to conduct a meaningful review of his request for an accommodation. The documentation the resident provided in that case was an "unclear" letter from the resident, and generic forms filled in by his chiropractor and his psychologist. The housing provider asked for additional documentation but the resident did not supply it. The court held that the failure to supply this information justified a finding that there was no disability-based discrimination.²⁶

²⁴ 181 F. Supp. 3d 798 (E.D. Cal. 2016).

²⁵ *Id.* at 808.

²⁶ 347 Fed. Appx. 464 (11th Cir. 2009). Note that, shortly before making his request for an accommodation, Mr. Hawn had petitioned Shoreline Towers to change its "no pets" policy, and that his request had been denied.

HUD cautions that when receiving information on a person's disability or on the disability related need for an assistance animal, that information must be kept confidential unless required to be disclosed by a court or other judicial proceeding.²⁷

D. Extent of the Accommodation

Under the FHAct, an accommodation is "reasonable" if it imposes no fundamental alteration in the nature of a program or undue financial or administrative burdens.²⁸ As a rule, courts have held that granting a waiver from a "no pets" policy to allow a resident to have an assistance animal is a reasonable accommodation.²⁹ An assistance animal is not a "pet," but is an assistive aid. Restrictions on pet ownership other than an outright ban also may not be applied. For example, a provider's pet policy may prohibit residents from owning dogs that weigh more than 12 pounds. That weight restriction [may not be used](#) to deny a resident permission to have an assistance dog that weighs more than the limit. Similarly, an additional deposit or extra rent may not be requested for an assistance animal, even if a deposit or rent premium normally is required for residents with pets.³⁰

E. Assistance Animals that Qualify

The request for an accommodation to allow an assistance animal usually will refer to a specific animal. Likewise, the documentation will note that a person has a need for a

²⁷ Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, *supra* n. 21.

²⁸ *Arnal v. Aspen View Condo. Ass'n.*, 226 F. Supp. 3d 1177, 1185 (D. Colo. 2016).

²⁹ *Chavez v. Aber*, 122 F. Supp. 3d 581, 596 (W.D. Tex. 2015). See also *Bronk v. Ineichen*, 54 F. 3d 425, 429 (7th Cir. 1995) ("Balanced against a landlord's economic or aesthetic concerns as expressed in a no-pets policy, a deaf individual's need for the accommodation afforded by a hearing dog is, we think, *per se* reasonable within the meaning of the statute.").

³⁰ If the provider's usual practice is to assess residents for the cost of repairs that go beyond normal wear and tear, the provider may charge a resident for the cost of repairing damage caused by an assistance animal.

specific animal to assist him or her. HUD regulations on assistance animals do not include any limitation on the species of animals that may be regarded as assistance animals.

While dogs are the most common type of assistance animal, other animals also may qualify.³¹ A housing provider's restrictions on breeds may not be applied to an assistance animal. A request may be refused if a specific animal poses a threat to the health or safety of others, or if a specific animal would cause substantial property damage that could not be reduced or eliminated by another accommodation. A determination that an animal is a threat must come from an individualized assessment of the animal. It may not be based on assumptions about a breed or species. It also may not be based on evidence of harm or damage that may have been caused by other similar animals.

³¹ U.S. Dep't of Housing and Urban Development, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, FHEO-2013-01, Apr. 25, 2013, online at https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF.

V. DENYING A REQUEST FOR ACCOMMODATION

Denying a request for an accommodation to allow an assistance animal may be done only in limited circumstances. A request may be denied if the resident does not have a disability, as defined by the FHAct,³² or if granting the request to keep an assistance animal is not a “reasonable accommodation” to allow a person with a disability access to the housing unit. It is up to the person who requests the accommodation to show that the accommodation is necessary for him or her to have an equal opportunity to use and enjoy the dwelling. Once he or she makes that showing, the burden of proof shifts to the housing provider to show that the accommodation is unreasonable.³³

The underlying goal of the FHAct is to provide access to housing. In keeping with that goal, a denial should be more than merely saying “no.” The collaborative process that started (or that should have started) when the request for an accommodation was made should continue. The housing provider should seek to understand the disability, and try to learn about the nexus between the disability and the request for an assistance animal. The purpose of the inquiry should be to reach some sort of balance.

The unjustified denial of a requested accommodation is a form of housing discrimination. In order to make a claim of housing discrimination based on a disability, a plaintiff must show that he or she has a handicap as defined in the FHAct, and that accommodation of that handicap may be necessary to afford the plaintiff an equal opportunity to use the dwelling.³⁴

³² See discussion above. Generally, the FHAct defines a disability as a physical or mental impairment which substantially limits one or more of such person’s major life activities; a record of having such an impairment; or being regarded as having such an impairment. 42 U.S.C. § 3602 (h).

³³ *Oras v. Hous. Auth.*, 373 N.J. Super. 302, 312, 861 A. 2d 194, 200 (2004).

³⁴ *Astralis Condo. Ass’n v. Sec’y, U.S. Dep’t of HUD*, *supra*, n. 6.

The necessity of the accommodation, and the relation between the requested accommodation and a person's handicap, could be seen as allowing more inquiry into a person's physical or psychological condition than the current HUD Guidelines would allow. Treating psychologists who certify support animals or emotional support animals have been [advised](#) that they may be called upon to justify that certification "in open court," and prove in a legal proceeding that the presence of the animal was necessary.

VI. STATE LEGISLATIVE EFFORTS TO ADDRESS ABUSES OF THE RIGHT TO REQUEST ACCOMMODATION

According to [Service Dog International](#), 0.9% of the truly disabled people in the United States use a service animal. Despite the relatively small number of service animals in use, there has been much discussion concerning the use of assistance or service animals. Some of this discussion has likely been spurred, if not defined, by anecdotal reports of animal owners making [unusual claims regarding animals](#).

Concerns about assistance or service animals have led to state legislative efforts to address abuses of the right to a service or assistance animal. Most of these laws deal with false claims that a dog is a service dog. [Missouri law](#), for example, makes it a class C misdemeanor to “knowingly [impersonate] a person with a disability for the purpose of receiving the accommodations regarding service dogs under the Americans with Disabilities Act . . .”³⁵

Recently, some states have taken specific aim at false claims of a need for a service animal or assistance animal in the housing context. Effective August 1, 2017, [North Dakota law](#) says that a person who “knowingly makes a false claim of having a disability that requires the use of a service animal or assistance animal or knowingly provides fraudulent supporting documentation in connection with such a claim” is guilty of an infraction. Landlords have the authority to evict a tenant who is convicted of, or who pleads guilty to, that offense. If the tenant submitted fraudulent documentation, the landlord may recover a “damage fee” of up to \$1,000. A similar law in [South Dakota](#) went into effect on July 1, 2018.

³⁵ See chart at Appendix B, *Fraudulent Misrepresentation - Defined*

An [Oklahoma law](#) allowing eviction and the recovery of damages for a false claim of the need for an assistance animal will go into effect on November 1, 2018. The Oklahoma law goes further than other state laws in that it sets out procedures for a resident to make a request for an accommodation. Unless the person making the request has a disability or need for an assistance animal that is readily apparent, the landlord may request reliable supporting documentation. The documentation requested must be necessary to verify that the person has a disability as defined by the FHAct, and it must describe the accommodation that is needed. The documentation must also show the relationship between the person's disability and the need for the requested accommodation. The landlord may independently verify the authenticity of supporting documentation, although the law is silent as to how this is done. Documentation that was acquired through purchase or payment will be presumed to be fraudulent.

VII. INTERFERENCE, INTIMIDATION OR RETALIATION FOR EXERCISING FAIR HOUSING RIGHTS

Some people with disabilities may be reluctant to request an accommodation for a disability. In particular, requesting an accommodation that involves permission to keep an animal even though the housing provider may have a “no pets” policy may be especially daunting. Providers may take actions that, intentionally or not, make the process of requesting an accommodation unnecessarily difficult or burdensome.

[Section 818 of the Fair Housing Act](#) prohibits any person from doing anything to “coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed” the rights protected by the FHAct. “Interference” has been defined to include “all practices which have the effect of interfering with exercise of rights under federal fair housing laws.”³⁶ Interference may occur when a person makes the request for an accommodation more difficult, such as by making excessive requests for documentation of a disability or of the need for an assistance animal. A provider may use a standardized form for a resident who requests an accommodation, but that form may be difficult or impossible for some people to complete. Insistence on completion of that particular form could be regarded as intimidation or coercion.

Interference may also consist of a failure to take any action on a request, if that delay has the effect of denying the person applying for the accommodation access to the housing.³⁷ A request for documentation to support a “non-specific” claim for permission to have an assistance dog is not interference when the person requesting the

³⁶ *Nevels v. W. World Ins. Co.*, 359 F. Supp. 2d 1110, 1122 (W.D. Wash. 2004)

³⁷ *Overlook Mut. Homes, Inc. v. Spencer*, 415 Fed. Appx. 617, 622 (6th Cir. 2011).

accommodation still was able to live in the condominium.³⁸ Levying a monetary penalty on a resident who owns a dog before their application for an accommodation is processed is also not interference, when the application was subsequently granted and the penalty was never collected.³⁹

Section 818 does not limit intimidation or coercion to actions taken by housing providers. The law applies to any person, including neighbors,⁴⁰ security guards,⁴¹ and insurers.⁴² To prove a violation of the law, it is not necessary to show that the person who interfered or intimidated acted out of any malice or ill will towards persons with disabilities.⁴³ A violation is shown when there is some connection between a person having a disability, and the interference. A violation will be proven if a resident or prospective resident exercised their rights under the FHAct, the provider or other person was aware of this exercise, the provider or other person took some adverse action, and there was a causal relationship between that exercise of rights and the adverse action.⁴⁴

³⁸ *Kromenhoek v. Cowpet Bay W. Condo. Ass'n.*, 77 F. Supp. 3d 462, 472 (D.V.I. 2014).

³⁹ *Id.*

⁴⁰ *United States v. Wagner*, 940 F. Supp. 972 (N.D. Tex. 1996)

⁴¹ *Antonio v. Sec. Servs. of Am., LLC*, 701 F. Supp. 2d 749 (D. Md. 2010)

⁴² *Nevels v. W. World Ins. Co.*, *supra*, n. 34.

⁴³ *United States v. Wagner*, *supra*, n. 38.

⁴⁴ *Elmowitz v. Exec. Towers at Lido, LLC*, 571 F. Supp. 2d 370, 376 (E.D.N.Y. 2008).

VIII. CONCLUSION

The laws protecting the rights of the disabled to have equal housing opportunities have been in force for a number of years. As society's understanding of disability broadens, more people will be able to claim protection under these laws. And as new treatments are developed or recognized, housing providers face new considerations in meeting the requirements of making reasonable accommodations.

In particular, the growing acceptance of the need for assistance animals is an important issue to consider. Policies against pet ownership have been adopted by many housing providers and, on the whole, they have been accepted as legitimate restrictions on the occupancy of a property. These policies, however, are being re-examined to take into account the rights of residents with disabilities who may require the assistance of an animal. State and federal expansions to the definition and function of assistance animals beyond Seeing Eye and Hearing Ear dogs has led to the need for new means of accommodating the needs of residents. As such, housing providers are facing greater pressure to change current policies in an effort to make the required accommodations. Making these changes, and understanding the need for them, is an important way REALTORS® can help build inclusive communities for everyone.

APPENDIX A

State	Definition of Assistance/Service Animal
Colorado	<p>Under Rights Law:</p> <p>“Service animal” has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal “Americans with Disabilities Act of 1990”, 42 U.S.C. sec. 12101 et seq</p> <p>Colo. Rev. Stat. § 24-34-803 (2018).</p>
Connecticut	<p>"Guide dog" or "assistance dog" includes a dog being trained as a guide dog or assistance dog and "person training a dog as a guide dog for a blind person or a dog to assist a deaf or mobility impaired person" means a person who is employed by and authorized to engage in designated training activities by a guide dog organization or assistance dog organization that complies with the criteria as described.</p> <p>Conn. Gen. Stat. § 46a-44 (2018).</p>
Delaware	<p>In chapter on "Equal Accommodations" (6 Del.C. § 4502):</p> <p>Support animal means any animal individually trained to do work or perform tasks to meet the requirements of a person with a physical disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or fetching dropped items.</p> <p>Del. Code Ann. tit. 6, § 4502 (2018).</p>
Florida	<p>“Service animal” means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks.</p> <p>Specifically states: "A service animal is not a pet."</p>

	<p>Service animal is also limited to a dog or a miniature horse.</p> <p>Fla. Stat. § 413.08 (2018).</p>
Louisiana	<p>(1) "Service dog" means a dog who has been trained or is being trained to do work or perform a task for a person with a disability. "Service dog" refers to a dog trained as any of the following:</p> <ul style="list-style-type: none"> (a) A hearing dog. (b) A guide dog. (c) A seizure alert dog. (d) A mobility dog. (e) An autism service dog. (f) A dog providing assistance during a medical crisis. (g) A service dog providing assistance to persons, including veterans with traumatic brain injury or post-traumatic stress disorder. <p>La. Rev. Stat. Ann. § 46:1952 (2018).</p>
Maine	<p>Under 5 M. R. S. A. § 4553(9-E), for purposes of subchapter 4 (fair housing):</p> <p>"Service animal" means:</p> <p>An animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician's assistant, nurse practitioner or licensed social worker; or</p> <p>An animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or retrieving dropped items; and.</p> <p>Me. Rev. Stat. tit. 5, § 4553(9-E) (2018).</p>
Missouri	<p>Under Chapter 209, equal access law:</p> <p>As used in sections 209.150 to 209.190, the term "service dog" means any dog specifically trained to assist a person with a physical or mental disability by performing necessary tasks or doing work which the</p>

	<p>person cannot perform. Such tasks shall include, but not be limited to, pulling a wheelchair, retrieving items, carrying supplies, and search and rescue of an individual with a disability.</p> <p>Mo. Rev. Stat. § 209.150 (2018).</p>
Montana	<p>"Service animal" means a dog or other animal individually trained to provide assistance to an individual with a disability.</p> <p>Mont. Code Ann. § 49-4-203 (2018).</p>
Nevada	<p>"Service animal" means an animal that has been trained to assist or accommodate a person with a disability.</p> <p>Nev. Rev. Stat. § 426.097 (2018).</p> <p>"Service animal in training" means an animal that is being trained to assist or accommodate a person with a disability.</p> <p>Nev. Rev. Stat. § 426.099 (2018).</p>
New Hampshire	<p>"Service animal" means any dog individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for purposes of this definition.</p> <p>N.H. Rev. Stat. Ann. § 167-D:1 (2018).</p>
New Mexico	<p>As used in the Service Animal Act:</p> <p>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;</p> <p>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;</p> <p>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</p> <p>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</p>

	<p>of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities.</p> <p>N.M. Stat. Ann. § 28-11-2 (2018).</p>
North Dakota	<p>“Service animal” means any guide dog, signal dog, or other animal trained to do work, perform tasks, or provide assistance for the benefit of an individual with a disability. The term includes an animal trained to provide assistance or protection services to an individual with a disability, pull a wheelchair, lend balance support, retrieve dropped objects, or provide assistance in a medical crisis.</p> <p>N.D. Cent. Code § 25-13-01.1 (2018).</p>
Ohio	<p>"Assistance dog" means a guide dog, hearing dog, or service dog that has been trained by a nonprofit special agency.</p> <p>“Guide dog” means a dog that has been trained or is in training to assist a blind person.</p> <p>“Hearing dog” means a dog that has been trained or is in training to assist a deaf or hearing-impaired person.</p> <p>“Service dog” means a dog that has been trained or is in training to assist a mobility impaired person.</p> <p>Ohio Rev. Code Ann. § 955.011 (2018).</p>
Pennsylvania	<p>“Service dog.” Any dog which has been or is in the process of being trained as a guide dog, signal dog or has been trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, pulling a wheelchair or fetching dropped items.</p> <p>3 Pa. Cons. Stat. § 459-102 (2018).</p>
West Virginia	<p>A “service animal” means any guide dog, signal dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair or fetching dropped items.</p> <p>W. Va. Code § 5-15-3 (2018)</p>
Wyoming	<p>"Service dog" means a dog which has been or is being specially trained to the requirements of a person with a disability.</p> <p>Wyo. Stat. Ann. § 35-13-205 (2018).</p>

APPENDIX B

State	Fraudulent Misrepresentation – Defined
Alabama	<p>§ 24-8A-4. Misrepresentation of entitlement to assistance animal or service animal.</p> <p>(a) A person commits the offense of misrepresentation of entitlement to an assistance animal or service animal if the person intentionally does either of the following:</p> <p style="padding-left: 40px;">(1) Misrepresents to another person that a person has a disability or disability-related need for the use of an assistance animal or service animal in housing.</p> <p style="padding-left: 40px;">(2) Makes materially false statements for the purpose of obtaining documentation for the use of an assistance animal or service animal in housing.</p> <p>(b)(1) Upon a first offense, a violation of subsection (a) shall be subject to a civil penalty of five hundred dollars (\$500) or treated as a Class C misdemeanor.</p> <p style="padding-left: 40px;">(2) Upon a second or subsequent offense, a violation of subsection (a) shall be a Class B misdemeanor.</p> <p>2018 Ala. Acts 235. Ala. Code § 24-8A-4 (2018).</p>
Colorado	<p>§ 18-13-107.3. Intentional misrepresentation of entitlement to an assistance animal--penalty--definitions</p> <p><Text of section effective Jan. 1, 2017></p> <p>(1) A person commits intentional misrepresentation of entitlement to an assistance animal if:</p> <p style="padding-left: 40px;">(a) The person intentionally misrepresents entitlement to an animal in his or her possession as an assistance animal for the purpose of obtaining any of the rights or privileges set forth in state or federal law for an individual with a disability as a reasonable accommodation in housing;</p> <p style="padding-left: 40px;">(b) The person was previously given a written or verbal warning regarding the fact that it is illegal to intentionally misrepresent entitlement to an assistance animal;</p> <p style="padding-left: 40px;">(c) The person knows that:</p>

(I) The animal is not an assistance animal with regard to that person; or

(II) The person does not have a disability.

(2) A person who violates subsection (1) of this section commits a class 2 petty offense and, upon conviction, shall be punished as follows:

(a) For a first offense, a fine of twenty-five dollars;

(b) For a second offense, a fine of not less than fifty dollars but not more than two hundred dollars; and

(c) For a third or subsequent offense, a fine of not less than one hundred dollars but not more than five hundred dollars.

(3)(a) A defendant may petition the district court of the district in which any conviction records pertaining to the defendant's first conviction for intentional misrepresentation of entitlement to an assistance animal, as described in subsection (1) of this section, are located for the sealing of the conviction records, except for basic identifying information.

(b) If a petition is filed pursuant to paragraph (a) of this subsection (3) for the sealing of a record of conviction for intentional misrepresentation of entitlement to an assistance animal, the court shall order the record sealed if the following criteria are met:

(I) The petition is filed;

(II) The filing fee is paid or the defendant has filed a motion to file without payment with a supporting financial affidavit and the court has granted the motion;

(III) The defendant's first conviction for intentional misrepresentation of entitlement to an assistance animal was at least three years prior to the date of the filing of the petition; and

(IV) The defendant has not had a subsequent conviction for intentional misrepresentation of entitlement to an assistance animal.

(c) An order entered pursuant to this subsection (3) must be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an

	<p>order sealing conviction records pursuant to this subsection (3), the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order and shall pay to the bureau any costs related to the sealing of his or her criminal conviction records that are in the custody of the bureau unless the court has granted the motion specified in subparagraph (II) of paragraph (b) of this subsection (3). Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.</p> <p>(4) A written finding made pursuant to section 12-36-142(1)(a), 12-38-132.5(1)(a), or 12-43-226.5(1)(a), C.R.S., is an affirmative defense to the offense established by this section. The lack of such a finding is not proof of the offense established by this section, and nothing in this section or in sections 12-36-142, 12-38-132.5, or 12-43-226.5, C.R.S., limits the means by which a person with a disability may demonstrate, pursuant to state or federal law, that the person has a disability or that the person has a disability-related need for an assistance animal.</p> <p>(5) As used in this section, unless the context otherwise requires:</p> <p>(a) "Assistance animal" means an animal that qualifies as a reasonable accommodation under the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended or section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended.</p> <p>(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and its related amendments and implementing regulations and includes a handicap as that term is defined in the federal "Fair Housing Act", 42 U.S.C. sec. 3601 et seq., as amended, and 24 CFR 100.201.</p> <p>(c) "Service animal" has the same meaning as set forth in the implementing regulations of Title II and Title III of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq.</p> <p>(d) "State and federal law" includes section 24-34-803, C.R.S., the federal laws specified in paragraph (a) of this subsection (5), and rules and regulations implementing those laws.</p> <p>Colo. Rev. Stat. § 18-13-107.3 (2018).</p>
Florida	Title XXX. Social Welfare (Chapters 409-434. Chapter 413. Vocational Rehabilitation. Part I. Blind Services Program.

413.08. Rights of an individual with a disability; use of a service animal; discrimination in public employment or housing accommodations; penalties

(1) As used in this section and s. 413.081, the term:

(a) "Housing accommodation" means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(b) "Individual with a disability" means a person who has a physical or mental impairment that substantially limits one or more major life activities of the individual. As used in this paragraph, the term:

1. "Major life activity" means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

2. "Physical or mental impairment" means:

a. A physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or

b. A mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, posttraumatic stress disorder, or an emotional or mental illness.

(c) "Public accommodation" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; a timeshare that is a transient public lodging establishment as defined in s. 509.013; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. The term does not include air carriers covered by the Air Carrier Access Act of 1986,

49 U.S.C. s. 41705, and by regulations adopted by the United States Department of Transportation to implement such act.

(d) "Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks. A service animal is not a pet. For purposes of subsections (2), (3), and (4), the term "service animal" is limited to a dog or miniature horse. The crime-deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

(2) An individual with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges in all public accommodations. A public accommodation must modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability. This section does not require any person, firm, business, or corporation, or any agent thereof, to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.

(3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy.

(a) The service animal must be under the control of its handler and must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise

under the handler's control by means of voice control, signals, or other effective means.

(b) Documentation that the service animal is trained is not a precondition for providing service to an individual accompanied by a service animal. A public accommodation may not ask about the nature or extent of an individual's disability. To determine the difference between a service animal and a pet, a public accommodation may ask if an animal is a service animal required because of a disability and what work or tasks the animal has been trained to perform.

(c) A public accommodation may not impose a deposit or surcharge on an individual with a disability as a precondition to permitting a service animal to accompany the individual with a disability, even if a deposit is routinely required for pets.

(d) An individual with a disability is liable for damage caused by a service animal if it is the regular policy and practice of the public accommodation to charge nondisabled persons for damages caused by their pets.

(e) The care or supervision of a service animal is the responsibility of the individual owner. A public accommodation is not required to provide care or food or a special location for the service animal or assistance with removing animal excrement.

(f) A public accommodation may exclude or remove any animal from the premises, including a service animal, if the animal is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's behavior poses a direct threat to the health and safety of others. Allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal. If a service animal is excluded or removed for being a direct threat to others, the public accommodation must provide the individual with a disability the option of continuing access to the public accommodation without having the service animal on the premises.

(4) Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with admittance to, or enjoyment of, a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of such an animal pursuant to subsection (8), commits a misdemeanor of the second

degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

(5) It is the policy of this state that an individual with a disability be employed in the service of the state or political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds, and an employer may not refuse employment to such a person on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

(6) An individual with a disability is entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(a) This section does not require any person renting, leasing, or otherwise providing real property for compensation to modify her or his property in any way or provide a higher degree of care for an individual with a disability than for a person who is not disabled.

(b) An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such a person may not be required to pay extra compensation for such animal. However, such a person is liable for any damage done to the premises or to another person on the premises by the animal. A housing accommodation may request proof of compliance with vaccination requirements.

(c) This subsection does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

(7) An employer covered under subsection (5) who discriminates against an individual with a disability in employment, unless it is shown that the particular disability prevents the satisfactory performance of the work involved, or any person, firm, or corporation, or the agent of any person, firm, or corporation, providing housing accommodations as provided in subsection (6) who discriminates against an individual with a disability, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

	<p>(8) Any trainer of a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public facilities and the same liability for damage as is provided for those persons described in subsection (3) accompanied by service animals.</p> <p>(9) A person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.</p> <p>Fla. Stat. § 413.08 (2018).</p>
<p>Indiana</p>	<p>Ind. Rev. Stat. § 22-9-7-8.</p> <p>(a) Emotional support animals may be used by individuals with a range of physical, psychiatric, or intellectual disabilities.</p> <p>(b) To be prescribed an emotional support animal, the individual seeking an emotional support animal must have a verifiable disability. An animal does not need specific training to become an emotional support animal.</p> <p>Ind. Rev. Stat. § 22-9-7-9.</p> <p>A person who offers to rent or otherwise make available a dwelling to an individual with a disability that is not readily apparent who seeks a reasonable accommodation for an emotional support animal in a dwelling may require that the individual provide written verification from a health service provider that:</p> <p>(1) the individual is an individual with a disability; (2) there is a disability related need for the emotional support animal to assist the individual; and (3) the emotional support animal assists the individual in managing the individual's disability.</p> <p>Ind. Rev. Stat. § 22-9-7-10. (a) Except as provided in subsection (b), an individual who moves from another state may provide documentation from:</p> <p>(1) a physician; (2) a psychiatrist; § (3) a social worker; or (4) another other mental health professional;</p>

licensed in that state, so long as the individual has an ongoing treatment relationship with the health service provider.

(b) This section excludes a health service provider whose sole service to the individual is to provide a verification letter in exchange for a fee.

Ind. Rev. Stat. § 22-9-7-11.

If an individual described in section 9 of this chapter submits a request for a reasonable accommodation, a person who offers to rent or otherwise make available a dwelling may evaluate any documents submitted with the request for a reasonable accommodation to verify the individual's disability related need for an emotional support animal.

Ind. Rev. Stat. § 22-9-7-12.

This section applies to an individual described in section 9 of this chapter who has a disability that is not readily apparent, and the health service provider that verifies the individual's disability status and need for an emotional support animal. An individual who submits a request to maintain an emotional support animal in a dwelling, or a health service provider who verifies the individual's need for an emotional support animal, and:

(1) misrepresents to a person who offers to rent or otherwise make available a dwelling that the individual is an individual with a disability or has a disability related need that requires the use of an emotional support animal in a dwelling;

(2) makes a materially false statement to the individual's health service provider to obtain documentation to substantiate the individual's need for an emotional support animal in a dwelling;

(3) provides a document to a person who offers to rent or otherwise make available a dwelling that misrepresents that the animal is an emotional support animal;

(4) fits an animal that is not an emotional support animal with a harness, collar, vest, or sign that would cause a reasonable person to believe the animal is an emotional support animal; or

(5) in the case of a health service provider:

(A) verifies an individual's disability status and need for an emotional support animal without adequate professional knowledge of the individual's condition to provide a reliable verification; or

(B) charges a fee for providing a written verification for an individual's disability status and need for an emotional support animal, and provides no other service to the individual; commits a Class A infraction.

Ind. Rev. Stat. § 22-9-7-13.

	<p>A person who offers to rent or otherwise make available a dwelling may not require an individual with a disability to pay a fee to maintain an emotional support animal in the dwelling.</p> <p>Ind. Rev. Stat. § 22-9-7-14.</p> <p>This chapter does not prohibit a person who offers to rent or otherwise make available a dwelling from requiring an individual with a disability who uses an emotional support animal from:</p> <p>(1) complying with the terms of the rental agreement and other rules or regulations applicable to the dwelling on the same terms as other residents;</p> <p>(2) paying for the cost of repairs that result from any damages to the dwelling that are caused by an emotional support animal in the same manner as a resident who maintains an animal that is not an emotional support animal in the dwelling; or</p> <p>(3) signing an addendum or other agreement that sets forth the responsibilities of the owner of the emotional support animal.</p> <p>Effective July 1, 2018.</p>
Kentucky	<p>KY Rev. Stat. § 383.085</p> <p>(1) As used in this section:</p> <p>(a) “Assistance animal” means 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. This shall include a service animal specifically trained or equipped to perform tasks for a person with a disability, or an emotional support animal that provides support to alleviate one or more identified symptoms or effects of a person's disability; and</p> <p>(b) “Therapeutic relationship” means the provision of medical care, program care, or personal care services, in good faith, to the person with a disability by:</p> <ol style="list-style-type: none"> 1. A mental health service provider; 2. An individual or entity with a valid, unrestricted state license, certification, or registration to serve persons with disabilities; or 3. A caregiver, reliable third party, or a government entity with actual knowledge of the person's disability.

(2) A person with a disability may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. Unless the person's disability or disability-related need is readily apparent, the person receiving the request may ask the person making the request to provide reliable documentation of the disability-related need for an assistance animal, including documentation from any person with whom the person making the request has or has had a therapeutic relationship.

(3) Unless the person making the request has a disability or disability-related need for an assistance animal that is readily apparent, a person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability-related need for the reasonable accommodation regarding an assistance animal. The person receiving the request may independently verify the authenticity of any supporting documentation.

(4) A person with a disability who is granted a reasonable accommodation to maintain an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. The person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for physical damages to the dwelling caused by pets. Nothing in this section shall be construed to affect any cause of action against any resident for other damages under the laws of the Commonwealth.

(5) Notwithstanding any other law to the contrary, a landlord shall not be liable for injuries by a person's assistance animal permitted on the landlord's property as a reasonable accommodation to assist the person with a disability pursuant to the Fair Housing Act, as amended, 42 U.S.C. secs. 3601 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C. secs. 12101 et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 701, or any other federal, state, or local law.

(6) A person commits the offense of misrepresentation of an assistance animal if the person knowingly:

(a) Misrepresents as a part of a request for a reasonable accommodation to maintain an assistance animal in a dwelling that the person has a disability or disability-related need for the use of an assistance animal;

(b) Makes materially false statements for the purpose of obtaining documentation for the use of an assistance animal in housing;

(c) Creates or executes a document that misrepresents an animal as an assistance animal for use in housing;

	<p>(d) Provides a document to another falsely stating that an animal is an assistance animal for use in housing; or</p> <p>(e) Fits an animal, which is not an assistance animal, with a harness, collar, vest, or sign that the pet is an assistance animal for use in housing.</p> <p>(7) Misrepresentation of an assistance animal is a violation with a fine of up to one thousand dollars (\$1,000).</p>
<p>North Dakota</p>	<p>§ 47-16-07.6. Service animals--Housing--Penalties for furnishing fraudulent disability documentation</p> <p>1. An individual is guilty of an infraction if the individual, in an attempt to obtain a reasonable housing accommodation under section 47-16-07.5, knowingly makes a false claim of having a disability that requires the use of a service animal or assistance animal or knowingly provides fraudulent supporting documentation in connection with such a claim.</p> <p>2. If the individual pleads guilty or is convicted of an offense under subsection 1, a lessor may evict a lessee and the lessor is entitled to a damage fee, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal or assistance animal.</p> <p>N.D. Cent. Code § 47-16-07.6 (2018).</p>
<p>Oklahoma</p>	<p>2018 Okla. Sess. Law Serv. Ch. 223 (H.B. 3282) (WEST)</p> <p>BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:</p> <p>SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 113.2 of Title 41, unless there is created a duplication in numbering, reads as follows:</p> <p><< OK ST T. 41 § 113.2 >></p> <p>A. As used in this section, “assistance animal” means 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 animal” includes a service animal specifically trained or equipped to perform tasks for a person with a disability, or an emotional support animal that provides support to a person with a disability who has a disability-related need for such support.</p> <p>B. A person with a disability may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling pursuant to the Fair Housing Act, as amended, 42 U.S.C., Section 3601 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C., Section 12101 et</p>

	<p>seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C., Section 701 or any other federal, state or local law. Unless the person making the request has a disability or disability-related need for an assistance animal that is readily apparent, the landlord may request reliable supporting documentation that (1) is necessary to verify that the person meets the definition of disability pursuant to the Fair Housing Act, (2) describes the needed accommodation, and (3) shows the relationship between the person’s disability and the need for the requested accommodation. The landlord may independently verify the authenticity of any supporting documentation. Supporting documentation that was acquired through purchase or exchange of funds for goods and services shall be presumed to be fraudulent supporting documentation.</p> <p>C. A landlord shall not be liable for injuries by a person’s assistance animal permitted on the landlord’s property as a reasonable accommodation to assist the person with a disability pursuant to the requirements of subsection B of this section.</p> <p>D. If a person obtains a reasonable housing accommodation under this section by knowingly making a false claim of having a disability that requires the use of an assistance animal or by knowingly providing fraudulent supporting documentation in connection with such claim, the landlord may remedy the person’s noncompliance by the procedures authorized pursuant to the Oklahoma Residential Landlord and Tenant Act in Section 132 of Title 41 of the Oklahoma Statutes. Additionally, a prevailing landlord in an eviction action under this section may be awarded court costs and fees, plus damages not to exceed One Thousand Dollars (\$1,000.00) from the tenant.</p> <p>SECTION 2. This act shall become effective November 1, 2018. Approved May 7, 2018.’</p> <p>Okla. Stat. tit. 41 § 113.2 (2018).</p>
South Dakota	<p>43-32-36. Eviction for false claims of disability requiring service animal or fraudulent documentation—Damages</p> <p>If a person is found to have knowingly made a false claim of having a disability that requires the use of a service animal or assistance animal or of knowingly providing fraudulent supporting documentation in connection with such a claim, a lessor may evict a lessee and the lessor is entitled to a damage fee, not to exceed one thousand dollars, from a lessee if the lessee provides fraudulent disability documentation indicating a disability requiring the use of a service animal or assistance animal.</p> <p>S.D. Codified Laws § 43-32-36 (2018).</p>
Tennessee	<p>Tenn. Code § 66–7–109 (g)</p>

	<p>(1) It is deemed to be material noncompliance and default by the tenant with the rental agreement, if the tenant pretends to have a disability-related need for an assistance animal in order to obtain an exception to a provision in a rental agreement that prohibits pets or establishes limits on the types of pets that tenants may possess on residential rental property. As used in this subsection (g), “assistance animal” means 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 (1) or more identified symptoms or effects of a person's disability.</p> <p>(2) The landlord may recover damages and obtain injunctive relief for any noncompliance and default by the tenant with the rental agreement under this subsection (g). The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.</p> <p>(3) A provision in a rental agreement that authorizes a landlord to hold a tenant in breach or default of the rental agreement in accordance with this subsection (g) is not unconscionable and is fully enforceable.</p> <p>Tenn. Code § 66–28–505 (f)</p> <p>It is deemed to be material noncompliance by the tenant with the rental agreement, if the tenant pretends to have a disability-related need for an assistance animal in order to obtain an exception to a provision in a rental agreement that prohibits pets or establishes limits on the types of pets that tenants may possess on residential rental property. As used in this subsection (f), “assistance animal” means 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 (1) or more identified symptoms or effects of a person's disability.</p> <p>Tenn. Code § 66–28–204</p> <p>A provision in a rental agreement that authorizes a landlord to hold a tenant in breach of the rental agreement in accordance with § 66–28–505(f) is not unconscionable and is fully enforceable.</p> <p>(3) A provision in a rental agreement that authorizes a landlord to hold a tenant in breach or default of the rental agreement in accordance with this subsection (g) is not unconscionable and is fully enforceable.</p>
Wisconsin	<p>Wis Rev. Stat. § 106.50 (2r) (bg) and (br) Animals that do work or perform tasks for individuals with disabilities.</p> <p>1. If an individual has a disability and a disability-related need for an animal that is individually trained to do work or perform tasks for the individual, it is discrimination for a person to refuse to rent or sell housing to the individual, cause the eviction of the individual from housing, require</p>

extra compensation from the individual as a condition of continued residence in housing, or engage in the harassment of the individual because he or she keeps such an animal.

2. If an individual keeps or is seeking to keep an animal that is individually trained to do work or perform tasks in housing, an owner, lessor, lessor's agent, owner's agent, or representative of a condominium association may request that the individual submit to the owner, lessor, agent, or representative reliable documentation that the individual has a disability and reliable documentation of the disability-related need for the animal, unless the disability is readily apparent or known. If the disability is readily apparent or known but the disability-related need for the animal is not, the individual may be requested to submit reliable documentation of the disability-related need for the animal.

3. An individual with a disability who keeps an animal that is individually trained to do work or perform tasks in housing shall accept liability for sanitation with respect to, and damage to the premises caused by, the animal.

4. Nothing in this subsection prohibits an owner, lessor, lessor's agent, owner's agent, or representative of a condominium association from denying an individual the ability to keep an animal in housing if any of the following applies:

- a. The individual is not disabled, does not have a disability-related need for the animal, or fails to provide the documentation requested under subd 2.
- b. Allowing the animal would impose an undue financial and administrative burden or would fundamentally alter the nature of services provided by the lessor, owner, or representative.
- c. The specific animal in question poses a direct threat to a person's health or safety that cannot be reduced or eliminated by another reasonable accommodation.
- d. The specific animal in question would cause substantial physical damage to a person's property that cannot be reduced or eliminated by another reasonable accommodation.